

**NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – II  
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 22-03-2023 (WEDNESDAY) AT 10.30 A.M. THROUGH VIDEO CONFERENCING:**

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**PRESENT : SHRI. SANJIV JAIN, HON'BLE MEMBER (JUDICIAL)  
SHRI. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**  
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**APPLICATION NUMBER : Rst.App(IB)/10(CHE)2022**  
**PETITION NUMBER : CP/1454/IB/2018**  
**NAME OF THE PETITIONER : Isuzu Motors India Pvt Ltd**  
**NAME OF THE RESPONDENT(S) : VR Rail Nirman Pvt Ltd**  
**UNDER SECTION : Sec 60(5) of IBC, 2016**  
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**ORDER**

Order pronounced in the Open Court, vide separate sheet. Be uploaded on the NCLT website.

- Sd -

**SAMEER KAKAR**  
**Member (Technical)**

vs

- Sd -

**SANJIV JAIN**  
**Member (Judicial)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**RST.APP(IB)10(CHE)2022**

**IN**

**CP/1454/IB/2018**

*(Under Section 60(5) of the Insolvency & Bankruptcy Code, 2016  
read with Rule 11 of the NCLT Rules, 2016)*

In the matter of **M/s. V R RAIL NIRMAN (P) LTD.**

**M/s. Isuzu Motors India Pvt. Ltd.,**  
9<sup>th</sup> Floor, Prestige Centre Court – Office Block,  
Vijaya Forum Mall, No. 183, NSK Salai,  
Vadapalani, Chennai-600 026

...Applicant/Operational Creditor

-Vs-

**M/s. V R Rail Nirman (P) Ltd.,**  
F-2, Sri Mahalakshmi Enclave,  
No. 75, Gandhi Road,  
Choolaimedu, Chennai-600 094

...Respondent/Corporate Debtor

**Order pronounced on 22<sup>nd</sup> March, 2023**

CORAM :

**SANJIV JAIN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Petitioner : Ms. Prapti Mehta, Advocate  
For Respondent : Mr. G. Gautham Ram Vittal, Advocate

**ORDER**

**Per: SANJIV JAIN, MEMBER (JUDICIAL)**

This order shall dispose of the application moved by the  
Applicant/Operational Creditor **M/s. Isuzu Motors India Private**



**Limited** under Section 60(5) of IBC, 2016 r/w Rule 11 of NCLT Rules, 2016 for revival of company petition bearing CP/1454/IB/2018 titled '**M/s. Isuzu Motors India Private Limited vs. M/s. V R Rail Nirman Private Limited**'.

2. Facts relevant for disposal of the application are that the Applicant had filed the aforesaid petition as Operational Creditor for initiating Corporate Insolvency Resolution Process ("CIRP") against the Respondent/Corporate Debtor **M/s. V.R. Rail Nirman Private Limited** as there allegedly existed unpaid admitted operational debt amounting to Rs.13,70,502/- (Rupees Thirteen Lakhs Seventy Thousand Five Hundred and Ten only). The Tribunal dismissed the application vide order dated 29.01.2019 on the ground that the company was already struck off and is not in existence as on date. It was observed the petition would not lie against an entity not in existence.

3. The Applicant thereafter filed an application under Section 252 of the Companies Act, 2013 bearing CA/952/2019 before this Tribunal against the Registrar of Companies ("ROC"), Chennai seeking to restore the name of the company in the Register maintained by the ROC. Vide order dated 02.03.2021, the application was allowed. The ROC was accordingly was directed to restore the active status of the Respondent. The Applicant after obtaining the certified copy of the order served upon the ROC,



Chennai on 31.03.2021 on the basis of which, the status of the Respondent was restored as 'Active' since 14.04.2021.

4. The Applicant thereafter filed an application for revival of CP/1454/IB/2018 on 03.06.2021 under S.R. No.809 dated 24.06.2022. It was stated that delay in filing the application was owing to COVID-19 restrictions during which period, the company was not fully operational. Reference was made of the Hon'ble Supreme Court vide order dated 10.01.2022 in *Suo Motu* Writ Petition (C) No. 3 of 2020. It was stated that in the present case, the date of default was 11.10.2017 for an amount of Rs.13,70,502/- which was above the threshold limit of Rs.1,00,000/- as prescribed under the Code being a default incurred prior to the amendment on 24.03.2020.

5. We have heard Ld. Counsel Ms. Prapti Mehta for the Applicant and Mr. G. Goutham Ram Vittal for the Corporate Debtor and gone through the written submissions filed in support of their arguments. Ld. Counsel for the Applicant reiterated what has been stated above. She referred the case of "**Sree Bhadra Parks and Resorts Ltd. v. Sri Ramani Resorts and Hotels Pvt. Ltd., (MANU/NL/0133/2021 – National Company Law Appellate Tribunal, Chennai Bench**" to contend that the Tribunal may in exercise of its inherent powers under Rule 11 allow an application for withdrawal or settlement and as such it can also pass an order



to restore and revive the application. Reference is also made of the case "**ESS Investments P. Ltd. vs. Lokhandwala Infrastructure P. Ltd. and Ors. (2020) 17 SCC 398 – Hon'ble Supreme Court of India**" & "**Goodfaith Holdings Pvt. Ltd. v. Ideal Real Estates Pvt. Ltd., CP(IB)461/KB/2019 dated 19.02.2021 – National Company Law Tribunal, Kolkata Bench**". Counsel contended that the Adjudicating Authority has the power to recall its own order which is no longer *res integra*. Ld. Counsel stated that when the petition was dismissed, the company was already struck off and was not in existence but it has now been revived an active as on date. Ld. Counsel stated that since the Applicant removed the impediment to the admission of the original petition, the same can be validly restored by this Tribunal. Ld. Counsel stated that even in the case of struck off companies, assets and liabilities of the directors would be continuing.

6. Ld. Counsel for the Respondent *per contra* argued that the order dated 29.01.2019 passed by the Tribunal was an order on merits discussing the legal principles. The Applicant could have appealed against the order which was not done in the present case. Even assuming that the Applicant was justified in moving an application for restoration of the Respondent Company's status but it failed to take note of the order of Hon'ble NCLAT date



06.09.2019 in the case of "**Elektrans Shipping Pte Ltd vs Pierre D' Silva**" reported in 2019 SCC Online NCLAT 1169" where it was held that an application under IBC is maintainable even against a company which is struck off by the ROC. Ld. Counsel stated that the present application could have been filed immediately after the order Hon'ble NCLAT dated 06.09.2019 and not in March 2022. Once Hon'ble NCLAT clarified the issue, there was no reason for the Applicant moving CA/952/2019 to get the Respondent Company's status restored. The Applicant cannot feign ignorance of the order of Hon'ble NCLAT to take the benefit of limitation. The inherent powers of the Tribunal under Rule 11 cannot revive time barred claim. Ld. Counsel contended that the order of the Supreme Court in suo motu petition was a benevolent and compassionate order and not meant to be invoked in vain to cover up once lapses.

7. We have considered the submissions made by the counsels for the parties and gone through the records of the case.

8. A perusal of records reveals that the Company petition was filed by the Applicant on 10.12.2018 under Section of 9 of IBC, 2016 on the ground that the Corporate Debtor/Respondent defaulted in paying the outstanding dues. The Corporate Debtor was incorporated on 15.04.2013. Since it was not carrying on any business for a period of two financial years, the ROC struck off the

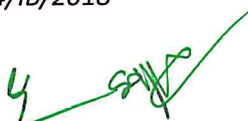


name of the company from the register maintained by it vide Form STK-7 on 09.08.2018. The Tribunal after verification of record vide order dated 29.01.2019 after noticing that the company's name was already struck off and it was not in existence as on date, dismissed the petition. The Applicant thereafter filed an application under Section 252(3) of the Companies Act, 2013 which application was allowed by the Tribunal vide order dated 02.03.2021 after due consideration of the reply of the ROC and restored the name of the Company of the Corporate Debtor in the register maintained by the ROC. The law at the time the petition was dismissed on 29.01.2019 was well settled that if the company's name is struck off and the company is not in existence as on date of filing the petition, the petition would not lie against that entity. This position changed only after the judgment of Hon'ble NCLAT in the matter of "**Elektrans Shipping Pte Ltd vs Pierre D' Silva**" reported in 2019 SCC Online NCLAT 1169" vide order dated 06.09.2019 where it was held that the adjudicating authority is empowered to restore the name of the company and all other persons in their respective position for the purpose of initiation of CIRP under Section 7 & 9 of IBC, 2016 based on the application, if filed by the creditor within 20 years from the date the name of company is struck off. It also held that an application under Section 7 & 9 is maintainable even against a



company whose name is struck off in the records of ROC. The said order came in force on 06.09.2019. However, before the said order came in force, the Applicant had taken steps by filing the petition/application under Section 252(3) of the Companies Act, 2013 i.e. 08.07.2019 on which order dated 16.03.2021 was passed restoring the name of the struck off company i.e. the Respondent Company in the Register maintained by the ROC.

9. Admittedly, the present application has been filed on 24.06.2022 but for this, the Applicant has given the reasons stating that owing to COVID restrictions, the Applicant company was not fully operational and could not instruct its counsel for revival of the insolvency petition. When in March 2022 it resumed the operations, it instructed its counsel to file the application for revival of the insolvency petition. The Hon'ble Supreme Court in suo moto Writ Petition (C) No. 3 of 2020 vide order dated 10.01.2022 also excluded the period from 15.03.2020 till 28.02.2022 for the purpose of calculating limitation. It is true that the Applicant immediately after the order of Hon'ble NCLAT dated 06.09.2019, could file Insolvency Petition but since the application/petition filed by the Applicant under Section 252(3) of the Companies Act was pending before the Adjudicating Authority, this made the Applicant not to file the petition. As regards filing of an appeal against the order dated 29.01.2019, since the judgment



in the case of "**Elektrans Shipping Pte Ltd vs Pierre D' Silva**" **reported in 2019 SCC Online NCLAT 1169**" on 06.09.2019 and before that the position was that the insolvency petition could not be filed against a company which was not in existence, the Applicant instead filing an appeal, filed the petition under Section 252(3) of the Companies Act, 2013.

10. As regards the contention that this Tribunal does not have jurisdiction to review its own order, Rule 11 of NCLT Rules clearly provides that nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent the abuse of process of the Tribunal. The present application cannot be said to be for review of the order dated 29.01.2019. But for the peculiar circumstances which had arisen as explained above which led the Applicant move this application. It is well settled law as held by the Hon'ble Supreme Court that procedures are handmaid of justice. For meeting the ends of justice and to prevent abuse of process of law, the Tribunal should not go into the technicalities of the matter and resort to substantial justice to the parties.

11. For the reasons stated above, we find merits in the application for restoration of the application moved by the Applicant. We allow the application. Accordingly, CP/1454/IB/2018 **is restored** on the file of this Tribunal.

12. List CP/1454/IB2018 on **01.05.2023**.

13. Nothing mentioned hereinabove shall tantamount to be in expression of opinion on the merits of the case.



**SAMEER KAKAR**  
**Member (Technical)**

*suguna*



**SANJIV JAIN**  
**Member (Judicial)**