

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI SPECIAL BENCH- IV

CONY-P 23/ND/2021

IN

IB No. 1208/ND/2018

IN THE MATTER OF:

M/s Stallion

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s Mehar Steels Private Limited

... RESPONDENT/ CORPORATE DEBTOR

And IN THE MATTER OF:

M/s Stallion

**(A partnership firm registered under the
Indian Partnership Act, acting through its
Partner Mr. Kapil Sawhney)
Having its registered office at
A-1/27, Panchsheel Enclave,
New Delhi-110017**

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

**M/s Mehar Steels Private Limited
A Company incorporated under the
Provisions of the Companies Act, 1956
Having its registered office at
B-222, Layak Ran Complex,
V&PO, Badarpur, New Delhi-110044
(Through its Managing Director)**

... RESPONDENT/ CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 04.05.2022

CORAM:

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

Sol

SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (TECHNICAL)

ORDER

PER- SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

The instant Contempt Application under Rule 11 of NCLT Rules 2016, read with Section 420 of Companies Act, has been filed on behalf of the Operational Creditor, seeking initiation of contempt of Court proceedings and appropriate directions against the Corporate Debtor and also for revival of the IB petition.

2. Brief facts of the present application are that the applicant, being the Operational Creditor, filed application under Section 9 of IBC Code, before this Tribunal on 12th September 2018. During the pendency of the said application, there was mutual discussion between the applicant and the respondent-Corporate Debtor. Accordingly, a settlement agreement dated 06th February 2019 was executed between the parties, containing various terms and conditions, including schedule of re-payment of debt by the Corporate Debtor. It is further submitted that vide CA No. 80/2019, the parties filed a joint application for withdrawal of the captioned application, in view of the settlement agreement dated 06th February 2019. Accordingly, the said application under Section 9 of IBC Code, was withdrawn and the same was dismissed as withdrawn vide order dated 20th February 2019.
3. Further, it is also submitted that the respondent-Corporate Debtor failed to adhere to the terms & conditions of the settlement agreement and the cheques bearing No. 473084-89 amounting to Rs. 57,012,892/- were dishonoured, except two cheques amounting Rs. 7,12,892/- as well as Rs. 10,00,000/- dated 07th February 2019 and 02nd October 2019 respectively.

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Balance Rs. 40,00,000/- were not paid despite repeated request. Hence, there was a violation of the settlement agreement. Accordingly, it is prayed that contempt proceeding may be initiated against the respondent and the petition No. 1208 of 2018 be admitted and CIR proceedings be initiated against the respondent-Corporate Debtor, as well as to direct the Director of the Corporate Debtor to furnish accounts and bank details of the Corporate Debtor and to restrain them as not to sell and dispose of alienate the assets, without permission of this Tribunal, till the pendency of present application and not to travel abroad and leave the country without permission

4. Heard, record has been thoroughly perused. From the bare perusal of the joint application dated 15th February 2019, the following prayers were made:

(a) to permit the Applicants to jointly file and bring on record Annexure A - Settlement Agreement dated 17.02.2019 and record the undertaking of signatories of the Settlement Agreement.

(b) to permit the Applicant Petitioner to withdraw the present petition with liberty to approach the Hon'ble Tribunal afresh, if so require, in accordance with law.

(c) to pass any other order or direction which this Hon'ble tribunal may deem fit and proper in the facts and circumstances of the present case.

5. By, this Tribunal's order dated 20th February 2019, the settlement agreement was taken on record and permission was granted to withdraw the IB-1208 of 2018. Hence, CA No. 80/ND/2019 was disposed of, thereby IB-1208/ND/2018 was also disposed-of as withdrawn. The applicant herein already has received a sum of Rs. 17, 12, 892/- and no demand notice was issued after the dishonouring of cheques bearing No. 473086-89. Thus, no fresh cause of action has arisen the favour of the applicant on the basis of

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the said settlement, which was entered into between parties and they have voluntarily executed the same to withdraw the application for initiation of CIR proceedings.

6. So far as, the contempt proceedings are concerned, contempt proceedings are initiated only in exceptional cases, where the parties have ever intentionally and malafidely flouted the order of the Tribunal. Therefore, the said exceptional remedy cannot be exercised with this Tribunal merely at the asking of the applicant herein that too, when there is default only with respect to the agreement entered into between the parties, which may give rise to civil remedy after withdrawal of the application under Section 9 of the Code.
7. Both parties, herein, entered into the agreement to close the CIR proceedings. The applicant also voluntarily consented to that and even obtained post-dated cheques. Once, cheques have been taken, the appellant has got efficacious remedy either to go to Civil Courts for enforcement of the said agreement or to file complaint under section 138 of the N.I. Act. The said criminal remedy has already been availed. Thus, the applicant herein, after entering into the said settlement cannot be allowed to seek the revival of the application under Section 9 of Code, as the intention appears to be is to recover the money and not to go for CIR proceedings against the Corporate Debtor. Moreover, NCLT and IBC cannot be allowed to be used as tool for recovery of amount. So far as, the citation referred on the part of the applicant i.e. *Ashish Seth And ORs. Vs. Sumit Mittal and Ors. decided on 24.04.2020, Kakkoor Service Co-operative Bank Ltd. Vs. Jinu Augustine, 2021 (4) KLT 616 decided on 26.02.2021, Sunil Choudhary Vs. Hubergroup India*

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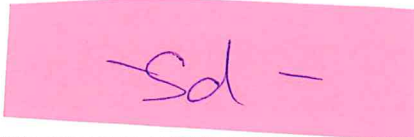
Pvt. Ltd. and Another, 2019 SCC Online NCLAT 428 decided on 29.07.2019, Ruchita Modi Vs. Kanchan Ostwal and Another, 2019 SCC Online NCLAT 1345 decided on 04.11.2019, Prithvi Raj Kasana Vs. Kapil Arora & Ors., 2019 SCC Online NCLAT 234 decided on 04.06.2019, Digant L. Kapadia Vs. Bank of India and Anr., 2019 SCC Online NCLAT 1297 decided on 20.11.2019, Raaj Bardhan Jayaswal Vs. Kunal Bardhan Jayaswal, 2018 SCC Online NCLAT 69 decided on 05.02.2018, M/s Khanna Jewellers Pvt. Ltd. Vs. M/s Lifetime Infotech Pvt. Ltd., (IB)-1724(PB)/2018, order dated 13.12.2018 are concerned, those are not applicable in the given facts and circumstances of the present case.

8. Thus, this Tribunal is of the firm view that NCLT can be allowed to act as a recovery as machinery at the mere whims & wishes of the parties to accept the applications time and again, after voluntary withdrawal of the application, under Section 7 or 9 of the Code on the same cause of action that to, when the application is moved not with fair intention to initiate the CIR proceedings, but just to fulfil its demands. Operational Creditor must be conscious enough before entering into such settlements with the Corporate Debtor, whether it would be fulfilled or not and the post-dated cheques would be encashed or not.
9. Once the parties have voluntarily chosen to accept the agreement with the post-dated cheques and to withdraw the main application under Section 9 of IBC, they must be ready to face the consequence of same. Hence, this Tribunal cannot be permitted to be used as a tool at the hands of such applicants as it is contrary to the legislative purpose behind the provision of IBC, 2016.


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10. Accordingly, the present application being devoid of any merits, the same stands dismissed, with no order as to cost.

File be consigned to records.



(HEMANT KUMAR SARANGI)
MEMBER (T)



(DHARMINDER SINGH)
MEMEMBR (J)

Pronounced today u/d Rule 151 of NCLT Rules, 2016 as the Hon'ble Member (Technical) Shri. Hemant Kumar Sarangi is not holding the Court today.

Vishal Rana
04-05-2022
Court Officer