

*(Through Videoconference)*

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI, COURT II**

**IA No. 896 of 2022  
IN  
MA No. 3816 of 2019  
IN  
CP No. 294/IB/2018**

Application under Rule 11 of the National Company Law  
Tribunal Rules, 2016

*In the matter of :-*

**BSFC Distributors Private Limited**

**... Applicant**

*V/s*

**Mr. Om Prakash Agrawal  
Liquidator of Corporate Debtor**

**... Respondent**

*In the matter of :-*

**IDBI Bank Limited**

**...Applicant**

*V/s*

**S. Kumars Nationwide Limited**

**... Corporate Debtor**

**Order delivered on: 09.02.2023**

***Coram:***

**Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)**

**Hon'ble Member (Technical) : Mr. Shyam Babu Gautam**

***Appearance:***

For the Applicant : Mr. Rahul Sarda, Advocate  
For the Respondent : Mr. Prakash Shinde, Advocate

**ORDER**

***Per: Shyam Babu Gautam, Member Technical***

1. The present Application has been filed by the Applicant seeking recall of the Order dated 18.02.2020 passed by this Tribunal in MA No. 3816 of 2019 wherein approval was granted to the Liquidator to initiate proceedings for recovery of the sum due and payable to the Corporate Debtor against the Applicant herein.
2. The Applicant has called for recall of the Order on the ground that the Liquidator of the Corporate Debtor had suppressed certain facts and documents in obtaining the Order dated 18.02.2020.
3. The Applicant has stated that the Liquidator in the said IA being 3816 of 2019 did not implead the Applicant herein as the party Respondent. The liquidator had allegedly observed that large amounts of money was due and payable by the Applicant herein to the Corporate Debtor. Hence the liquidator had issued a Demand Notice dated 07.10.2019

under section 8 of the Insolvency and Bankruptcy Code, 2016 (Code) calling upon the Applicant herein to pay a sum of Rs. 1,59,25,632/- to the liquidator as the same was due and payable by the Applicant herein to the Corporate Debtor as Operational Debt. The Applicant submits that the liquidator had suppressed the fact that the Applicant herein before the issuance of the demand notice, had informed the Resolution Professional of the Corporate Debtor about the pre-existing dispute vide numerous letters. The Applicant states that the liquidator did not disclose any other correspondences except the demand notice in the said IA. By not disclosing the relevant facts the Tribunal believed that there is no pre-existing dispute regarding the Applicants alleged debt and also the applicant has not raised any dispute in response to the demand notice.

4. The Respondent vide the said IA sought permission from the Tribunal to initiate proceedings against the Applicant after suppressing important facts and documents. Hence, in view of the Order dated 18.02.2020, the Respondent filed Company Petition No. 1427 of 2020 under section 9 of the Code against the Applicant. In view of not making full and true disclosure of the Respondent in filing the said IA 3816 of 2019, the Applicant prays to recall the order dated 18.02.2020 and restrain the liquidator from continuing with the Company Petition No. 1427 of 2020 filed against the Applicant.
5. The Respondent liquidator has filed its reply dated 06.05.2022. the liquidator states that this Tribunal vide its order dated 18.02.2020 allowed to initiate proceedings against the Applicant herein and hence

CP 1427 of 2020 was filed under Section 9 of the Code on 11.03.2022. the present Application is challenged by the liquidator on the ground that the said present Application has been filed by the Applicant after two years of the passing of the Order dated 18.02.2020 in MA 3816 of 2019.

6. One of the prayers in the present Application is to recall the order dated 18.02.2020 passed in MA 3816 of 2020. It is submitted that there are no provisions so as to recall of an Order under the Code or the National Company Law Tribunal Rules, 2016. If a person is aggrieved by any Order of the Adjudicating Authority, they can file an Appeal in the National Company Law Appellate Tribunal under Section 61 of the Code and the Applicant has not chose to file the Appeal and instead has filed an IA for recalling of the said Order.
7. Further, the Liquidator denies of any suppression of any documents as alleged and states that as per Section 33(5) of the Code, that the party against whom legal proceedings are sought to be initiated is not required to be made a party in the Application.

### **FINDINGS**

8. We have heard the arguments of the Applicant and the Respondent herein. The issue for consideration is whether a Liquidator can file CIRP proceedings against the Corporate Debtor. The said issue has been clarified in Explanation II given under Section 11 of the Code wherein it specifically states that nothing shall prevent a Corporate

Debtor referred to in the clauses from a to d from initiating Corporate Insolvency Resolution Process against another Debtor. The said section is reproduced as under :-

*“Section 11. Persons not entitled to make Application – the following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely :-*

- a. a corporate debtor undergoing a corporate insolvency resolution process [ or a pre-packaged insolvency resolution process;] or*
  - (aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or*
- b. a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or*
  - (ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or*
- c. a corporate debtor or a financial creditor who has violated any of the terms of the resolution plan which was approved twelve months before the date of making of an application under this Chapter; or*
- d. a corporate debtor in respect of whom a liquidation order has been made.*

*[Explanation I] – For the purpose of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.*

*[Explanation II] – For the purposes of this Section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor]*

9. Thus, it is clear from the above amendment (brought in effect from 28.12.2019) that CIRP proceedings may be filed against another Corporate Debtor. Further it is also pertinent to note that as per Section 33(5) of the Code, it also specifies that the liquidator on behalf of the Corporate Debtor, with prior approval of the Adjudicating Authority can initiate proceedings against another Corporate Debtor and in the present case the Respondent herein has received an approval from the Tribunal vide Order dated 18.02.2020.
10. Further, the plea as taken by the Applicant herein can be separately agitated under the Company Petition 1427 of 2020 as it is a separate proceeding and can be decided on merits.
11. In view of the above, **IA 896 of 2022** is hereby rejected and disposed of.

Sd/-

**SHYAM BABU GAUTAM**  
MEMBER (TECHNICAL)

Sd/-

**JUSTICE P.N. DESHMUKH**  
MEMBER (JUDICIAL)