

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT III

IA-2650/2023
In
(IB) 535/ND/2022

Order Under Rule 11 of the National Company Law Tribunals Rules, 2016.

IN THE MATTER OF:-

AGSON GLOBAL PRIVATE LIMITEDAPPLICANT

Versus

M/s. PRODALIM B.VRESPONDENT

AND IN THE MATTER OF:-

M/s. PRODALIM B.VOPERATIONAL CREDITOR

Versus

AGSON GLOBAL PRIVATE LIMITEDCORPORATE DEBTOR

Order Pronounced on: 07.12.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI

HON'BLE MEMBER (TECHNICAL)

PRESENT:-

For the Applicant: Mr. Anindita Roy Chowdhury, Adv.

For the Respondent: Mr. Sumit K. Batra, Adv.

IA-2650/2023 In (IB) 535/ND/2022
D.O.O – 07.12.2023

ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The Application has been filed by the Applicant/Corporate Debtor under Rule 11 of the National Company Law Tribunals Rules, 2016 seeking following prayers:-

a) Allow the present Application under Rule 11 of the NCLT, Rules, 2016 and take on record the Settlement Agreement as entered between the parties and thereby dismiss the main petition bearing CP IB – 535 (ND) 2022 titled as “Prodalim B.V vs. Agson Global Private Limited” under Section – 9 of the IBC, 2016 on account of Settlement between the parties.

2. Briefly stated facts of the case are that, Prodalin B.V. (“Operational Creditor”) is a company based in the Netherlands (having its group headquarters in Israel) and is part of the Prodalin Group, a global player, established in 1987, providing a full supply chain solution to the beverage industry and the seasoning and flavours industry. Agson Global Private Limited (“Corporate Debtor”) is based in New Delhi and is in the business of manufacturing various chemical derivatives of menthol and other allied chemicals. For its business requirements, the Corporate Debtor had placed an order with the Operational Creditor for D-Limonene, which is extracted from the peels of oranges and other citrus fruits.

3. The Corporate Debtor entered into a sales contract No. 21200174 with the Operational Creditor on 09.03.2021, for delivery of D-Limonene to the

Corporate Debtor at the rate of 4,650 USD per metric tonne over two delivery cycles.

4. In furtherance of the Sales Contract, a Purchase Order No.002/2021/PRODALIM/D-LIMONENE was executed by the Corporate Debtor with the Operational Creditor for 10 shipments of containers of D-Limonene.

5. The Operational Creditor raised various invoices time to time as regards for delivering of certain quantities of D-Limonene. Out of total no. 10 shipments 7 shipments were completed as per the agreed CAD arrangement, 3 shipments amounting to 45.52 metric tonne of D-Limonene were also successfully delivered to the Corporate Debtor but the Corporate Debtor without making the payment of due amount took the delivery of the 3 shipments. Thus, the Corporate Debtor defaulted in making the payment for the above mentioned 3 shipments the principal sum in default is USD 211,668/ (equivalent to INR 1,57,83,448/-; calculated @ USD 1 = INR 74.567 as on 05.10.2021).

6. It is further noted that, during the pendency of the main petition IB – 535 (ND) 2022 before this Adjudicating Authority, the parties have entered into a Settlement Agreement wherein the Corporate Debtor has promised to pay the entire claimed Operational Debt of Rs. 1,57,83,448/- to the Operational Creditor. The Settlement Agreement was signed by the Corporate Debtor on 06.03.2023 and in return the Operational Creditor sent the signed copy of the Settlement Agreement on 21.03.2023. The repayment schedule as per the Settlement Agreement is as follows: -

a) Rs. 18,26,891/- to be paid by the Corporate Debtor within 3 days of signing of the settlement agreement;

b) Rs. 22,74,293/- to be paid by the Corporate Debtor within 30 days of signing of the settlement agreement; and

c) Rs. 1,16,82,263/- to be paid by the Corporate Debtor within 60 days of signing of the settlement agreement.

7. It is further submitted by the Applicant that, in compliance of the Settlement Agreement that was signed by the Operational Creditor on 21.03.2023, the Corporate Debtor has paid the payment of two instalments and same has been duly received by the Respondent/Operational Creditor. The Corporate Debtor made the payment of first instalment of Rs. 18,26,891/- on 16.03.2023 i.e., much prior to signing of the Settlement Agreement by the Operational Creditor. The payment qua the second instalment of Rs. 22,74,293/- was initiated by the Corporate Debtor on 12.04.2023 but due to delay from bank side the second transaction was completed on 08.05.2023.

8. It is vehemently argued by the Ld. Counsel appearing for the Applicant that, as per the Settlement Agreement despite receiving a sum of Rs. 41,01,185/-. The Ld. Counsel appearing for the Operational Creditor on 13.04.2023 submitted before this Adjudicating Authority that Settlement talks between parties have failed. The Ld. Counsel for the Applicant further submitted that, the Operational Creditor has not returned the aforementioned amount of Rs. 41,01,185/- and the Operational Creditor is only misusing the provisions of IBC, 2016 for the purpose of recovery.

9. We have heard the argument advanced by the Ld. Counsel appearing for Applicant as well as for the Respondent.

10. On mere reading of the Settlement Agreement executed between the parties, we found that the Corporate Debtor and the Operational Creditor after extensive deliberations agreed for full and final Settlement whereby as per the terms the Settlement amount is Rs. 1,57,83,448/-. As per the Settlement Agreement the Corporate Debtor paid a sum of Rs. 41,01,185/- but failed to pay the third instalment of Rs. 1,16,82,263/-. Now, as per the Respondent the amount in default is more than 1 crore so, the third unpaid instalment proves the existence of debt.

11. It is pertinent at this stage to refer the decision of ***Hon'ble NCLAT judgement dated 25.11.2020 in case titled Amrit Kumar Aggarwal versus M/s. Tembo Appliances Private Limited in Company Appeal (AT) (Insolvency) No. 1005/2020*** wherein while discussing this issue, it was observed by Hon'ble NCLAT that a mere obligation to pay does not bring the liability within the ambit of 'financial debt' or 'operational debt' as defined under IBC. The debt, along with interest, if any, should be disbursed against the consideration for the time value of money. ***Mere breach of terms of any agreement including a Settlement Agreement by a party, whereby some payment was due, would not fall within the scope of IBC, so as to constitute a 'Debt'***. Accordingly, it was observed that mere obligation to pay under a Settlement Agreement would not amount to disbursement of amount for consideration against the time value of money, and thus, breach of such obligation would not entitle a party to invoke CIRP against the other party. Taking guidance from the aforesaid judgement, it can be concluded that mere breach of terms of any agreement including a Settlement Agreement by a party, whereby some payment is due cannot take colour of an operational debt arising out of supply of any goods or services as envisaged under Section 5(20) of the Code, 2016. This Adjudicating Authority cannot stand as a sentinel/guardian* and is not bound to observe every Settlement payment agreed between of the parties.

12. In this regard we may also place reliance on a judgement of Hon'ble NCLAT in *Company Appeal (AT) (Ins.) No.742 of 2020 "Trafigura India Private Limited vs. TDT Copper Ltd"* for the proposition that breach of settlement agreement does not give any rise to the Operational Debt. The relevant paragraph is reproduced below for reference: -

"The Adjudicating Authority has considered the Settlement Agreement and rightly come to the conclusion that default of instalment of Settlement Agreement does not come within the definition of 'operational debt' as it does not fall within the definition of additional debt as per section 5(21) of the IBC."

13. It is no more *res integra* that IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Adjudicating Authority for the recovery of the same amount.

14. Having regard to the conspectus of all relevant facts and circumstances and the judgements cited ***supra***, we are of the view that the outstanding debt as claimed in the present application does not fall under the definition of Operational Debt as defined under Section 5(21) of the Code, 2016 as the debt claimed is not the debt owed for the supply of goods or rendering of services, it is a debt which has arisen from the breach of the Settlement Agreement. Accordingly, the Settlement Agreement is taken on record and in the light of above findings IA – 2650 (ND) 2023 stands ***allowed***. We have no hesitation to hold that the IB – 535 (ND) 2022 is not being maintainable and stands ***dismissed***.

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**

