

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1060 of 2020

In the matter of:

Himadri Foods Ltd.

....Appellant

Vs.

Credit Suisse Funds AG

....Respondent

Present:

Appellant: Mr. Amey Hadwale, Mr. Amir Arsiwala, Ms. Geeta Lundwani, Ms. Vidhi Sharda, Advocates.

Respondent: Mr. Aditya Mahajan, Ms. Aditi Mittal, Mr. Ayush Agarwala, Mr. Suvaankoor Das, Mr. Siddhant, Ms. Arushi Kaulaskar, Advocates.

ORDER

(Through Virtual Mode)

07.01.2021: The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-II, disposed off Company Petition being CP(IB)No.389/MB.II/2019 in terms of the settlement arrived at between the parties after taking the Settlement Terms on record. An application being MA No. 3601 of 2019 was moved seeking restoration/ revival of the Company Petition. In terms of the impugned order dated 16th October, 2020, the Adjudicating Authority allowed restoration of Company Petition. The instant appeal has been preferred by one of the erstwhile Directors assailing the impugned order on the ground that revival could not be allowed by invoking Rule 11 of the NCLT Rules, 2016.

Learned counsel for the Appellant submits that an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 filed by one Operational Creditor against the same Corporate Debtor has been admitted and Corporate Insolvency Resolution Process (CIRP) has commenced. In view of the same, this appeal is rendered infructuous as the Corporate Debtor is faced with the CIRP proceedings though initiated by another Creditor viz. Operational Creditor. That apart, it emerges from the record that the Financial Creditor was given liberty to

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report any non-compliance with the Settlement Terms. This is clearly borne out from para 4 of the impugned order. The object of reporting default qua Terms of Settlement to the Adjudicating Authority can be interpreted on no hypothesis other than that it was to take action in the event of non-compliance with the terms of the order even if it has not been specifically recorded in the order that non-compliance would warrant revival/ restoration of the CIRP proceedings.

We have gone through the order dated 29th August, 2019 passed by the Adjudicating Authority in terms whereof the Company Petition was disposed off after recording the Terms of Settlement. It appears that the Terms of Settlement providing a repayment schedule was incorporated in the order thereby making it an order/ decree of the Court and once this was the position, giving liberty to the Financial Creditor to come back can be interpreted on no hypothesis other than that the revival of CIRP would be sought for non-compliance with the Terms of Settlement. Therefore, even on merit, we find no substance in the instant appeal.

Be that as it may, the development that has taken place in commencement of CIRP at the instance of another Creditor viz. an Operational Creditor against the Corporate Debtor, the relief sought in the instant appeal no more survives for consideration. The appeal is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Shreesha Merla]
Member (Technical)

AR/g