BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A.No.354 of 2018 in
C.P. (IB) No.65/BB/2018
Under Section 7 of the IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of

M/s. Hind Filters Ltd.,
Registered Office: 1521 & 1522
Maker Chambers V,
221 Backbay Reclamation,
Nariman Point,
Mumbai – 400021. - Applicant/Petitioner

Versus

M/s. Bhoruka Power Corporation Ltd.,
Registered Office: 48, Hitananda II,
Lavelle Road,
Bangalore – 560 001. - Respondent

Date of Order: 18th December, 2018

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner	:	Shri Girish K
For the Respondent	:	Shri Samart.H.Shreedhar

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. I.A.No.354 of 2018 in CP (IB) No. 65/BB/2018 is filed by **M/s. Hind Filters Ltd** (Applicant) U/R 11 of NCLT Rules, 2016,

by inter alia, seeking to recall order dated 11th May, 2018 passed in C.P.(IB)No.65/BB/2018 whereby, the Company Petition was disposed of by directing both the parties to strictly adhere to terms and conditions mentioned in the Compromise Petition dated 11th May, 2018 without any deviation.

2. Brief facts of the case, which are relevant to the issue, are as follows:

1) M/s. Bhoruka Power Corporation Ltd., (herein after referred as Respondent) approached through M/s. Kumar Brothers (herein after referred as Agent of the Applicant Company) 113C, Church gate Chambers 5, New Marine Line, Mumbai 400020 in order to secure an Inter-Corporate loan Rs.3,00,00,000/- (Rupees Three Crores only). In Pursuance to the same, the Respondent received the inter-corporate deposit of Rs. 2,00,00,000/- (Rupees Two Crores only) on 03.04.2017 and another Rs.1,00,00,000/- (Rupees One Crores only) on 17.04.2017 have defaulted in repayment of outstanding amount and not received reply from the Respondent for repayment of ICD. Aggrieved by nonpayment of outstanding amount, the main Petition was filed U/s 7 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia, seeking to initiate CIRP against the Corporate Debtor.

2) When the case was listed on 11.05.2018, a Compromise Petition dated 11th May 2018, duly signed by the parties was filed before the Bench by the both the Learned Counsel by urging the Tribunal to dispose of Company Petition in terms said Compromise. Accordingly, the case was finally disposed by an order dated 11th May, 2018, by directing both the parties to strictly adhere to terms and conditions mentioned

in the Compromise Petition dated 11th May, 2018 without any deviation.

3) Now the present IA No. 354 of 2018 is filed by alleging that as per the Compromise Petition dated 11.05.2018, the second installment of Rs.50 lacs along with interest was due on 31.05.2018. The third installment of Rs.100 lacs plus interest was due on 30.06.2018 and fourth installment of Rs.100 lacs plus interest was due on 31.07.2018. We approached M/s. Bhoruka Power Corporation Ltd., for above payments but no payment received till date along with interest @18%. Therefore, the present application is filed by seeking to recall the order.

3. Heard Shri Girish K learned PCA for the Petitioner and Shri Samarth Shreedhar, learned Counsel for Respondent. We have carefully perused the records including the earlier Compromise Petition dated 11.05.2018.

4. In the said Compromise Petition, several terms and conditions contained in it, and the dues in question are required to pay in four installments. It is relevant to extract para 4 and 7 of Compromise Petition, which reads as under:

> ***"Para 4*** *In view of these facts and circumstances, the Applicant does not wish to prosecute the petition. It is however made it clear, in case of failure to pay the balance sum of Rs.2,50,00,000/- plus Interest on the respective agreed due dates, the applicant is at liberty to initiate fresh application under Section 7 of the IBC Code, 2017 in respect of said defaulted sum with interest @ 16% up to the date of realization.*
>
> ***Para 7:*** *The Applicant and the Respondent consent for this Compromise and the parties herein are submitting this compromise petition by signing it with a clear intent to settle the instant proceedings as stated herein above to*

resolve the same amicably. The parties have entered into this settlement out of their own will and volition; towards full and final settlement of all their claim and the parties have agreed that they will have no claims whatsoever against each other, with regard to the subject-matter of the above dispute."

5. Therefore, the Petitioner has to file a fresh Company Petition, duly following the extant provisions of the IBC. Hence, the present IA is not maintainability, and is liable to be disposed of by granting liberty to the Petitioner to file fresh case in accordance with law.

6. I.A No. 354 of 2018 in C.P. (IB)No.65/BB/2018 is disposed of by granting liberty to the Applicant/Petitioner file fresh Company Petition duly following extant provision of the Code. No order as to costs.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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