THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

M.A. 718 OF 2020

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Mars Art Studio
Through its Proprietor
Mr. Ashwin G. Shah

…Applicant

In the matter of

C.P.(IB) No. 839/MB/2017

Shirdi Industries Limited

…Corporate Applicant

Order delivered on: 16.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

Appearances

For the Applicant : Ms. Sneha Agarwal, Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

1. This Application MA 718/2020 filed by Mars Art Studio ("the Applicant") in the Corporate Insolvency Resolution Process (CIRP) of

M/s Shirdi Industries Limited ("Corporate Debtor") seeks for declaration that Order dated 12th December 2017 passed by the Tribunal approving the Resolution Plan submitted by the Insolvency Resolution Professional whereby Applicant is entitled for 15% of the claim amount is not in any manner binding upon the Applicant.

2. The Applicant on 04th March 2016 filed Petition bearing No.33 of 2016 ("the said Petition") before the Micro and Small Enterprises Facilitation Council, MMR Region for recovery of the sum of Rs.2,87,500/-. On 15th February 2018 the Corporate Debtor filed their Affidavit in Reply/Defence Statement and Counter claim. In the said Affidavit in reply the Respondent denied the claim of the Applicant. On the contrary the Corporate Debtor by way of counter clam prayed for Decree of sum of Rs.50,00,000/- against the Applicant.

   2.1. On 03rd March 2018 the Learned Arbitrator is stated to have passed an Award against the Corporate Debtor and the Corporate Debtor were directed to pay the Petitioner a sum of Rs.2,87,500/- along with interest on each and every due amount of the Invoice when become payable after deduction of 30 days, till the realization of the amount to the Petitioner. After the passing of the said Award the Applicant through their letter dated 09th May 2018 called upon the Corporate Debtor to pay the outstanding amount.

   2.2. After the receipt of the said letter dated 09th May 2018 the Corporate Debtor sent a letter dated 21st May 2018 alongwith the enclosure letter dated 02nd May 2018 to the Applicant. The Applicant through his letter dated 21st June 2018 called upon the Corporate Debtor to furnish the copy of the order dated 12th December 2017 alongwith the resolution Plan.

   2.3. As the Corporate Debtor failed neglected to pay the amount as per Award dated 03rd March 2018 therefore the Applicant took out an Execution Application bearing No.787 of 2019 before the Hon'ble

High Court for the recovery of sum of Rs.8,73,339/-. On 19th November 2019 the Hon'ble Court was pleased to issue Warrant of Attachment under Order XXI Rule 46 of the Civil Procedure Code for attaching the Current Bank Account bearing No. 1112016583, IFSC:KKBK0000963 with Kotak Mahindra Bank situated at Saraswat Bhawan, Prabhadevi, Shivaji Park branch, Mumbai 400 028 standing in the name of the Corporate Debtor to the extent of Rs.8,73,159.70.

2.4. Accordingly the Bank Account of the Corporate Debtor was attached to the extent of Rs.8,73,159.70. After attachment of the Bank Account the Kotak Mahindra Bank by their letter dated 16th December 2019 informed that they have marked a lien of Rs.8,73,339.70.

2.5. On 18th December 2019 the Corporate Debtor took out Interim Application bearing No.1 of 2019 before the Hon'ble High Court for setting aside the Warrant of Attachment. In the said Application the Corporate Debtor mentioned that the arrangement towards the claim of the Applicant has been already made as per the Order dated 12th December 2017 of the National Company Law Tribunal, Mumbai Bench. In the said Application it is further mentioned by the Corporate Debtor that the it has has informed to the Directorate of Industries, Office of the Joint Director of Industries (MMR), Mumbai Region, Mumbai about his readiness and willing to pay the dues of the Applicant as per approved Resolution Plan by the letter dated 2nd May 2018 and the same was also sent to present Applicant and also incorporated relevant paragraph of the letter dated 2nd May 2018 which is mentioned hereinbelow:-

> *"According to the resolution Plan approved by Hon'ble NCLT the dues of operation creditors as on 18/05/2017 shall be paid @ 15% and this*

amount shall be payable in 8 instalments commencing from June 2022 till March 2024 without any interest. In the present Case the amount payable is Rs.43,125/- and to be paid as above".

2.6. The Applicant has stated that he was not aware about the filing of the Company Petition by the Corporate Debtor before the Tribunal nor any papers and proceedings were served upon Applicant by the Corporate Debtor. Even in the Affidavit in reply dated 07th February 2018 filed by the Corporate Debtor before the Micro and Small Enterprises Facilitation Council, MMR Region they have denied the claim of the Applicant and on the contrary the Corporate Debtor by way of Counter claim prayed for Decree of sum of Rs. 50,00,000/- against the Applicant. The Corporate Debtor has suppressed before the Micro and Small Enterprises Facilitation Council, MMR Region about the fact of the filing of the Company Petition, passing of the Order dated 18th May 2017, the scheme passed by Interim Resolution Professional and the Order dated 12th December 2017. The Corporate Debtor has thus played fraud from upon the Court by suppressing all this facts and filing false Affidavit on Oath.

2.7. The Applicant further stated that by filing the Affidavit in reply before the Learned Arbitrator the Corporate Debtor has waived their rights of claiming the advantage of the scheme passed by the Interim Resolution Professional and the Order dated 12th December 2017 passed by this Tribunal. The Corporate Debtor is also estopped from taking advantage of the scheme passed by the Interim Resolution Professional and the Order dated 12th December 2017 passed by this Tribunal. The said order dated 03rd March 2018 passed by the Directorate of Industries, Office of the Joint Director of Industries (MMR), Mumbai Region, Mumbai is binding upon the Corporate Debtor and the Corporate Debtor is liable to pay as per the said

Award dated 03rd March 2018. The Corporate Debtor can not now say that they are liable to pay only a sum of Rs.43,125/- in 8 instalments commencing from June 2022 till March 2024.

3. Heard the learned Counsel and perused the materials available on record.

3.1. It is undisputed fact that the Resolution Plan in the case of Corporate Debtor is approved by this Tribunal vide order dated 12.12.2017 after admission of Corporate Debtor into the CIRP on 18.05.2017. These facts were communicated by the Corporate Debtor vide letter dated 02.05.2018 and relevant text is reproduced hereunder:

> *"1. Our company had been earlier registered as a sick unit by BIFR under Ref. No. 90/2013 and declared sick by the Hon'ble Bench of BIFR on 15/10/2016.*
>
> *2. The Registration of the company with BIFR was abated as Sick Industrial Companies Act (SICA) had been repealed with effect from 01/12/2016. The company thereafter filed application under Section 10 of Insolvency And Bankruptcy Code 2016 before the Hon'ble Bench of NCLT Mumbai and the case had been admitted by the Hon'ble Bench of NCLT on 18/05/2017.*
>
> *3. Hon'ble Bench of NCLT had approved the Resolution Plan under Section 10 of Insolvency And Bankruptcy Code 2016 for the company, vide Order dated 12/12/2017. (copy attached)*
>
> *4. According to the resolution plan approved by Hon'ble NCLT the dues of operational creditors as on 18/05/2017 shall be paid @ 15% and this amount shall be payable in 8 instalments commencing from June 2022 till March 2024 without any interest. In the present case the amount payable is Rs. 43,125/- and to be paid as above.*
>
> *5. The Resolution Plan, duly approved by Hon'ble Authority vide Order dated 12.12.2017 is now therefore binding upon all operational creditors."*

3.2. It is trite law that all the claims of the creditors are to be dealt in terms of the approved resolution plan in case of Corporate Debtor's resolution under the Code. All claims of the Creditors, whether filed or not, ceased to exist unless otherwise taken into consideration in the approved resolution plan.

3.3. In view of above, we do not find any substance in the prayer of the Applicant for recall of order dated 12.12.2017. Section 32 of the Insolvency and Bankruptcy Code, 2016 provides for an appeal against an order approving the Resolution Plan by the aggrieved person on the grounds stated in Section 61(3) of the Code. If the applicant is aggrieved by the order dated 12.12.2017, he ought to have filed an appeal.

3.4. This Bench has limited power to recall its order and such power does not include the power to review as has been held in the case of ***Union Bank of India v. Dinkar T. Venkatasubramanian, 2023 SCC OnLine NCLAT 283***. The Hon'ble NCLAT (5 Member Bench) passed the order in relation to Section 11 of NCLAT Rules which are in pari-materia of section 11 of NCLT Rules. The Hon'ble NCLAT held that "*Power of recall is not power of the Tribunal to rehear the case to find out any apparent error in the judgment which is the scope of a review of a judgment. Power of recall of a judgment can be exercised by this Tribunal when any procedural error is committed in delivering the earlier judgment; for example; necessary party has not been served or necessary party was not before the Tribunal when judgment was delivered adverse to a party. There may be other grounds for recall of a judgment. Well known ground on which a judgment can always be recalled by a Court is ground of fraud played on the Court in obtaining judgment from the Court.*"

3.5. In view of aforesaid, we have no hesitation to hold that this Tribunal does not have power to recall its order dated

12.12.2017 on the grounds stated in the Application and in terms of the settled law the claim of the Applicant is to be dealt with in accordance with the approved resolution plan.

4. In view of the aforesaid, this MA 718/2020 is dismissed and disposed of accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)