

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. 3247/ND/2022

IN

Company Petition No. (IB)-1441(ND)/2018

IN THE MATTER OF:

Bajaj Rubber Company Private Limited

...Applicant/Operational Creditor

Versus

Saraswati Timber Private Limited

...Corporate Debtor

AND IN THE MATTER OF IA. 3247/ND/2022:

Bajaj Rubber Company Private Limited

Registered Office at :

Maya Puri Industrial Area

Phase-II, New Delhi - 110064

...Applicant/Operational Creditor

Versus

Saraswati Timber Private Limited

Registered Office at :

C-304, Lake View Apartment,

Paschim Vihar, Delhi - 110044

...Respondent

Order Delivered on: 11.08.2022

SECTION: Rule 11 of NCLT Rules, 2016

CORAM :

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Shailender Kumar

For the Respondent : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present IA. No. 3247 of 2022 is preferred by M/s. Bajaj Rubber Company Private Limited (hereinafter referred to as the '**Applicant**') filed through Sh. Sahit Bajaj, Director of the Company under Rule 11 of the NCLT Rules, 2016 seeking the following reliefs :

- “1. *Allow the application and revive the CP-IB/ 1333/ND/2018 and may kindly proceed in accordance with IBC, 2016 as amended up to date, and or;*
2. *Pass any such other orders as this Hon'ble Tribunal may deem fit in the facts and proper in the interest of justice, equity and good conscience....”*

2. To put succinctly, facts of the case are that the Operational Creditor, M/s Bajaj Rubber Company Private Limited had filed an application bearing no (IB)-1333(ND)/2018 under Section 9 of IBC 2016 for initiation of CIR Process against the Corporate Debtor M/s. Ace Footmark Private Limited. On 21.01.2019, the Operational Creditor had withdrawn the aforesaid Application on the ground of settlement between the Parties. The relevant order dated 21.01.2019 passed by this Tribunal, is reproduced below :

“Ld. Counsels submit that a compromise has been arrived at between the parties. In the light of the same, Ld. Counsel for the Operational Creditor submits that he has instructions to withdraw the present petition. He however seeks liberty to revive this petition in the event of default in the terms of the settlement.

Liberty granted. Disposed off accordingly.”

3. It is submitted by the Applicant that the Corporate Debtor had settled the matter with the Operational Creditor in terms of Settlement/Compromise Deed dated 17.01.2019, pursuant to which post-dated cheques were issued to the Applicant by the Corporate Debtor. It is added by the Applicant that the Corporate Debtor failed to adhere to the terms of the Settlement Deed dated 17.01.2019 and many cheques got dishonoured.

4. We have heard the Ld. Counsel for the Applicant and perused the documents placed on record. It is observed that the Applicant has sought revival of the present application on the ground of breach of terms and conditions of the Settlement Agreement.

5. At this juncture, it is worthwhile referring to the Judgment of NCLT, Delhi, Court V passed in the matter of M/s. Alhuwalia Contracts (India) Ltd. Vs. M/s. Logix Infratech Private Limited in (IB)- 882/ND/2022, dated 03.06.2022, which reads as below :

“15. As per the definition referred to supra, Operational Debt means a claim in respect of provision of goods or services including employment. Now we consider the case of the Applicant and we observe, the claim of the applicant do not fall either under the category of the supply of the goods or service rendered by the Corporate Debtor. Rather the claim of the Applicant is based on the breach of terms and conditions of the settlement agreement, on the basis of which the Applicant has claimed that there is default in payment of the amount as referred to part IV of the application. And the second part of the Operational debt says a debt in respect of payment dues arising under any law for the time being enforce.

Admittedly the claim of the Applicant also do not come under this part of the definition of the Operational debt.

16. *"At this juncture, we would also like to refer a decision of NCLT Allahabad Bench in "**Company Petition (IB) No. 343/ALD/2018 in the matter of Mis Delhi Control Devices (P) Limited Vs. Mis Fedders Electric and Engineering Ltd.**" decided on 14.05.2019, in which the NCLT Allahabad bench and same is reproduced below: "unpaid instalment as per the settlement agreement cannot be treated as operational debt as per Section 5 (21) of IBC. The failure or Breach of settlement agreement can't be a ground to trigger CRP against Corporate Debtor under the provision of IBC 2016 and remedy may lie elsewhere not necessarily before the Adjudicating Authority".*

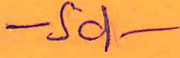
17. *A similar view is followed by this Bench in **IB No. 507/ND/2020 in the matter of Nitin Gupta vs International Land Developers Private Limited.**"*

18. *Applying this principle decided in the matters referred to Supra, we are of the considered view that the case of the Applicant is also covered with the aforesaid decision. Therefore, in our considered view, the default of payment of settlement agreement do not come under the definition of Operational debt. Hence, we are not inclined to allow the prayer of the Applicant."*

6. We further observe that though vide order dated 21.01.2019, the liberty was granted, however, subsequently in catena of judgments this Tribunal has held that breach of the terms and conditions of payment according to a Settlement Agreement does not come under the purview of the Operational Debt as defined under the IBC, 2016 and it cannot be a ground to trigger CIRP against the Corporate Debtor.

7. Hence, we have no option but to reject the present application.

The IA-3247/ND/2022 is accordingly Dismissed.



(L. N. GUPTA)
MEMBER (T)



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(DHARMINDER SINGH)
MEMBER (J)