

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 103 of 2022**

**IN THE MATTER OF:**

**Pooja Finlease Ltd.**

**...Appellant**

**Versus**

**Auto Needs (India) Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Rajendra Beniwal, Mr. Amar Singhania, Mr. Sunil Tripathi, Mr. Saksham Solanki, Ms. Mansi Kukreja, Ms. Bano Deshwal, Mr. Shreyansh Gaur, Advocates.**

**For Respondents: Mr. M. P. Sahay, Ms. Eccha Shukla and Mr. Sachin Kharb, Advocates for R-1 & 2.**

**O R D E R  
(Virtual Mode)**

**18.07.2022:** Heard learned counsel for the Appellant. This Appeal has been filed against order dated 10.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi, Bench IV by which order the application filed by the Appellant – Financial Creditor for revival of Corporate Insolvency Resolution Process (CIRP) has been rejected.

2. On an application filed by the Appellant under Section 7 of the I&B Code, CIRP was initiated against the Corporate Debtor by order dated 20.12.2019. In the corporate insolvency process, settlement reached between the parties and Consent Terms dated 27.01.2020 was filed. Clause 8 of the Consent Terms is as under:

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*“8. The Parties shall be duly bound to fully co-operate each other and sign all necessary application, affidavits, petitions etc. and make necessary statements for the purpose of withdrawal of aforesaid Application in terms of present consent terms. The Financial Creditors will file an Application seeking withdrawal of the said Petition i.e. IB-2340(ND)/2019 before the Hon’ble National Company Law Tribunal, New Delhi Bench – IV. The Corporate Debtor/ Party of Second Part shall make submission before the National Company Law Tribunal, New Delhi Bench – IV acknowledging the execution of the present Consent Terms. The Financial Creditor shall be entitled to revive the said Petition IB-2340(ND)/2019 in the event of any default of the terms of the present Consent Terms on the part of the Corporate Debtor.”*

3. In pursuance of the Consent Terms, the Adjudicating Authority passed following order dated 05.02.2020:

**“ORDER**

*Heard the submissions made by the counsel for the financial-creditor. Counsel for the corporate-debtor is present. Authorized Representative is also present and submitted that they have received 12 cheques towards full and final settlement of their claim. The application filed under Rule 11 of NCLT rules, 2016 is taken on record and the application is allowed as a consequence the petition filed under Section 7 stands dismissed as withdrawn, in exercise of powers conferred under Rule 11 of the NCLT Rules, 2016.*

4. The case of the Appellant is that there is default committed by the Corporate Debtor, consequently, he filed application seeking revival of the Corporate Insolvency Resolution Process in terms of Clause 8 of the Consent Terms, which application has been rejected by the Adjudicating Authority. Learned counsel for the Appellant submits that when Clause 8 of the Consent Terms contemplate revival of CIRP in the event of any default of the terms of the Consent Terms on the part of the Corporate Debtor, the Adjudicating Authority ought to have revived the Section 7 petition and Adjudicating Authority has committed error in rejecting the revival application.

5. Learned counsel for the Respondent submits that there was no liberty granted in the order dated 05.02.2020 to revive CIRP, hence, the Adjudicating Authority has rightly rejected the application for revival. He has also referred to judgment of this Tribunal in '*Krishna Garg and Anr. vs. Pioneer Fabricators Pvt. Ltd.*' which has also been relied by the Adjudicating Authority in Para 7 of the impugned order.

6. We have considered submissions of learned counsel for the parties and perused the record.

7. The Consent Terms in Clause 8 as has been extracted above clearly entitle the Financial Creditor to revive the Section 7 petition in event any default of the terms of the Consent Terms. Further, the order dated 05.02.2020 cannot be read as an order by which Consent Terms has not been taken on record when by the said order application filed alongwith the consent terms under Rule 11 of NCLT rules, 2016 was taken on record and was

allowed. When the application was allowed in terms of the consent terms, Clause 8 itself shall be treated to be part of the order which shall entitle the Financial Creditor to revive the petition in the event of any default.

8. Judgment of this Tribunal which has been relied by the Respondent in '*Krishna Garg and Anr. vs. Pioneer Fabricators Pvt. Ltd.*' was a case where neither settlement terms were filed nor the same were brought on the record. The facts in the present case are distinguishable from the above case as Consent Terms were filed and also were taken on record by the Adjudicating Authority. When the Adjudicating Authority allowed the application filed, the Consent Terms were also taken record and the Financial Creditor was fully entitled to seek revival of the Section 7 petition in event of default of consent terms.

9. We, thus, allow this Appeal and set aside the impugned order dated 10.11.2021 and revive the Section 7 petition i.e. C.P. (IB) No. 2340 of 2019 which may be heard by the Adjudicating Authority in accordance with law.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Justice M. Satyanarayana Murthy]**  
**Member (Judicial)**

**[Barun Mitra]**  
**Member (Technical)**

*Archana/nn*