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**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IA/555/IB/2020 IN IBA/1352/2019 filed
under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016 read with
Rule 11 of National Company Law
Tribunal Rules, 2016.

In the matter of M/s. Bnazrum Agro Exports Limited

M/s. Sakthi Containers Private Limited

No. 269, SIDCO Industrial Estate,
Ambattur, Chennai-600098

---Applicant

Vs.

M/s. Bnazrum Agro Exports Limited

Sirumalai Road, Erandalaparai,
Reddiyapatti Post, Dindigal,
Tamilnadu-624006

---Respondent

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Applicant : *Shri. Jayesh Dolia, Advocate*
For M/s. Aiyar & Dolia

For the Respondent : *Shri. K.S. Ravichandran, PCS*
For KSR&Co.,

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order pronounced on: 10.06.2021

The above application has been preferred by the Applicant
under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 and

Rule 11 of the NCLT Rules, 2016 allowing the Applicant to reopen IBA/1352/2019 on account of default in payment by the Corporate Debtor as per the Joint Memo of Compromise dated 12.03.2020.

2. On perusal of this Application, the averments made in the application are that

- (i) The Applicant herein being Operational Creditor, with claim of Rs.53,09,980/- filed IBA/1352/2019 under Section 9 of the Code. As per the "Joint Memorandum of Compromise and Consent Terms" filed on 12.03.2020 (page.10), the Corporate Debtor paid Rs.9,27,500/- by RTGS on 11.03.2020 whereas for other monthly instalments, post-dated cheques were issued for the period from April, 2020 to August 2020. The applicant reserved its right to reopen IBA/1352/2019, if the cheques were dishonoured, under clause 4 of Joint memo of compromise. This Tribunal vide its order dated 17.03.2020 disposed the matter as withdrawn with liberty.
- (ii) The applicant has filed the present application, since the cheques issued by Corporate Debtor were dishonoured due to

insufficient funds. As on date, a sum of Rs.37,10,000/- is due from Corporate Debtor. As per the provisions of Section 3(12) of the Code, the date of default is 14.07.2019 when the debt became due and payable by the Corporate Debtor which is prior to 25.03.2020 as notified under Section 10A of the Code and date of default as claimed by the Respondent i.e. 15.05.2020 is not correct.

3. In the written submission filed on 19.02.2021 by the Corporate Debtor, it is contended that

- (i) The Corporate Debtor had already paid the first instalment of Rs.9,27,500/- on 11.03.2020 and second instalment of Rs.15.04.2020 as per the schedule of payment provided in the Joint Compromise Memo and the subsequent default has occurred only with respect to amounts payable from 15.03.2020 aggregating to an amount of Rs.37,09,580/-. Thus, in the present case, the date of initiation of Section 9 application bearing IBA/1352/2019 which was filed on 11.11.2019 cannot be a date of default.



(ii) The Respondent cited the order of the Hon'ble NCLT, Mumbai Bench in the matter of **M/s. Tata Power Trading Co. Ltd. vs. Indusar Global Ltd** which held *"that there is no specific procedure prescribed under I&B Code, or the Rules thereof for re-opening of the application and therefore the application on this count alone is to be dismissed"*. In the another matter of **M/s. Walchandnagar Industries Limited Vs. Karmayogi Shankarraoji Patil Sahakari Sakhar Karkhana Limited** the Hon'ble Mumbai Bench vide its order dated 17.07.2019 held *"it seems that the settlement agreement has been violated/breached and the applicant seeks for revival of this Petition and the applicant may issue a fresh notice to the Corporate Debtor and thereafter file fresh Petition. Hence, the application is dismissed"*.

(iii) According to the Respondent, by virtue of Notification S.O.1205(E) dated 24.03.2020, as per Section 4 of the IBC, Part-II relating to insolvency resolution for corporate person, will apply only to matters where the minimum amount of default is of rupees one crore. In the present case, the default has



arisen on 15.05.2020 due to non-payment of 3rd instalment and the default amount is Rs.37,09,580/- which is much below the threshold provided under the IBC in force, for the purpose of initiating CIRP against the Corporate Debtor. Even if the re-opening is permitted, the original amount of Rs.53,09,980 as per the said Application is below the threshold provided under the IBC.

4. Heard the arguments by both sides and perused the records placed on file. In the present case, the prayer of the operational creditor becomes pertinent in light of the fact that the minimum threshold of default under section 4 of IBC 2016 has been raised from Rupees One Lakh to Rupees One Crore vide Notification F. No. 30/09/2020 dated 24th March, 2020 issued by the Ministry of Corporate Affairs. Further, if we did not revive the IBA, it will give further room to the Corporate Debtor to violate settlement arrived before 24.03.2020, they defeat the very spirit of IBC. Hence, if terms of compromise are not honoured, there the IBA shall be reverted to



its original position and the Adjudicating Authority shall take up the same for Adjudication.

5. The Hon'ble NCLAT in the matter of Sree Bhadra Parks and Resorts Vs Sri Ramani Resorts and Hotels on 09.04.2021 had deliberated on the restoration of original application on the breach of the consent terms agreed between the parties. The Hon'ble NCLAT settled that the adjudicating authority is empowered to restore the original application under rule 11 of the NCLT rules 2016 in spite of the express provision in the consent terms to file a fresh application.

The relevant portions of the order:

"It cannot be said by any stretch of imagination that the 'Adjudicating Authority' (National Company Law Tribunal, Kochi Bench, Kerala) cannot pass an order to restore and revive the application in IBA/13/KOB/2020 by way of an Interlocutory Application filed by the 'Respondent'/'Financial Creditor'/'Applicant'. Consequently, the contra plea taken on behalf of the 'Appellant' is not acceded to by this 'Tribunal'."

6. The Hon'ble Supreme Court also in the matter of Ess Investments vs Lokhandwala Infrastructure held that the National



Company Law Tribunal can restore a 'Petition' which was dismissed as an 'infructuous one'.

7. In light of the above, the instant application **IA/555/IB/2020** is hereby **allowed**

8. The Registry is directed to list this IBA/1353/2019, on **24.06.2021**

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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