

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No. 294 of 2021

IN THE MATTER OF:

SRLK Enterprises LLP

(Formerly known as “LUV KUSH TECHNOLOGIES PVT LTD)

Registered Officer:

A-6/5, Basement Floor,

Paschim Vihar, Delhi,

West Delhi DL-110063

... Appellant

Versus

JALAN Transolutions (India) Ltd.

Registered Address:

206, Ajnara Bhawan

D – Block Market Vivek Vihar

Delhi DL-110095

... Respondent

Present:

For Appellant: Mr. Rakesh Kumar, Ms. Preeti Kashyap and Mr. Ankit Sharma, Advocates.

For Respondent: None.

ORDER
(Virtual Mode)

08.04.2021 Heard Learned Counsel for the Appellant.

2. This Appeal is filed against the Impugned Order dated 26th February, 2021 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench, (Court –II) New Delhi in I.A. No. 977 of 2021 in C.P. No. (IB)-1721(ND)2018 whereby the Adjudicating Authority rejected the Application to recall the Orders which the Tribunal had passed while disposing the Petition IB-1721(ND)/2018 on 09th May, 2019.

3. It is argued and the Appeal claims that the Appellant had filed Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC

in short) against the Corporate Debtor Respondent which was admitted. Later on, there was a compromise with Corporate Debtor and in view of the compromise, the Adjudicating Authority was moved and the Application filed under Section 7 of IBC was withdrawn by the Appellant. Adjudicating Authority had ignored CoC formed after settlement was informed to IRP. The Order dated 09th May, 2019 (Annexure A4 Page 65) reads as under:

“Ld. Counsel for the applicant submits that a compromise had been effected between the parties before constitution of the COC and they had duly informed the IRP regarding this fact.

Ld. Counsel for the applicant submits that on 20th April, 2019 settlement had been arrived at and the fact was duly communicated to the Ld. IRP. The COC was constituted by 24th April, 2019.

In view of the same, Ld. Counsel presses his prayer for the termination of the CIR Process. In the view of the decision of the Hon’ble Apex Court in the matter of “Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.”, W.P.(C) 99/2018, the CIR Process stands terminated.

The Corporate Debtor is released from the rigours of the moratorium and is permitted to function through its own board.

Ld. Counsel for the Corporate Debtor undertakes to liquidate the expenses incurred in the CIR Process as per bills submitted by IRP.

As nothing further survives, file be consigned to records.”

4. The Learned Counsel for the Appellant refers to the ‘Settlement Deed’ copy of which is at Page 58 of the Appeal to submit that the Corporate Debtor had given 27 cheques for various amounts and had even agreed that if the cheques are not honoured, the proceedings can be revived. It is stated that only four cheques were honoured and the rest of the cheques could not be encashed. The Learned Counsel submits that in view of this, the Application was filed to the Adjudicating Authority but Adjudicating Authority erroneously dismissed the Application. The Learned Counsel submits that the

Application should have been allowed and the earlier order should have been recalled.

5. The Impugned Order is a short Order which reads as under:

“IA/977/2021: The Applicant has filed this Application under Section 60(5) of the IBC Code r/w Rule 11 of the NCLT Rules. Heard Ld. Counsel appearing for the Applicant and perused the averment made in the Application.

The Ld. Counsel appearing for the Applicant submitted that this Adjudicating Authority vide order dated 09.05.2019 had terminated the CIRP and the file was consigned to the records. He further submitted that the said order was passed in terms of the settlement arrived in between the parties. He further submitted that in the meantime, the Corporate Debtor has violated the terms and conditions of the settlement. Therefore, this Adjudicating Authority under Rule 11 of the NCLT Rules has power to revive the original application. He also placed reliance on the decision of the Hon’ble Supreme Court in Civil Appeal No. 324/2020 as well as decision of the NCLT, Mumbai Bench in M.A. No. 3516 of 2019.

In the light of submissions, we went through the decision on which the Petitioner has placed reliance as well as averments made in the Application. We notice that vide order dated 09.05.2019 passed by this Bench, the petition (IB)-1721(ND)2018 was withdrawn at the instance of the Financial Creditor and the CIRP was terminated. We further notice that no liberty was given to the Petitioner to revive the application. So, considering this, we are of the considered view that since this Adjudicating Authority was not the part of the settlement arrived in between the parties, rather the settlement was arrived outside the Tribunal. It was on the submissions of the Applicant, the main petition was dismissed as withdrawn and the CIRP was terminated. Therefore, we have no reason to recall our earlier order. Accordingly, the prayer of the Applicant to recall the earlier order is hereby rejected.

Accordingly, the IA is DISMISSED.”

6. Going through the Impugned Order dated 26th February, 2021 which seeks to recall the Order dated 09th May, 2019 which also we have seen, we

find it difficult to take a different view from the Adjudicating Authority. 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.

7. We do not find any substance in the Appeal to entertain the Appeal. The Appeal is dismissed.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)