

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH
COURT III**

I.A. No. 2096/2021
In
IB-619(ND)/2019

In the matter of:

INTEC CAPITAL LIMITED

...Applicant/Financial Creditor

Versus

JAGTAR SINGH & SONS HYDRAULIC PRIVATE LIMITED

...Respondent/Corporate Debtor

Order delivered on 23.11.2021

Coram:

Shri Bachu Venkat Balaram Das Shri Narender Kumar Bhola
Hon'ble Member (Judicial) Hon'ble Member (Technical)

Applicant : Mr. Aabhas Singh (Advocate) .
Respondent

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1.The present application has been filed by the Applicants/Financial Creditor for revival/restoration/re-initiation of Corporate Insolvency Resolution Process (CIRP) admitted on 3rd September, 2019 in Company Petition No. 619/ND/2019 and to further reset the time

line or give fresh start to the CIR process under Insolvency & Bankruptcy Code, 2016 (IBC, 2016).

2. The facts that led to the filing of the present application are as follows:

a. It is submitted that the applicant moved an application u/s 7 of the IBC, 2016 for initiation of CIRP against Corporate Debtor and this adjudicating authority vide order dated 03.09.2019 admitted the application and initiated the CIR Process against CD. The CD preferred an appeal against the admission order and vide order dated 19.09.2019, the Hon'ble Appellate Authority referred the matter to Mediation, wherein a compromise was arrived at between the parties by entering into a settlement deed dated 02.12.2019. It is stated that vide order dated 06.12.2019, the Hon'ble Appellate Authority set aside the admission order dated 03.09.2019, conditionally subject to the compliance of the terms of the Settlement.

b. It is further submitted that in pursuant to the settlement, the promoter of the Corporate Debtor gave

post-dated cheques and filed an affidavit that the Cheques will be encashed on presentation and in case of default of any of the cheques, the promoters shall be personally liable and same was recorded in the order dated 06.12.2019 by the Hon'ble NCLAT. It is stated that the cheque presented bounced on one or another pretext.

c. In para 11 of the order dated 06.12.2019, the Hon'ble NCLAT has also recorded that the CIR Process can be revived by the Applicant/Financial Creditor in case of breach of terms of settlement or default of any post-dated cheque. The Hon'ble NCLAT further observed that on completion of compliance of terms and conditions the application u/s 7 will be deemed to have been withdrawn by 'Intec Capital Ltd.', otherwise the order setting aside the impugned order dated 3rd September, 2019 shall stand recalled and the Corporate Insolvency Resolution Process will continue. It is stated that the Corporate Debtor/Promoter has miserably failed to honour and comply with the terms and conditions of the

settlement deed dated 02.12.2019 as the post-dated cheques bounced on one pretext or another.

- d. It is argued that last opportunity was given by Hon'ble Appellate Authority to the Corporate Debtor/Promoters vide order dated 15.03.2021 and following order was passed:

"After hearing learned counsel for the parties and going through the records, we are of the view that it would be conducive to interest of justice to allow the Appellant to pay 50% of the balance amount by the end of March, 2021 and remaining amount by the end of June, 2021, failing which Respondent No.1 shall be entitled to approach the adjudicating authority to seek revival of CIRP proceedings against the Corporate Debtor for breach of terms of settlement recorded by this Hon'ble Tribunal in terms of para 11 of the order dated 6th December, 2019 treating it to be an order and direction of this Appellate Tribunal to be complied by the parties. In the event of nonadherence to this revised schedule, in whole or in part, order passed in appeal dated 6th December, 2019 shall stand recalled in terms of para 11 and CIRP revived. CIRP costs including the fees of the Interim Resolution Professional, in such eventuality shall be addressed by the Adjudicating Authority. I.A. Nos. 1071 & 2218 of 2020 stands disposed of."

- e. It is stated that till date of filing of the application under consideration against the respondent/corporate debtor, no further payment has been received by the Applicant/ Financial Creditor. Hence, prayed that the CIR Process may be revived against Corporate Debtor and applicant may be given liberty

to file fresh claim with Interim Resolution Professional.

3. The respondent has been provided with various opportunities to file reply; however, no reply has been filed by the respondent/Corporate Debtor to the present application. Hence, this Adjudicating Authority in its order dated 08.11.2021 has closed the right to file reply of the Corporate Debtor.
4. We have gone through the Application and arguments advanced by the counsel. The Hon'ble Appellate Authority in para 11 of its order dated 06.12.2019 has stated that:

"11. Terms of Settlement as recorded by the Hon'ble Mediator should be treated to be order and direction of this Appellate Tribunal to be complied by all the parties including the Promoters of 'M/s Jagtar Singh and Sons Hydraulics Private Limited' (Corporate Debtor); Parvinder Singh, Authorized Representative; Intec Capital Ltd. and Interim Resolution Professional. In the present, whole process practically stands suspended for compliance of the Terms of Settlement. The Corporate Insolvency Resolution Process can be revived by the Petitioner in case of breach of Terms of Settlement or default of any post-dated cheque. On completion of compliance of terms and conditions, the application under Section 7 will be deemed to have been withdrawn by 'Intec Capital Ltd.', otherwise the order setting aside the impugned order dated 3rd September, 2019 shall stand recalled and the Corporate Insolvency Resolution Process will continue. The Interim Resolution Professional may allow the Promoters/ Board of Directors to run the Corporate Debtor through Board of Directors. However, the Appellant, the Corporate Debtor, its Directors, Officers, Employees will not sell, alienate, transfer or create third party


encumbrance on any of the movable or immovable property of the Corporate Debtor during the period Terms of Settlement are complied."

This adjudicating authority is convinced that there is breach of terms of settlement dated 02.12.2019. Hence, in terms of the order dated 06.12.2019 and order dated 15.03.2021 of the Hon'ble NCLAT, this Adjudicating Authority is inclined to revive/re-store the Corporate Insolvency Process of Corporate Debtor/Respondent M/s Jagtar Singh & Sons Hydraulics Private Limited and Interim Resolution Professional, Mr. Piyush Moona is directed to resume his duties as per direction of this adjudicating authority in the order dated 03.09.2019.

5. Admission order against the corporate debtor dated 03.09.2019 is hereby, revived/restored. Accordingly, IA-2096/2021 in IB-619(ND)/2019 is Allowed to the extent relief granted above.
6. The financial Creditor is directed to communicate this Order to the RP and the Corporate Debtor with immediate effect.
7. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the

status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

8. The order is pronounced by this Adjudicating Authority through Video Conferencing.



(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)