
(2022) 11 NCLT CK 0041

In the National Company Law Tribunal

Case No : IA 2417 of 2022 In C.P. No. 2779/IBC/MB/2019

Priyanka S. Mittle & Anr

APPELLANT

Vs

Shree Naman Developers Private Limited

RESPONDENT

Date of Decision : 10-11-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 60(5)
National Company Law Tribunal Rules, 2016 — Rule 11

Citation : (2022) 11 NCLT CK 0041

Hon'ble Judges : H.V. Subba Rao, Member (J); Satya Ranjan Prasad, Member (T)

Bench : Division Bench

Advocate : Mutahhar Khan, Ashish, Vibhav Krishna, Tahir Prande

Final Decision : Disposed Of

Judgement

H.V. Subba Rao, Member (Judicial)

1. The Petitioner one Mr. Kaulchand H Jogani filed the above IA praying the following reliefs: -

(a) To allow the present application and permit the applicant to amend the cause title of the Company Petition No. 2779 of 2019 by removing the name of Mrs. Priyanka S. Mittle as financial creditor.

2. The brief facts behind filing the above petition are as follows: -

(i) The above Petitioner along with one Mrs. Priyanka S Mittle jointly filed the above referred Company Petition claiming an amount of Rs. 4 Crores by the Petitioner and Rs. 33,27,500/- respectively by the other Petitioner Mrs. Priyanka S Mittle.

(ii) During the pendency of the above CP both parties have entered into a consent terms dated 4th December 2019 with the Corporate Debtor and withdrawn the above Company Petition. Accordingly, this Bench on 4th December 2019 passed the following order: -

"Both sides present and submits that the parties have amicably settled the matter and filed consent terms. Consent terms taken on record. The counsel for the petitioner seeks for withdrawal of this petition and accordingly, the petition is dismissed as not pressed".

(iii) Subsequent to the disposal of the above CP, the Corporate Debtor while completely discharging the claim of Mrs. Priyanka Shailesh Mittle committed default in settling part of the claim of the present Petitioner, i.e., Kaluchand H Jogani. Therefore, Mr. Jogani filed an I.A. 2411 of 2020 for restoration of the main Company Petition in view of the breach of Consent Terms and accordingly, this Tribunal on 13.07.2022 passed the following order: -

"Mr. Devarajan Raman, PCS appeared for the Petitioner. Mr. Mutahhar Khan, Advocate appeared for the Applicant. None appeared for the Respondent.

This is an application filed for the restoration of the main of the Company Petition which was disposed of vide order dated 04.12.2019 in view of entering into the consent terms between the parties. The learned counsel appearing for the petitioner submits that subsequent to entering into the consent terms, the Corporate Debtor has paid three instalments out of 5 instalments and committed breach in respect of two instalment of Rs. 1 crore each.

After hearing the submissions and upon perusing the papers, this Bench is of the opinion that this is a fit case for revival of the above Company Petition. Accordingly, IA 2411 of 2020 is allowed and the main Company Petition bearing No. 2779 of 2019 is restored to file.

List the main company Petition on 27.07.2022. The Petitioner shall inform the next date of listing to other side. The Corporate Debtor shall appear before this Bench on the next date of hearing failing which the above Company Petition would be automatically admitted".

3. Since there was no appearance on behalf of the Corporate Debtor while allowing the above IA 2411 of 2020, the Corporate Debtor filed an IA bearing No. 2343 of 2022 for recalling the order dated 13.07.2022 and the Petitioner filed the present IA 2417 of 2022 praying the above reliefs. Subsequently, on 07.10.2022, the Corporate Debtor not pressed the IA filed by them for recalling the order dated 13th April, 2022.

4. The Corporate Debtor opposed the above IA 2417 of 2022 filed by the Applicant for the above reliefs contending as follows: -

"a. The subject matter of the petition i.e. claim of the Original Petition has been resolved, settled and paid.

b. The claim of Priyanka Mittle, the Petitioner No. 1 has been paid and settled.

c. The claim of Kaulchand Jogani has also admittedly been substantially paid and 2 cheques have been duly honoured.

d. The claim under dishonoured cheque was during the moratorium period under Covid-19 and is not a default under IBC.

e. The cause of action has been substantially altered and is no longer subsisting.

f. The Consent Terms dated 04.12.2019 has been substantially complied with, acted upon and payments have been made by the Respondent thereby the Respondent has altered its position by making payments to Petitioner Nos. 1 and 2. The amount of debt and default has substantially changed from the Original Petition filed by the Petitioners since payments have been made by the Respondent to Petitioner Nos. 1 and 2 under the Consent Terms”.

4. As mentioned above, it is an admitted case of both sides that the main CP was filed by two Petitioners claiming different amounts which was subsequently disposed of in view of the Consent Terms. It is also an admitted fact that the Corporate Debtor while completely discharging the claim of Mrs. Priyanka S. Mittle partly discharged the claim of Petitioner and what is remaining is a partial claim of the Petitioner as per the Consent Terms. As rightly contended by the Corporate Debtor, the Petitioner filed the above IA only for mere amendment of the Cause Title by removing the name of Mrs. Priyanka S. Mittle as Financial Creditor and to adjudicate the remaining partial claim of the Petitioner without amending the claim and the cause of action arising under the Consent Terms which is not legally permissible as it would amount to converting the IBC proceedings into a recovery proceeding. The above IA is filed by the Petitioner by taking advantage of the order dated 13.07.2022 passed by this Tribunal in the absence of the Corporate Debtor.

5. Hence, there is no merit in the above IA and the same is liable to be rejected. Accordingly, IA 2417 of 2022 is hereby rejected.