



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 7
CP IB 876/ND/2022

IN THE MATTER OF:

**M/s. Saran Equipements and Engineers Pvt. Ltd. V/s. M/s. ASPG
Infrastructures Pvt. Ltd.**

Order under Section 9 of Insolvency and Bankruptcy Code, 2016

Order delivered on 26.09.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)
SHRI RAHUL BHATNAGAR,
HON'BLE MEMBER (TECHNICAL)**

ORDER

Order pronounced in open Court vide separate sheets.

CP(IB) 876/ND/2022 stands dismissed.

SD/-

**(Rahul Bhatnagar)
Member Technical**

SD/-

**(Bachu Venkat Balaram Das)
Member Judicial**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

CP IB-876/(ND)/2022

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s. Saran Equipments and Engineers Pvt. Ltd.

Registered Office at:

G-19, Tiwari Complex, 1st Floor, Vijay Chowk,
Laxmi Nagar, New Delhi- 110092

...Applicant/Operational Creditor

Versus

M/s. ASPG Infrastructures Pvt. Ltd. & Anr.

Registered Office at:

246, Loha Mandi, Site – I
BS Road Industrial Area,
Ghaziabad Uttar Pradesh.

...Respondent/Corporate Debtor



Coram:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI.RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Applicant/ Operational Creditor: Mr. Mohit Nandwani,
Advocate

Counsel for Respondent/ Corporate Debtor: Ms. Prity Mishra,
Advocate

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

Date 26.09.2023

1. This Petition is filed by M/s. Saran Equipments and Engineers Pvt. Ltd. to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent M/s. ASPG Infrastructures Pvt. Ltd. for the alleged default on the part of the Respondent in clearing the debt of Rs. 2,61,80,644/- (Rupees Two Crore Sixty One



Lakhs Eighty Thousand Six Hundred and Fourty Four) including outstanding principle of Rs. 1,14,77,632 (Rupees One Crore Fourteen Lakhs Seventy-Seven Thousand Six Hundred and Thirty Two) and Rs.1,57,03,012/- (Rupees One Crore Fifty Seven Lakhs Three Thousand and Twelve) as interest.

2. The matter was reserved on maintainability since this Tribunal in CP (IB) 3277/ND/2019 against same parties initiated CIRP against the Corporate Debtor vide order dated 09.06.2022. Subsequently, on 17.06.2022 the petitioner was permitted to withdraw the said petition on the basis of settlement agreement arrived between parties. Hence, this fresh petition is filed.
3. We have heard the Ld. Counsels for the Operational Creditor, Corporate debtor and also the pleadings of both the parties and documents filed in support of pleadings.
4. The Operational Creditor is claiming the debt on same set of invoices which was filed before in CP(IB) 3277/ND/2019.
5. In the matter of *Finsbury Global FZE v. M/s Uttam Sucrotech International Pvt. Ltd.*, I.A. 4081 of 2022 in C.P (I.B) No.



1013 of 2020, it was held that the nature of the debt changes post settlement. In this case, in order to settle the outstanding operational debt, a Settlement Agreement was entered into by the parties. It was held that the moment the parties entered into the settlement agreement, the nature of debt changed from being operational debt under Section 5(21) of the Code. The debt outstanding by virtue of the Settlement Agreement loses the substratum of operational debt under the Code and merely stands to be a debt. Relevant para of the aforesaid judgement is reproduced as under: -

*6. From the documents on records, it is pertinent to note that pursuant to the settlement agreement dated 09.11.2021 entered between the parties, the parties had agreed to settle the outstanding operational debt amounting USD 5,98,148 at a settlement amount of USD 5,78,148. **The moment the parties entered into the settlement agreement dated 09.11.2021, the nature of the debt being operational debt defined under Section 5(21) of the Code, 2016 changed. The amount outstanding pursuant to the settlement agreement is only a settlement amount which can merely be a debt as defined under Section 3(11) of the Code, 2016 but in no circumstances can be an operational debt as it has lost its substratum of***



operational debt and is only a debt pursuant to the settlement between the parties.

....

8. It is no more res-integra that IBC is not a recovery proceeding where because the money or part of it has not been paid, the party may repeatedly come to the Adjudicating Authority for the recovery of the amount. *The Hon'ble Supreme Court in citation M/s. Invent Asset Securitisation and Reconstruction Private Limited v. M/s. Girnar Fibres Limited [Civil Appeal No. 3033/2022] observed that time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such. The intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor.*

9. Having regard to the relevant facts and discussions and the judgments cited supra, we are of the view that pursuant to the withdrawal of the C.P.(IB)/1013/2020 on the strength of the settlement agreement dated 09.11.2021, the outstanding debt as claimed in the company application has lost its substratum of being operational debt as defined under Section 5(21) of the Code, 2016.

10. Accordingly, IA/4081/2022 stands dismissed. No orders to cost.



6. The Hon'ble Supreme Court in '*Invent Asset Securitisation and Reconstruction Pvt. Ltd. vs Girnar Fibres Ltd.*', Civil Appeal No. 3033 of 2022, wherein it was held that:

"Time and again, it has been expressed and explained by this Court that the provisions of the Code are essentially intended to bring the corporate debtor to its feet and are not of money recovery proceedings as such."

7. We are therefore of the view that IBC is not a recovery proceeding where parties can repeatedly come to court due to non-payment of debt.
8. In view of the above, the application filed by Operational Creditor is dismissed. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.

SD/-
Rahul Bhatnagar)
Member (Technical)

SD/-
(Bachu Venkat Balram Das)
Member (Judicial)