

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) (Ins) No. 1296 of 2022

IN THE MATTER OF:

Bajaj Rubber Company Pvt. Ltd.
Versus

...Appellants

Saraswati Timber Pvt. Ltd.

...Respondents

Present:

For Appellants : Mr. Shailender Kumar, Advocate

For Respondents :

ORDER

01.05.2023: Heard Mr. Shailender Kumar, Ld. Counsel for the Appellant.

The present appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as 'Code') has been preferred against an order dated 11.08.2022 passed by the National Company Law Tribunal, New Delhi Bench, Court-II, (herein after referred to as NCLT) in I.A. No. 3247/ND/2022 which was filed in CP No. (IB)- 1441(ND)/2018. The said Interlocutory application i.e. I.A. No. 3247/ND/2022 was filed with a prayer to revive/restore CP No. 1441/2018 which was earlier withdrawn by the appellant on the plea that outside settlement had already been taken place. The Ld. NCLT by the order dated 11.08.2022 has dismissed the I.A. No. 3247/ND/2022.

2. By an order dated 21.01.2019 passed by NCLT, CP No. 1441.2018 was permitted to be withdrawn. The order dated 21.01.2019 is quoted herein below:

*"Ld. Counsels submit that a compromise has been arrived at between the parties. In the light of the same, Ld. Counsel for the Operational Creditor submits that he has instructions to withdraw the present petition. He however seeks liberty to revive this petition in the event of default in the terms of the settlement.
Liberty granted. Disposed off accordingly".*

3. On perusal of the aforesaid order, it is evident that on submission made by Ld. Counsel that a compromise had already been arrived at between the parties and Ld. Counsel for the Operational Creditor (who is Appellant herein) on instruction had withdrawn the CP No. 1441/2018. However, liberty was given to revive the petition in the event of default in the terms of the settlement.

4. It is the case of the appellant that though for some time the Corporate Debtor followed the terms and conditions of the settlement but subsequently, he repudiated and this was the reason that last cheque which was given by the Corporate Debtor for an amount of Rs. 1,25,000/- was dishonoured by the Bank.

5. Ld. Counsel for the Appellant has drawn our attention to running page 228 to show that on 24.12.2020, a cheque amounted to Rs. 1,25,000/- was dishonoured. Subsequently, the appellant in terms of earlier order i.e. order dated 21.01.2019 filed an application in the month of June, 2022. The Appellant filed an application i.e. I.A. No. 3247 of 2022 for revival of the same. The Adjudicating Authority after considering the submission of Ld. Counsel for the Appellant by the impugned order has dismissed the same.

6. Mr. Shailender Kumar, Ld. Counsel for the Appellant assailing the impugned order, has argued that once while allowing withdrawal of the application by its order dated 21.01.2019, the Adjudicating Authority had granted liberty to the appellant for revival in case of violation of the terms of the settlement the Adjudicating Authority was not required to reject the application that too mainly relying on a judgment passed by the National Company Law Tribunal, which was already overruled by this Appellate Tribunal.

7. In sum and substance, Ld. Counsel for the Appellant requests for setting aside the impugned order and directing for restoring/reviving of CP No. 1441/2018.

8. Besides herein, Ld. Counsel for the appellant, we have perused the materials available on record. Fact remains that initially the appellant herein had filed application under Section 9 of Code before the NCLT and it was numbered as CP No. 1441/2018. It is also a fact that the application filed under Section 9 was not even admitted and before its admission the applicant withdrew CP No. 1441/2018. Before the NCLT it was submitted that applicant and corporate debtor had arrived at a settlement and thereafter a prayer was made for withdrawal of the application. The prayer for withdrawal of application was allowed. However, while recording disposal the Ld. Tribunal also granted liberty to revive in case of violation of settlement condition.

9. The said order was passed long back on 21.01.2019. It is also not in dispute that after about expiry of three and half years, the appellant herein approached the NCLT for revival of the application filed under Section 9 of the Code. Section 9 application was filed claiming Operational debt of Rs. 1,34,18,197/-. Without application being admitted on the plea that applicant and corporate debtor had settled the dispute the applicant withdrew the application. Since the Applicant before the NCLT voluntarily withdrew the application, there was no reason for revival of the case. However, the NCLT had granted liberty to revive the same. The said order may not be construed that right of revival was granted to be invoked even after expiry of about three and half years. Moreover, at the time of making prayer for revival it was pleaded that only about Rs.24,00,000/- (Twenty Four Lakhs) was still outstanding. Meaning thereby, that out of total claimed debt i.e. Rs. 1,34,18,197/-(One Crore thirty four lakhs eighteen thousand one hundred ninety seven) major portion of the operational debt was already cleared by the corporate debtor.

10. It is admitted position that last alleged dishonour of cheque had occurred on 24.12.2020. If the appellant was serious to pursue the matter then in that event immediately he would have approached the NCLT but he preferred to slumber over his right for several years and suddenly in the month of June, 2022 he approached the NCLT with a prayer to revive his application which was already withdrawn 21.01.2019. In such situation we are of the opinion that it would be a futile exercise to entertain the present application.

11. The appeal stands dismissed.

[Justice Rakesh Kumar]
Member (Judicial)

[Dr. Alok Srivasatava]
Member (Technical)

sr/rr

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