

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

**IA No. 1139 of 2022
In
IA No. 375 of 2022
In
CP (IB) No. 1832/(MB) 2017**

Under Rule 11 read with Rule 49(2) of
the National Company Law Tribunal
Rules, 2016.

**Matix Fertilizers and Chemicals
Limited**

Having address at: Poonam Chambers,
B Wing, 5th Floor, Dr. Annie Besant
Road, Worli, Mumbai- 400 018

.....Applicant

Vs.

**Mr. Abhijit Guhathakurta,
Liquidator of EPC Constructions
(India) Ltd.,** Having address at Flat No.
701, A Wing, Satyam Springs, CTS No.
272A/2/1, Off BSD Marg, Deonar,
Mumbai- 400 088

..... Respondent

In the matter of

IDBI Bank Limited

... Financial Creditor

Vs.

EPC Constructions (India) Limited

... Corporate Debtor

Order delivered on: 25.11.2022

Coram:

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

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

Appearances:

For the Applicant : Mr. Vikram Nankani, Senior Advocate
For the Respondent : Mr. Pulkit Sharma, Advocate

ORDER

Per: Shyam Babu Gautam, Member Technical

1. This is an Application filed by the Applicant, Matix Fertilizers and Chemicals Limited, seeking setting aside of the **Order dated 3rd March 2022** (hereinafter called the “said Order”) passed by this Bench and praying for the following reliefs:

“i. Allow the instant application, and set aside/ recall the ex-parte impugned Order dated 03.03.2022 passed by this Hon’ble Tribunal allowing I.A. No. 375/2022 filed by the Respondent Liquidator.

ii. Consequently, direct the Liquidator to serve a copy of the said I.A. 375/2022 upon the Applicant, and thereafter the same be considered afresh along with pending I.A. No. 415/2022 in C.P. (IB)/1832(MB)2107 filed by the applicant herein, after hearing the parties;

iii. At the interim/ ad-interim stage, pending final disposal of the instant application, this Hon’ble Tribunal may please stay the impugned ex parte Order dated 03.03.2022 in I.A. No. 375/2022 filed by the Respondent Liquidator;

iv. Pass any other order(s) as this Hon’ble Court may deem fit and proper.”

2. The Respondent was appointed as the Liquidator of the Corporate Debtor vide Order dated 7th May 2021. In the course of his duties, the Respondent filed an **Application being I.A. No. 375 of 2022** (hereinafter called “the Permission Application”) seeking permission to initiate appropriate proceedings against the Applicant on account of default committed by the Applicant in payment of the redemption amount of Rs. 310 Crores. The Applicant submits that this Bench passed an *ex-parte* **Order dated 3rd March 2022** wherein permission was granted to the Respondent to initiate insolvency proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “the Code”) against the Applicant.
3. The Applicant claims that they were neither served any Notice regarding the said Permission Application i.e. I.A. No. 375 of 2022 nor were made aware of the filing or hearing of the same and this has caused great prejudice to them. The Applicant denies any obligation to repay any amounts to the Corporate Debtor and instead highlights the Corporate Debtor’s liability to repay an amount of Rs. 583 Crores to the Applicant. The Applicant further submits that the fact that another Application being I.A. No. 415 of 2022 has been filed by the Applicant praying for an Order from this Tribunal to direct the Respondent to consider the Applicant’s claim, is pending before this Bench and this fact was actively concealed by the Respondent while acquiring the said Order from this Bench. Copies of the relevant documents have been duly attached to this Application.

4. The Respondent filed a **Reply dated 3rd August 2022** wherein it is prayed that the instant Application be dismissed on the following grounds. It is submitted that this Tribunal does not possess the power to set aside/ review its own Order and rehear a matter already disposed of and this position has already been upheld by NCLAT in a catena of decisions. Moreover, it is argued that the said Order was not *ex-parte* as the Applicant was rightly not impleaded as a party in the Permission Application as their presence was not required since the Applicant was not a necessary party. Further, pursuant to the said Order, a fresh Company Petition being **C.P. (IB)/ 156 (KB)/ 2022** was filed before NCLT Kolkata Bench which was duly served upon the Applicant. The Respondent submits that it is before this Court that the Applicant is entitled to agitate all their claims on merits.

FINDINGS

5. We have heard the Counsel appearing for the Applicant and the Counsel for the Respondent at length. On perusal of the said Order dated 3rd March 2022 passed by this Bench, it is evident that the said Order was passed for the sole purpose of granting permission to the Liquidator for initiating appropriate legal proceedings against the Applicant. We note that the observations made in the said Order do not amount to Findings or Inferences made on the merits of the case. The opinions expressed therein are preliminary in nature and not conclusive with regard to the issues raised by the Applicant. The said Order neither restricts the rights of the Applicant nor curtails their freedom to raise their claims before the appropriate forum after the initiation of suitable proceedings by the Respondent.

6. In the instant case, proceedings under Section 7 of the Code have already been initiated by the Respondent before NCLT Kolkata Bench and the Applicant retains the right to agitate their issues before the said Bench. It is reiterated that the observations made in the said Order are not based on the merits of the case but dwell on the limited issue of granting permission to the Respondent to initiate legal proceedings under the Code.
7. In view of the foregoing reasons, we find it fit to reject this Application. With the above observations, I.A. No. 1139 of 2022 is accordingly **dismissed**.

Sd/-

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

Sd/-

JUSTICE P. N. DESHMUKH
(MEMBER JUDICIAL)

AN
25.11.2022