

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

IA-2771/2023 IN

CP (IB) No.834/MB-IV/2020

Under Section 241-242 of the Companies
Act, 2013

In the matter of:

Amluckie Investment Company Limited

...Financial Creditor

In the matter of:

Amluckie Investment Company Limited

V/s

Skill Infrastructure Limited

...Corporate Debtor

Order pronounced on: 25.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Sandeep Bajaj Adv.

For the Respondent(s) :

Mr. Rohit Gupta a/w Mr.

Mantul Bajpai and Ms.

Priyam Shirma adv.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Interlocutory Application No. 2771/2023 is filed seeking revival of CIRP proceedings in the matter of Corporate Debtor Amluckie Investment Company Limited. In this matter an order for initiating CIRP was passed on 15.03.2021 by this bench in CP.IB.834/MB-IV/2020 u/s 7 of the IBC, however, the bench has pronounced the order verbally on 15.03.2021 though, the order in writing came to be uploading after passing of order on 15.03.2021.
2. After pronouncement of verbal order dated 15.03.2021, the parties entered into settlement dated 23.03.2021 whereby parties mutually agreed that in view of the present settlement agreement and upon the filing of this settlement agreement before the Hon'ble National Company Law Tribunal, Mumbai Bench in the CP.(IB)834/2020 and once the verbal order dated 15.03.2021 is recalled, the Corporate Debtor shall not challenge the order dated 15.03.2021 before the National Company Law Appellate Tribunal or any other court of Law. However, the verbal order dated 15.03.2021 was challenged before Hon'ble NCLAT in Company Appeal (AT)(Ins.) 280/2021 by one of the Suspended director Mr. Bhavesh Gandhi.
3. Pursuant to this, the Hon'ble NCLAT passed an order dated 05.04.2021 taking notice of the factum of settlement and disposed of the appeal by directing closing of the case before the adjudicating authority releasing the

corporate debtor from the rigours of CIRP process and putting an end to the moratorium u/s 14 of the Code. The Hon'ble NCLAT also made it clear in the last para that *“only the part payment has been made towards satisfaction of full and final claim of the Financial Creditor in terms of the Settlement Agreement and the balance payment is agreed to be paid as per the schedule indicated hereinabove. In the event of default on the part of the Corporate Debtor in adhering to the terms of schedule, Respondent-Financial Creditor shall be at liberty to approach the Adjudicating Authority to reopen the Corporate Insolvency Resolution Process Proceedings in accordance with Law”*.

4. The Corporate Debtor had commenced payment of the debt amount to the Financial Creditor and paid a sum of Rs.1.40 Crores but has defaulted again in payments though the Corporate Debtor pay the remaining amount of Rs.3.20 Crores and interest @12% P.A. from the date of settlement till the payment of last instalment. No further instalments have been paid by the Corporate Debtor and he has been default in making the payments of the due amounts to the Applicant. The financial Creditor presented the post-dated cheques which were issued by the Corporate Debtor in pursuance of the Settlement Agreement. These cheques were presented before the bank, all of them got dishonoured showing “Account Closed”.
5. This application has been filed seeking initiation of CIRP against the Corporate Debtor due to the failure on the part of the Corporate Debtor in making the repayment of these amounts aggregating to Rs.3,79,34,988.59 of

Rs.2,00,00000/- (Rupees Two Crores Only). The applicant has placed reliance on from the order of Hon'ble NCLAT in the case of Bhavesh Gandhi promotor and suspended director of Skill Infrastructure Limited and emphasised on the words "*to reopen the Corporate Insolvency Resolution Proceedings in accordance with Law*".

6. After perusal of the said order, this Bench finds that the Hon'ble NCLAT disposed of the appeal after taking notice of settlement "*by directing closing of the case before the adjudicating authority. Corporate Debtor is released from the rigour of Corporate Insolvency Resolution Process. Moratorium will cease to have effect, forthwith.*" This Bench is of the considered view that the Hon'ble NCLAT had closed the Company Petition meaning thereby the CIRP process stood closed thereat. We are of the view that the words "*to reopen the Corporate Insolvency Resolution Proceedings in accordance with Law*" only warrants restoration of company petition for fresh admission, because the code does not contain any provision for reopening of CIRP process once it is stood concluded at one point of time. This view is also supported by clause 11 of the settlement agreement which provides that "*The Second party/Personal Guarantor hereby unconditionally and irrevocably agrees and assures that in case of any default on the part of the Corporate Debtor in complying with the stipulations of Clause No.10 above of the present settlement agreement and which is not cured, the first party shall be at liberty to refute the present settlement agreement and seek revival*

of the application under Section 7 of the Code being Company Petition (IB) No. 834 of 2020 before Hon'ble National Company Law Tribunal, Mumbai Bench.

7. This bench also asked the Ld. Counsel for the Applicant whether the IBC contains any provision for reopening of CIRP process, he was non-committal on this legal proposition. This bench feels that if the words “*to reopen the Corporate Insolvency Resolution Proceedings in accordance with Law*” are interpreted to imply resumption of CIRP automatically on default, the Hon'ble NCLAT would have rather stayed the CIRP process for the period during which settlement amount was to be paid than to order the closure of CIRP. Further, the words “*in accordance with the law*” clearly suggest that the reopening of the proceedings has to be in accordance with the provisions of the code and not otherwise.
8. Since, the settlement terms were taken on record by Hon'ble NCLAT while allowing withdrawal of CIRP against the Corporate Debtor on 05.04.2021. This bench finds it appropriate to allow the restoration of CP.IB.834/MB-IV/2020 on occurrence of default in the said settlement terms.
9. In view of the above, Interlocutory Application No. 2771/2023 is partly **allowed by restoration of company petition and disposed of.**

Sd/-

Prabhat Kumar
Member (Technical)
28.08.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)