



NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

19. I.A. 3196/2022

IN

C.P.(IB)-4412(MB)/2019

CORAM: SHRI. H.V.SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **21.12.2022**

NAME OF THE PARTIES: IDBI Trusteeship Services Limited

V/s.

Nirmal Lifestyle Limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

I.A. 3196/2022

The above Interlocutory Application is filed by the Financial Creditor for restoration of the main company petition which was disposed of by allowing an application filed by the Interim Resolution Professional under Section 12(A) in Interlocutory Application bearing No. 2938/2021 on 09.02.2022.

Upon the query raised by this Tribunal as to how the above application is maintainable, Mr. Dimay Dave, counsel appearing for the Financial Creditor relied upon the order of Hon'ble NCLAT in the case of **Himandri Foods Ltd. Vs. Credit Suisse Funds AG.** This Bench has carefully gone through the above order relied by the petitioner and observed the followings:

1. In the above instant case before the Hon'ble NCLAT the company petition was disposed of by the Adjudicating Authority as infructuous,



in view of admitting another company petition against the same Corporate Debtor.

2. A liberty was given by the Adjudicating Authority for reporting non-compliance of the settlement terms.

As stated above the present company petition was disposed of after its admission on an application filed by the Interim Resolution Professional under section 12(A) of the Code. However, no liberty was granted to the Financial Creditor to once again apply for revival of the above company petition in case of breach. Therefore, the above case law relied upon by the petitioner is distinguishable from the facts of the present case on hand and is not applicable.

As stated above, the petitioner approached this Tribunal for a Resolution which has taken place by way of settlement basing on which the petitioner withdrawn the company petition after admission. Now the petitioner once again cannot ask for restoration more so when no liberty was granted, since it would amount to converting the Resolution process into recovery process which is not the object of the Code.

It is appropriate to mention here that there is no express provision anywhere in the code for re-opening of a company petition which was withdrawn after settlement.

It is also appropriate to mention here that there are several company applications filed against the Corporate Debtor and its group companies before various Benches at Mumbai and the Corporate Debtor is adopting the same modus of settling matters with the individual Financial Creditor/Operational Creditor after passing CIRP order and before



constituting the COC and again forcing the petitioner once again to file an application for restoration by committing breach. Keeping the conduct of the Corporate Debtor in mind, this Bench did not consciously grant liberty to revive the company petition since the Financial Creditor has entered into the consent terms at their own risk and responsibility. For the aforesaid reason, this Bench is of the considered view that there is no merit in the above application and the same is liable to be **dismissed**.

Accordingly, the above Interlocutory Application is **dismissed**.

Sd/-
MADHU SINHA
Member (Technical)
//SKS//

Sd/-
H.V.SUBBA RAO
Member (Judicial)