

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV**

**Item No. 101
Restoration App/153/ND/2023 IN
IB/1456/ND/2018**

IN THE MATTER OF:

Jatalia Global Ventures Limited	...	Applicant
Versus		
Gokul Exim Pvt Ltd	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 19.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

Restoration App/153/ND/2023 IN IB/1456/ND/2018 stands dismissed.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

**Restoration Application No. 153/2023
IN**

Company Petition No.(IB)-1105(ND)/2020

**[Under Rule 11 of the National Company Law Tribunal Rules,
2016]**

IN THE MATTER OF:

M/s. Jatalia Global Venture Limited

.... Applicant/ Operational Creditor

Vs.

M/s. Gokul Exim Private Limited

.... Corporate Debtor

Order Dated: 19.10.2023

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is filed by M/s. Jatalia Global Venture Limited ('applicant/operational creditor') under Rule 11 of the National Company Law Tribunal Rules, 2016 inter-alia seeking the following relief(s) :-

- a) Pass an order for the revival of the C.P.No. (IB)/1456/ND/2018, thereby initiating the Insolvency Process as laid down in the IB Code, 2016.

b) Pass any other order in favour of the Applicant/Operational Creditor which this Hon'ble Tribunal may deemed fit and proper in the interest of justice.

2. Briefly stated, the facts of the present case, as averred by the applicant are that M/s. Gokul Exim Private Limited ('Corporate Debtor') had defaulted in payment of Operational Debt amounting to Rs.1,76,56,269/- owed to the Applicant. The Applicant had filed an application i.e., C.P.(IB) No./1456/ND/2018 under Section 9 of the Code, 2016 seeking initiation of the CIRP against the Corporate Debtor. However, before admission of the said application, the Applicant and Corporate Debtor had entered into a Settlement Agreement dated 15.09.2021, wherein the Corporate debtor had agreed to pay a sum of Rs.1,54,00,000/- on or before 31.12.2021 against the total outstanding amount of Rs. 1,76,56,269/- on account of supply of goods.
3. The Applicant further submitted that consequent to the settlement agreement, a joint application i.e., I.A/4189/ND/2021 was moved before this Hon'ble Adjudicating Authority seeking withdrawal of C.P.(IB) No./1456/ND/2018 under Section 9 of the Code, 2016 on account of the Settlement Agreement dated 15.09.2021. This Hon'ble Adjudicating Authority vide order dated 20.09.2021 had allowed the withdrawal of C.P.(IB)/1456/ND/2018. However, according to the Applicant, the Corporate Debtor had failed to comply with the terms and conditions of the Settlement Agreement dated 15.09.2021. Accordingly by filing the instant application, the applicant seeks permission to revive the C.P.(IB) No.1456/ND/2018 and further, initiate insolvency proceedings against the Corporate Debtor.
4. We have heard the Ld. Counsel for the Applicant and perused the averments made in the application. The relevant documents annexed with

the application have also been perused. The short point for our consideration is, “Whether the restoration of the C.P.(IB)/1456/2018, an application filed under Section 9 of the Code, 2016 which was withdrawn by the parties on pretext of the Settlement Agreement dated 15.09.2021 can be allowed at this stage?”

5. From a perusal of this Adjudicating Authority’s order dated 20.09.2021, it is evident that the C.P.(IB)/1456/2018 was allowed to be withdrawn on the joint submissions of the applicant and Corporate Debtor. Further, no liberty was granted by this Adjudicating Authority to restore the said application. The relevant part of this Adjudicating Authority’s order dated 20.09.2021 is reproduced below:-

IA No. 4189/ND/2021:

A joint application filed by the Operational Creditor and Corporate Debtor under Rule 11 seeking withdrawal of insolvency application No. 1456/ND/2018. Mr. Ganda, Learned Counsel for the Corporate Debtor states that matter was heard at length and order was reserved on 25.08.2021. Ms. Garima, Learned Counsel for the applicant states that thereafter the Corporate Debtor has settled the matter and paid the amount, as per the settlement agreement dated 15.09.2021. Copy of settlement agreement is annexed with the application. Initially Rupees 20,00,000/- is deposited to the applicant and for balance amount in terms of the agreement, post-dated cheques have been issued to the applicant.

Considering the submission made and documents on record, we allow the application, thereby allowing IB-1456/ND/2018 to be withdrawn and stands disposed of.

(Extract of the order dated 20.09.2021 in I.A/4189/ND/2021)

6. Further, it is an admitted fact that on the parties had agreed to settle the outstanding operational debt amounting Rs.1,76,56,269/- at a settlement amount of Rs.1,54,00,000/- payable in 4 instalments on or before 31.12.2021 against the total outstanding amount. This Adjudicating Authority is of the view that the moment the parties entered into a settlement agreement with regard to the settlement of the Operational Debt, the nature of the debt being operational debt and as defined under

Section 5(21) of the Code, 2016 is bygone as now the debt is not owed for the supply of goods or rendering of services but has arisen from the breach of the settlement agreement dated 15.09.2021. It is pertinent to note that 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 in respect of which an application under Section 9 of the Code, 2016 can be initiated. The present claim is nothing but a mere claim that arose pursuant to the breach of the settlement agreement between the parties.

7. Pertinently, the Hon'ble NCLAT Chennai, NCLAT in **Mr. Maulik Kirtibhai Shah Vs. United Telecoms Ltd in Company Appeal(AT)(CH)(Ins)/268/CN/2023 vide order dated 15.09.2023** have held that, "the Petition filed in respect of claims arising under the aforementioned Settlement Agreement does not come within the definition of "Operational Debt". The relevant para of the judgement is reproduced below:-

"14. From the aforesaid it is evident that the Petition filed in respect of claims arising under the aforementioned Settlement Agreement [even if disputed herein] does not come within the definition of 'Operational Debt'. Time and again, the Hon'ble Apex Court in a catena of Judgments held that the IBC is not a recovery mechanism. Even if the Settlement Agreement is taken into consideration, this Tribunal is of the earnest view that the claims arising under the MOU lost the character of Operational Debt and became a debt simpliciter. In respect of in the definition of Operational Debt cannot be interpreted widely so as to include any agreement between the parties which does not specifically pertain to the supply of goods or services. A wide interpretation would only defeat the scope and objective of the code. Keeping in view, the spirit of the Code, this Tribunal is of the considered view that at best, the claims are contractual claims for which appropriate Civil Proceedings may lie."

8. From the documents on record, it is pertinent to note that the parties sought withdrawal of the C.P.(IB)/1456/2018 after the matter was reserved for orders, on account of the settlement agreement dated 15.09.2021 entered into between the parties. Admittedly, on the date of settlement, the Corporate Debtor had paid on instalment of Rs.20Lakhs and had issued the PDC's for the balance amount. However, the PDC's were not honoured and bounced back, for which the right course of action would be under Section 138 of the NI Act and not under the I&B Code, 2016.
9. 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 amount. The Hon'ble Supreme Court in the case of **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 the Hon'ble Apex 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, whereas, the intent of the appellant had only been to invoke the provisions of the Code so as to enforce recovery against the corporate debtor.
10. The Hon'ble NCLAT in **Ankit Goyat vs. Sunita Agarwal & Anr. [Company Appeal (AT)(Ins) No. 1029 of 2019]** had also observed as follows:-

“ the I&B Proceedings are not a recovery proceeding and we place reliance on the ratio of the decision of this Tribunal in Binani Industries Limited' Vs. Bank of Baroda & Anr.' Company Appeal (AT) (Insolvency) No. 82 of 2018 wherein it was observed that the IBC is not a recovery proceeding. In fact, the I&B Code prohibits and discourages recovery in several ways

11. Therefore, having regard to the conspectus of all relevant facts and discussions and the judgments cited supra, we are of the view that pursuant to the withdrawal of the C.P.(IB)/1105/2020 on the strength of the settlement agreement dated 15.09.2021, the outstanding debt as claimed in the company application has lost its substratum of being an operational debt as defined under Section 5(21) of the Code, 2016 and at best be termed as a claim arising out of the breach of the Settlement Agreement for which the remedy may lie under the relevant law but certainly not under the provisions of the I&B Code, 2016, which provides a specific framework for Insolvency Resolution and not for recovery of claims arising out of breach of contractual terms.
12. Accordingly, the present Restoration Application **(R.A (IBC)/153/2023)** ***stands dismissed.*** No orders to cost.

File be consigned to records.

Sd/-

(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-

(MANNI SANKARIAHSHANMUGA SUNDARAM)
MEMBER (J)