IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT-III

Rest. Appl. 137/2024
In
IB-517/2023

IN THE MATTER OF IB-517/2023:

Shashi Bhushan Nagar ..... Financial Creditor

Versus

Sri Ganraj Buildcon Pvt. Ltd ..... Corporate Debtor

AND IN THE MATTER OF Rest. Appl. -137/2024:

Shashi Bhushan Nagar ..... Financial Creditor/Applicant

Versus

Sri Ganraj Buildcon Pvt. Ltd ..... Corporate Debtor/Respondent

Order Pronounced On: 17.07.2026

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

MS. REENA SINHA PURI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Ashutosh Dubey, Ms. Rajshri Dubey, Mr. Abhishek Chauhan, Mr. Amir, Advs

For the Respondent : Mr. Prakul Khurana, Ms. Ishita Arora, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present Application has been filed by the Applicant/Financial Creditor for recalling of order dated 19.01.2024 passed by this Tribunal in Company Petition IB (IBC) No/517/of 2023, whereby this Adjudicating Authority was pleased to allow the petition to be withdrawn on account of matter being settled between the Financial Creditor/Applicant and corporate debtor. Prayers made in the instant Application read as under:

   "**a)** *Allow the instant Application and recall the Order dated 19.01.2024 passed in Company Petition IB (IBC) NO/517 /of 2023 and restore* *the Application, Company Petition IB (IBC) NO/ 517 / of 2023 to its file and number for further hearing and orders.*

b) *Pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case."*

2. <u>Brief Background</u>

a. The Applicant/Financial Creditor advanced loan of Rs. 1,86,95,051/- to Sri Ganraj Buildcon Pvt. Ltd/Corporate Debtor from 17.3.2015 to 31.8.2020. The corporate debtor was to repay the said amount by 31.3.2021. On account of default by corporate debtor, the Financial Creditor/Applicant filed IB (IBC)-517/2023 under section 7 of the Code seeking initiation of CIRP against Sri Ganraj Buildcon Pvt. Ltd/Corporate Debtor.

b. Vide order dated 19.01.2024 IB-517/2023 was dismissed as withdrawn, the order dated 19.01.2024 is reproduced below:

"Mr. Akshay Sharma, Learned Counsel appearing for the Applicant and Mr. Yash Tandon, Learned Counsel appearing for the Corporate Debtor submit that the matter has been settled between the parties and therefore the present application ought to be disposed of in terms of the settlement. Learned Counsel appearing for the Applicant seeks liberty to withdraw the petition in view of the settlement.

IB-517(ND)/2023 ***dismissed as withdrawn****."*

3. Submissions of the Applicant

a. It is submitted that this Tribunal was pleased to issue notice on the petition on 27.09.2023, after service of notice of the petition, the Corporate Debtor approached the Financial Creditor/ Applicant and persuaded to enter into a settlement for clearance of all its dues. After several meetings, the Corporate Debtor, for and on behalf, and in consent with all the directors of company, entered into an amicable settlement with the applicant with a promise to clear all pending amount to the Financial Creditor/ Applicant by 31.7.2024. The applicant was further persuaded to withdraw the petition.

b. It is submitted that in terms of the settlement, the Corporate Debtor allotted one more residential flat/ unit (Flat/Unit No. 405) to the applicant as security on 18.1.2024 in addition to already existing two units (which were issued as security Flat/Unit No. 303 and 302) in the project, "Golden Bells", Jagatpura, Jaipur, Rajasthan and had duly executed documents in favour of the applicant. Since at the time of advancement of loan, most of the payments were in cash, which on the suggestion of the Corporate Debtor under settlement, payments (Rs. 76,60,000/-) were made through RTGS/cheques by Financial Creditor/Applicant to the Corporate Debtor and respective entries were made in the books of the Corporate Debtor.

c. It is submitted that the respondent/ corporate Debtor paid an amount of Rs.1,53,000/- (Rupees One lakh fifty three thousand only) towards part payment of outstanding dues of the applicant. Believing the promises of Corporate Debtor and acting on settlement, the Financial Creditor/ Applicant had withdrawn his petition on 19.1.2024.

d. It is submitted that in terms of the settlement, the Corporate Debtor was supposed to make complete payment to the Financial Creditor/ Applicant by 31.7.2024.

e. It is submitted that the Corporate Debtor defaulted in making payment by 31.7.2024, the Corporate Debtor requested for personal meeting with the Financial Creditor/Applicant. In meeting held on 6.8.2024 in Gurgaon, the Corporate Debtor candidly admitted its default but had requested for some time to honour his commitment and make the payment. Accordingly, on mutual oral understanding, the time for complete payment of entire dues was extended by two months i.e. 30.9.2024. The Corporate Debtor had assured and confirmed the Financial Creditor/Applicant for making complete payments by 30.9.2024 without any further extension and default. To buttress the argument the Applicant has placed reliance on What's App chat with the Corporate Debtor annexed as Annexure-A6(colly).

f. It is submitted that in spite of Corporate Debtor's undertaking to make complete payment by 30.9.2024 without any default, the Corporate Debtor had defaulted in making payment to the Financial Creditor/ Applicant with agreed interest @ 1.75% per month. The applicant had sent reminders/ messages to the respondent Corporate Debtor for making payments on time.

g. It is submitted that the applicant on 1.10.2024 had issued notice/demand letter to the Corporate Debtor asking for payment of complete amount due on as on date of 30.9.2024 i.e. Rs. 3,64,62,813 which is inclusive of Principal amount of Rs.1,86,95,051/- & interest of Rs. 1,77,67,762/-) to the Financial Creditor/ Applicant within a period of 7 days from the date of notice, failing which it was clarified that the IBC Petition 157(ND)/2023, which was withdrawn by the Financial Creditor/Applicant on the premise of settlement before this Tribunal will be revived for further proceedings.

h. It is submitted that the Corporate Debtor misled and misrepresented the applicant to enter into an amicable settlement in respect of admitted outstanding dues in order to avoid further proceedings under the Code.

4. Submissions of the Respondent

a. It is submitted that the withdrawal of Petition was unconditional and there was no settlement which recognised the alleged cash transaction of advancing purported loan or regarding repayment of alleged cash loan which was not reflected in the books of the Company and was denied and disputed and therefore no alleged/purported settlement agreement was placed on record.

b. It is further submitted that Applicant/Petitioner was falsely claiming that cash amount was given by it which was in clear violation of the provisions of Income Tax Act, 1961 which would have resulted in prosecution as well as imposition of heavy penalties on the Applicant/Petitioner and therefore inter-alia under such fear, the Petition was withdrawn by the Applicant/Petitioner and there was no settlement qua the alleged cash transaction of purported loan.

c. It is submitted that the instant application is liable to be dismissed *in limine* on the ground that the same is not maintainable in as much as firstly, no liberty of revival/restoration was granted by this Tribunal to the Applicant vide order dated 19.01.2024. Secondly, the withdrawal order was a simpliciter withdrawal on the request of the Applicant and the alleged purported settlement terms were not incorporated in order of the withdrawal, by virtue of which it cannot be said that the withdrawal order passed by this Tribunal assumed the character of the decree of the court, breach whereof would entitle the Applicant to come back and seek restoration/ revival of the company petition. Thirdly, breach of the alleged purported terms of a purported settlement agreement, if any, would not fall within the meaning of financial debt under Section 5(8) of the Code, and the Code cannot be used as a recovery mechanism to trigger Corporate Insolvency Resolution Process.

d. It is submitted that issue of revival of company petition post withdrawal on alleged/purported settlement is not res integra anymore. The Hon'ble Appellate Tribunal in *Krishna Garg & Anr. vs. Pioneer Fabricators Pvt. Ltd., Comp. Appeal (AT)(Ins.) No. 92 of 2021* has categorically held that the petition cannot be revived/restored when neither the settlement terms were filed nor the same were brought on record and incorporated in the order of the Adjudicating Authority with liberty to revive/ restore the petition in the event of the Corporate Debtor not adhering to the terms of the settlement. The relevant paragraph of the aforesaid judgment is reproduced below for ready reference:

> *"2. . . . . It further emerges from the order that neither the settlement terms were filed nor the same were brought on record and incorporated in the order of the Adjudicating Authority with liberty to revive/ restore the CIRP in the event of the Corporate Debtor not adhering to the terms of the settlement or post dated cheques issued to Appellants being dishonored.*
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> *3. In view of this position, it cannot be said that the Settlement Terms not incorporated in the order of the Adjudicating Authority assumed the character of the decree of the Court, breach whereof*

would entitle the Appellants- Financial Creditors to come back and seek restoration/ revival of CIRP. 4. Viewed thus, we find no legal infirmity in the impugned order. The appeal being devoid of any merit, cannot be allowed. The remedy for the Appellants lies somewhere else and the dismissal of this appeal would not preclude the Appellants from seeking such remedy.”

e. It is submitted that in the instant case the withdrawal order dated 19.01.2024 passed by this Tribunal did not grant any liberty to the Applicant to revive/restore the proceedings in case of default of the purported settlement. Even otherwise, there was no settlement agreement and no terms or conditions of any alleged/purported settlement were brought on record before this Tribunal in order to subsume the alleged settlement agreement into a decree of the withdrawal order, breach of which would have entitled a chance to Applicant to revive/restore the main company petition. Therefore, the instant restoration application is liable to dismissed.

f. It is further submitted that Hon'ble Appellate Tribunal in another judgment dated 08.04.2021 passed in *SRLK Enterprises LLP v. JALAN Transolutions (India) Ltd., Company Appeal (AT) (Ins) No. 294 of 2021*, has held that there is difference between simpliciter withdrawal by mere statement, and withdrawal by bringing settlement deed on record before the Adjudicating Authority coupled with a liberty to restore the proceedings in case of default. The relevant paragraph of the a foresaid judgment is reproduced below for ready reference:

“6... ... There is difference between withdrawal simplicitor making statement that parties have settled. It is different when bringing the settlement on record, and making it a part of the Order of withdrawal liberty is taken and brought on record to restore the proceedings in case of default. IBC is not a recovery proceeding where because the money or part of it has not come, the party may repeatedly come to the Court. Adjudicating Authority has rightly observed that no liberty to revive was there and so declined to interfere. The Appellant would be at liberty to pursue other remedies in law.”

g. It is submitted that in the instant case as well, the withdrawal order dated 19.01.2024 passed by this Tribunal was a simpliciter withdrawal without bringing the settlement agreement on record before this Tribunal, thereby rendering the present restoration application not maintainable in the eyes of law.

h. It is submitted that the instant restoration application is filed with an ill-motive with a sole motive for the recovery of the alleged debt, and not for the resolution of the Respondent Company, which is against the objective and purpose of the Code.

i. It is submitted that the Applicant with a motivated and ill-founded attempt is trying to enforce the sale deed, allegedly entered into between the Respondent and the Applicant, which is being falsely and in a misconceived manner wrongly portrayed as purported/ alleged settlement agreement.

j. It is submitted that the instant application is misguided and de hors the provisions of the Code in as much as breach of the terms of a purported /alleged settlement agreement would not fall within the meaning of financial debt under Section 5(8) of the Code, and the Code cannot be used as a recovery mechanism to trigger CIRP. The Hon'ble Appellate Tribunal in *Amrit Kumar Agrawal v. Tempo Appliances Pvt. Ltd., 2020 SCC OnLine NCLAT 1202,* have held that:

"4. Mere obligation to pay does not bring the liability within the ambit of 'financial debt'. The debt, along with interest, if any, should be disbursed against the consideration for the time value of money. Breach of terms of an agreement including a Settlement Agreement whereunder payment may be due would not fall within the ambit of Section 5(8) so as to constitute a 'Financial Debt' ......

5. Thus, viewed we find no legal infirmity in the order. The Appellant may have other remedies available under law for effecting recovery of money due in terms of the Settlement Agreement but the triggering of Corporate Insolvency Resolution Process is not warranted. Insolvency proceedings stand at a different footing and cannot tantamount to recovery *proceedings. Corporate Insolvency Resolution Process cannot be initiated for purposes of recovery of money."*

5. The Applicant has also filed rejoinder affidavit dated 07.07.2025 to the Reply Affidavit filed by the Respondent.

6. **Analysis and Findings:**

a. We have heard the submissions of Learned Counsel appearing for both the parties and perused the records.

b. The case of the Applicant herein is that the Applicant/Financial Creditor filed IB-517/ND/2023 under Section 7 of the Code seeking initiation of the CIRP against Sri Ganraj Buildcon Private Limited, the Corporate Debtor. The said Section 7 application was dismissed as withdrawn vide order dated 19.01.2024 on the basis of the submission made by the Learned Counsel appearing for both the parties that the matter has been settled. The order dated 19.01.2024 is reproduced below:

"*Mr. Akshay Sharma, Learned Counsel appearing for the Applicant and Mr. Yash Tandon, Learned Counsel appearing for the Corporate Debtor submit that the matter has been settled between the parties and therefore the present application ought to be disposed of in terms of the settlement. Learned Counsel appearing for the Applicant seeks liberty to withdraw the petition in view of the settlement.*

IB-517(ND)/2023 ***dismissed as withdrawn**."*

c. The Applicant's grievance is that the Corporate Debtor did not adhere to the terms of the settlement and there is a failure on the part of the Corporate Debtor in making the payment to the Applicant/Financial Creditor. The Respondent objected to the restoration of the Section 7 application on the ground that there no liberty was granted to the Applicant while passing the order dated 19.01.2024. Further, no terms of settlement was placed on record when the order dated 19.01.2024 was passed. The Applicant has placed on record certain documents in support of the settlement which are in Hindi Vernacular and turned as Ikrarnama dated 19.01.2024. The Applicant has also placed on record two translated copies of the said Ikrarnama.

d. A perusal of the said documents shows that the first party i.e. Mr. Shashi Bhusan Nagar agreed to sell the property in question to the second party namely M/s. Sri Ganraj buildcon Private Limited for a consideration as mentioned therein. For the sake of convenience and better understanding of the case, the relevant para from the agreement dated 19.01.2024 entered into between Mr. Shashi Bhusan Nagar and M/s. Sri Ganraj buildcon Private Limited with respect to the sale of flat No. 303, 3rd floor 'Grand Golden Bells', Flat No. 303, Khasra No. 1518/1, 1519/1, Village Siroli, Tehsil Sanganer, District Jaipur 302033 (Rajasthan) is extracted hereunder:-

> *"It has been agreed that the costs related to the sale deed, apart from the sale price, will be borne by the Second Party. From the total sale amount, an advance payment of INR 51,000/- (Fifty-One Thousand Rupees) has been made through Cheque No. 000527, dated 19.01.2024, and the First Party acknowledges the receipt of this amount in the presence of witnesses in this agreement, and the remaining balance of INR 59,49,000/- (Fifty-Nine Lakh Forty-Nine Thousand Rupees) will be paid by the Second Party by the due date of 31.07.2024. Upon receiving the balance, the First Party will execute the sale deed in favour of the Second Party, or any other person as instructed by the Second Party, and will hand over the original documents along with physical and actual possession of the aforementioned residential flat to the Second Party.*
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> *The First Party will execute the sale deed of the aforementioned ' residential flat within the specified period (31.07.2024) in favour of the Second Party or any other person as instructed by the Second Party. Therefore, this agreement has been written by both parties in a sound state of mind, without any influence of intoxication, on one stamp paper worth INR 100 and two plain papers. After reading, listening, thinking, and fully understanding the agreement, both parties have signed it in the presence of the following witnesses, so that it may serve as proof and be useful when needed. Dated 19.01.2024."*

e. Nowhere in the said agreement, there is any mention about a default clause as well as seeing liberty to revive/restore the Section 7 application or taking any other legal recourse.

f. In our considered opinion, the Applicant is seeking recovery on the ground of breach of the sale agreement. In such a situation, the IBC is not the correct remedy. Moreover, in the absence of any liberty being sought either in the agreement or in the order dated 19.01.2024 passed by this Adjudicating Authority. The prayer for restoration of IB-517/ND/2023 cannot be entertained.

g. Therefore, the present application is **rejected**. However, it will be open for the Applicant to take appropriate legal recourse available under recourse, if so advised. **Rest. Appl. -137/2024 stands dismissed**.

Sd/-	**Sd/-**
(REENA SINHA PURI) **MEMBER (TECHNICAL)**	**(BACHU VENKAT BALARAM DAS)** **MEMBER (JUDICIAL)**