



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**IA No. 891/NCLT/AHM/2022
IN
CP (IB) 300/NCLT/AHM/2020**

Under Rule 11 of National Company Law Tribunal Rules, 2016

In The Matter of IA No. 891/NCLT/AHM/2022

Vrundavan Residency Pvt Ltd.

... Applicant

Versus

Mars Remedies Pvt Ltd.

...Respondent

AND

IN THE MATTER OF

Vrundavan Residency Private Limited

...Financial Creditor

Versus

Mars Remedies Private Limited

...Corporate Debtor

Order Pronounced On: 12/01/2023

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)**

IA No. 891/NCLT/AHM/2022
IN CP (IB) 300/NCLT/AHM/2020



MEMO OF PARTIES

(IA No. 891/AHM/2022)

M/s. Vrundavan Residency Pvt Ltd.

Near Polytechnic Road College,

Mota Bazar, V.V. Nagar

Gujarat - 388120

... Applicant

Versus

M/s. Mars Remedies Pvt Ltd

635, GIDC Estate, Vaghodiya,

Vadodara, Gujarat – 391760.

...Respondent

Present:

For the Applicant/RP: Mr. Ravi Pahwa, Advocate

For the Respondent: Mr. Pavan Godiawala, Advocate

ORDER

1. The Application bearing IA No. 891/AHM/2022 is filed by M/s. Vrundavan Residency Pvt Ltd. being the original Applicant in CP (IB) No. 300/2020 under Rule 11 of the National Company Law Tribunal Rules, 2016 ('NCLT, Rules') seeking following prayer:

- i) *That this Hon'ble Adjudicating Authority may be pleased to allow the present interlocutory application, in the interest of justice;*
- ii) *That this Hon'ble Adjudicating Authority may be pleased to restore CP (IB) No.300 of 2020, in the interest of justice;*
- iii) *That this Hon'ble Adjudicating Authority may be pleased to take revised Form-2 on record and pass consequential order admitting the opponent into CIRP, in the interest of justice;*



iv) *That this Hon'ble Adjudicating Authority may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper, in the interest of justice;*

2. The facts in brief as submitted by Applicant are as under:

- i) The applicant had filed an insolvency petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') being CP (IB) No. 300 of 2020 for initiating Corporate Insolvency Resolution Process (CIRP) against the Respondent M/s. Mars Remedies Pvt Ltd. The said petition was rejected vide order dated 22.3.2021 with following observations:

13. The date of default is on 29.09.2015. The last date of payment by the Corporate Debtor is on 29.09.2015 and thereafter no payment was made. The last entry in 26AS of the Income Tax Statement for payment of interest is on 31.03.2016. The application is Educational Society held that Limitation Act is applicable to the proceedings under IBC.

14. In view of the above, the petition is not maintainable as time barred. As a consequence, the instant petition is rejected in terms of Section 7 of the IB Code."

- ii) The Applicant being aggrieved by order dated 22.03.2021, filed Company Appeal (AT) (Ins.) No. 345/ 2021 before Hon'ble National Company Law Appellant Tribunal ('NCLAT') and Hon'ble NCLAT vide order dated 04.03.2022 allowed the Appeal with following Order:

"9. Taking all these facts and circumstances of the case, we are of the considered view that the impugned order cannot be sustained in the eyes of law, therefore, the impugned order dated 22.03.2021 passed by the Ld. Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in C.P. (IB) No. 300/NCLT/AHM/2020 is hereby set aside and the matter is remitted back to the Ld.



Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad with a request to hear the parties and after perusing the aforesaid documents whereby the Respondent categorically acknowledged the debt, pass fresh orders within twelve weeks from the date of receipt of this judgment.”

- iii) Thereafter, the Respondent being aggrieved preferred Civil Appeal No. 4823/2022 before Hon’ble Supreme Court and vide order dated 01.08.2022 said civil appeal was dismissed as withdrawn. The extracts of order dated 01.08.2022 is reproduced below:

“Learned counsel for the appellant seeks permission to withdraw the appeal.

Permission is granted.

The Civil Appeal is accordingly dismissed as withdrawn.”

- iv) Thereafter when the main petition was taken up afresh, in view of initiation of CIRP of the Corporate Debtor in CP(IB) 804/2019, the main petition was disposed of vide order dated 07.09.2022. The Order dated 07.09.2022 is reproduced below:

“Order initiating CIRP is passed against the Corporate Debtor today in CP(IB) 804 of 2019, hence, this application has become infructuous. The Applicant is at liberty to file its claim before IRP as per the provisions of the IBC, 2016. Learned Counsel Mr. Pahwa seeks and is granted liberty to restore the application in case CP(IB) 804 of 2019 get settled or the order is set aside. Accordingly, CP(IB) 300 of 2020 stands disposed of as infructuous.”

- v) The Hon’ble Supreme Court vide Order dated 26.09.2022 was pleased to stay further proceedings as regards resolution process in CP(IB) 804/2019. The said order dated 26.09.2022 is reproduced below:



“Until further orders, there shall be stay of all further proceedings as regards the Resolution Process (CIRP) in CP (IB) 804 of 2019 pending before the National Company Law Tribunal, Ahmedabad.”

vi) Thus, the Applicant filed this instant application seeking restoration of main petition and passing of consequential order of admission of Respondent into CIRP.

3. The Respondent has filed reply and submits as under:

- i) Another matter CP (IB) No 804/2019 was filed by one another alleged financial creditor against the respondent and pursuant to the order passed by the Hon'ble NCLAT, CP (IB) 804 of 2019 was admitted into CIRP vide order dated 07.09.2022. The order of Hon'ble NCLAT was challenged before Hon'ble Supreme Court and the Hon'ble Supreme Court on 26.09.2022 gave direction that there shall be stay of all further proceedings as regards the Resolution Process (CIRP) in CP (IB) No 804/2019.
- ii) The Applicant has already filed its claim with the IRP appointed in CP (IB) No 804/2019.
- iii) The main petition CP(IB) No. 300/2020 was disposed of as infructuous vide order dated 07.09.2022 with liberty to restore the main petition in case CP (IB) 804/2019 get settled or the order is set aside. Order dated 07.09.2022 in CP (IB)804/2019 is neither set aside nor any settlement has arrived between the Corporate Debtor and applicant in CP(IB) 804/2019. Hence the instant application is not only pre-mature but a sheer abuse of the process of law and court.



4. Heard the parties, liberty was granted to file written submissions. The Respondent had filed its written submissions and submits that the Applicant in instant application is seeking review of order dated 07.09.2022 and this Adjudicating Authority does not have jurisdiction to review its own order and by allowing the application there shall be multiplicity of litigation as in case the appeal of the Respondent before the Supreme Court is disallowed than the order dated 07.09.2022 as passed in CP(IB) 804/2019 would continue and in such eventuality there shall be a multiplicity of litigation.
5. Considered the submissions and perused the documents placed on record. The Corporate Debtor was admitted into CIRP on 07.09.2022 in CP (IB) 804/2019 on an application filed by financial creditor BDH Industries Ltd. The said CIRP order was passed in view of order dated 07.02.2022 passed by Hon'ble NCLAT. In the meantime, order dated 07.02.2022 of Hon'ble NCLAT was challenged before Hon'ble Supreme Court, where an order for stay of all further proceedings as regards the resolution process in CP(IB) 804/2019 is passed on 26.09.2022.
6. The present Applicant claiming to be a financial creditor had filed the main Application CP(IB) 300/2020 for initiation of CIRP of the Corporate Debtor, during the pendency of CP(IB) 804/2019. In view of initiation of CIRP of the Corporate Debtor in CP(IB)804/2019, the present Applicant financial creditor was given liberty to file its claim before IRP appointed in CP(IB) 804/2019. The Applicant was also granted liberty to restore the main petition, with following directions:



“Learned Counsel Mr. Pahwa seeks and is granted liberty to restore the application in case CP(IB) 804 of 2019 get settled or the order is set aside.”

This application is filed after an order passed by Hon’ble Supreme Court with respect to CP (IB)804/2019 on 26.09.2022. The order passed by the Hon’ble Supreme Court is reproduced below:

“Until further orders, there shall be stay of all further proceedings as regards the Resolution Process (CIRP) in CP (IB) 804 of 2019 pending before the National Company Law Tribunal, Ahmedabad.”

7. The Hon’ble Supreme Court has merely granted stay in CIRP proceeding in order to decide the appeal filed against the order of Hon’ble NCLAT directing NCLT to admit the IB application. The final outcome of the appeal before the Hon’ble Supreme Court would be either setting aside of order of initiation of CIRP of the Corporate Debtor or continuance of CIRP proceedings of the Corporate Debtor in CP(IB) 804/2019. Since there cannot be two simultaneous CIRP proceedings against the same Corporate Debtor, hence the outcome of the proceedings before Hon’ble Supreme Court shall decide the fate of Corporate Debtor.

8. The order passed by this Bench on 07.09.2022 records as under:

“Order initiating CIRP is passed against the Corporate Debtor today in CP(IB) 804 of 2019, hence, this application has become infructuous. The Applicant is at liberty to file its claim before IRP as per the provisions of the IBC, 2016. Learned Counsel Mr. Pahwa seeks and is granted liberty to restore the application in case CP(IB) 804 of 2019 get settled or the order is set aside. Accordingly, CP(IB) 300 of 2020 stands disposed of as infructuous.”



The prerequisites to revive/restore the main IB Application of present Applicant is clearly mentioned as ‘*to restore the application in case CP(IB) 804 of 2019 **get settled** or the **order is set aside***’. Neither of the conditions are existing at present. Admittedly the matter is not settled and setting aside is yet premature if it has to happen in view of the pendency of the said issue before Hon’ble Supreme Court.

9. Hence, we are of the considered view that the present application cannot be considered at this stage. However, the present Applicant can avail the remedy of restoring the main application subject to the outcome of the appeal before Hon’ble Supreme Court in CP(IB) 804/2019.
10. In view of the foregoing, instant application is rejected and disposed of.
11. Copy of this order be served to the parties by registry.

-Sd-

AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

-Sd-

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Mansi J./LRA