

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**

**COURT-VI**

**Item No. 601  
IB-315/ND/2021**

**IN THE MATTER OF:  
M/s. Samyak Metals Pvt. Ltd.**

**...PETITIONER**

**Vs.**

**M/s. Kiran Udyog Private Limited**

**...RESPONDENT**

**Section  
Under Section 9 of IBC**

**Order delivered on 03.03.2022  
(Virtual Hearing)**

**Coram:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)  
SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**For the Petitioner/Operational Creditor :Mr. P. Nagesh, Senior Advocate  
with Kinshul Chatterjee,  
Shubham S. Saxena, Srishti  
Gupta, Priyanka Gupta,  
Advocates.**

**For the Respondent/Corporate Debtor :Mr. Shashank Agarwal, Advocate.**

**ORDER**

**IA No. 6010 of 2021**

This is an application under Rule 11 of NCLT Rules 2016 which was filed on 23.12.2021 seeking the modification of order dated 20.12.2021 passed by this Adjudicating Authority. We have heard the submissions made by the Ld. Counsel for the Applicant. The Applicant has placed reliance on Order of Hon'ble Supreme Court in Civil Appeal No. 324 of 2020 M/s ESS Investments Pvt. Ltd. Versus Lokandwala Infrastructure Pvt. Ltd. & another. This Tribunal's attention was invited to para 6 of the Order wherein it is clearly stated:-

(Annu)



“Since the disputes between the Respondent No. 1 and Dalmia Group Holdings has been settled and the order dated 19.09.2019 has been set aside, it will be open to the appellant to proceed against the Respondent No. 1 before the NCLT by seeking recall of the order dated 04.09.2018 and revival of its application No. CP (IB) No. 4000/MP/2018”.

Having regard for the spirit of Hon'ble Supreme Court order and that in these circumstances the Operational Creditor is clearly entitled for restoring his application for CIR process against the Corporate Debtor, therefore the application for modification of the order dated 20.12.2021 is permitted. The IE No. 315/ND/2021 now stands revived and restored. However, this Tribunal is of the view that in the interest of fair play and justice the Corporate Debtor be permitted to move an application for setting aside the ex parte order and also file his reply within 10 days. The files may be re-called and restored on records. Post the matter to **22.03.2022**.

  
—sd—

**(Rahul Bhatnagar)**  
**Member (T)**

  
—sd—

**(P.S.N Prasad)**  
**Member (J)**