

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 631 of 2025

[Arising out of the Impugned Order dated 17.03.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court-I in I.A. No.- 797 of 2025 in C.P. No. 1166/MB/2023]

In the matter of:

Transcon Skycity Private Limited

Having address at:

622B/1, Goshala Compound L.B.S. Marg
Mulund (West), Mumbai City,
Mumbai, Maharashtra, India 400080

...Appellant

Versus

Anchor Point Developers Private Limited

Having address at:

50 IB, Elegant Business Park,
Andheri Kurla Road, J.B. Nagar,
Andheri (East),
Mumbai 400059, Maharashtra,
India

...Respondent

Present:

For Appellant : Mr. Ravi Prakash, Sr. Advocate with Mr. Aditya Dewan,
Ms. Himangi Kapoor, Advocates.

For Respondent : Mr. Ramji Srinivasan, Sr. Advocate with Mr. Atul S.
Mathur, Mr. Prabal Mehrotra, Ms. Shefali Munde, Mr.
Umang Katariya, Mr. Arjun Bhatia, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('IBC' in short) by the Appellant arises out of the Order dated 17.03.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in I.A. No.- 797 of 2025 in C.P. No. 1166/MB/2023. By the impugned order, the

Adjudicating Authority has permitted revival of the original Section 7 Company Petition of the Financial Creditor-Anchor Point Developers Pvt. Ltd. for initiation of CIRP of the Corporate Debtor- Transcon Skycity Pvt. Ltd. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the brief factual matrix of the case, the Corporate Debtor-Transcon Skycity Pvt. Ltd. had launched a real estate project named Transcon Fortune Five Hundred Tower-I Project (hereinafter referred to as the **“Project”**). The Financial Creditor-Anchor Point Developers Pvt. Ltd. had invested in the Project of the Corporate Debtor following which the Corporate Debtor had issued an Allotment Letter on 18.10.2022. Since the development of the Project did not see any significant progress, the Respondent-Financial Creditor filed a Section 7 application against the Corporate Debtor (hereinafter referred to as **“First CP”**). Subsequently a Settlement Agreement was executed between the Corporate Debtor and the Financial Creditor on 03.02.2024 following which the Financial Creditor filed an IA for withdrawal of the First CP on 14.02.2024 (hereinafter referred to as **“Withdrawal IA”**). The Withdrawal IA was allowed by the Adjudicating Authority vide its order on 08.04.2024 (hereinafter referred to as **“Withdrawal order”**). According to the Financial Creditor, the Corporate Debtor purportedly failed to adhere to the various commitments made under the Settlement Agreement, hence, aggrieved by this, the Financial Creditor filed a fresh Section 7 petition vide Company Petition No. 1034 of 2024 (hereinafter referred to as the **“Second CP”**) on 16.11.2024. The Second CP was premised on the debt which had been the cause of action in the First CP. On 23.01.2025, IA No. 797 of 2025 was filed by present Respondent-Financial Creditor before

the Adjudicating Authority seeking restoration/revival of the First CP (hereinafter referred to as **“Restoration IA”**). The Respondent-Financial Creditor vide IA No. 797 of 2025 also placed the Settlement Agreement before Adjudicating Authority. Subsequent to filing of the Restoration IA, the Financial Creditor withdrew the Second CP on 19.02.2025. When the Restoration IA came up for hearing on 06.03.2025, the Corporate Debtor was given opportunity to file their reply to the Restoration IA. The Corporate Debtor did not file any reply to the Restoration IA. The Adjudicating Authority thereafter on 17.03.2025 ordered the restoration of the First CP while granting liberty to the Corporate Debtor to raise all their objections in respect of revival of the First CP. Aggrieved by the above impugned order dated 17.03.2025 restoring the First CP, the Corporate Debtor-Appellant has come up in appeal.

3. Making his submissions, the Ld. Counsel for the Appellant-Corporate Debtor submitted that the impugned order restoring the First CP was erroneous since the Financial Creditor had withdrawn the First CP unconditionally following an out of court settlement executed between the Corporate Debtor and Financial Creditor. It was asserted that the terms of the Settlement Agreement which preceded the withdrawal of First CP did not provide for revival of the First CP. Moreover, the withdrawal of the First CP was not contingent upon compliance of any obligations by the Appellant. In any case, the Corporate Debtor had already substantially fulfilled the commitments given by them under the Settlement Agreement and were willing to fulfil the remaining obligations. Therefore, the Financial Creditor by proceeding to file the Second CP has acted in a manner which is not in sync with the understanding arrived at amicably in

the out of court Settlement Agreement. Much emphasis was laid on the fact that the Settlement Agreement was neither incorporated in the Withdrawal IA by the Financial Creditor nor was the Settlement Agreement incorporated in the Withdrawal Order dated 08.04.2024. It was vehemently contended that the Financial Creditor therefore did not have the right to revive/restore the First CP or file the new Company Petition in respect of the cause of action of the First CP. The impugned order therefore suffered from grave infirmity since the Adjudicating Authority did not have the authority to revive the First CP which had already been dismissed as withdrawn and the Withdrawal Order did not extend any liberty to the Financial Creditor to revive the proceedings of the First CP.

4. It was also pointed out that once the Settlement Agreement had been entered into, the original debt no longer subsisted and hence there was no valid ground for filing the revival application. The Appellant also adverted attention to the lack of transparency and bonafide on the part of the Financial Creditor in that in their Restoration IA, they suppressed the fact that Second CP had also been filed. Neither was the existence of the Settlement Agreement disclosed while filing the Restoration IA. The Restoration IA on 24.01.2025 without having withdrawn the Second CP.

5. Refuting the contentions of the Appellant, it was submitted by the Ld. Sr. Counsel for the Respondent that the stand taken by the Appellant that the Settlement Agreement was unconditional is misconceived and incorrect. It was submitted that clauses of the Settlement Agreement clearly contemplated that the parties had agreed to forbear from initiating any legal proceedings subject to

compliance of obligations stipulated in the Settlement Agreement. That admission has been made by the Corporate Debtor that the obligations remain unfulfilled as they had only made partial payments and having agreed to fulfil the remaining obligations under the Settlement Agreement, this tantamount to admission on the part of the Corporate Debtor that it had breached the Settlement Agreement. It was also vehemently contended that it is misplaced on the part of the Appellant to contend that the Settlement Agreement was out of the court settlement. The Financial Creditor had categorically brought the settlement to the notice of the Adjudicating Authority and that the First CP was being withdrawn in view of a Settlement Agreement entered into between both the parties. When the Adjudicating Authority was already cognisant of the Settlement Agreement while passing the withdrawal order, it did not commit any error in subsequently allowing the revival of the First CP on grounds of alleged breach of the Settlement Agreement by the Corporate Debtor.

6. It has been further contended by the Respondent that simply because they had withdrawn the First CP, this in no way can be construed as surrender of their rights to initiate CIRP proceedings qua the Corporate Debtor particularly so when there is clear evidence of debt and default. It was submitted that the right of Financial Creditor to initiate Section 7 proceedings against the Corporate Debtor does not evaporate or stand extinguished merely because they had entered into a Settlement Agreement with the Corporate Debtor. As long as there is debt which is due and payable, in law and in fact, and the Corporate Debtor has defaulted, the Financial Creditor enjoys unfettered right of reviving First CP. In the present case, when the Settlement Agreement has suffered a breach, the

debt liability does not get wiped out. Since debt and default is established, the Adjudicating Authority did not commit any error in admitting the Section 7 application.

7. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

8. It is the case of the Appellant that the terms of Settlement Agreement dated 03.02.2024 did not provide in specific terms for revival of the First CP upon failure to perform the settlement. Hence, the Financial Creditor was not entitled to seek revival of the First CP on grounds of non-performance of obligations in the Settlement Agreement. The impugned order has also been assailed on the ground that the Adjudicating Authority did not have the authority to revive the First CP since First CP had already been dismissed as withdrawn and the Withdrawal Order did not extend any liberty to the Financial Creditor to revive the proceedings of the First CP.

9. To buttress their arguments, the Appellant pointed out that there is a clear distinction between a simpliciter and unconditional withdrawal of Company Petition as against a conditional withdrawal wherein the Settlement Agreement/or consent terms are placed on record which contain an express liberty for revival of the original petition. In support of their contention, reliance has been placed on the judgments of this Tribunal in ***IDBI Trusteeship Services Ltd. Vs Nirmal Lifestyle Ltd.*** in ***CA(AT)(Ins.) No. 117 of 2023*** and in ***SRLK Enterprises LLP Vs JALAN Transolutions (India) Ltd.*** in ***CA(AT)(Ins.) No. 294 of 2021*** which judgments clearly outline the distinction between a simpliciter unconditional withdrawal and a conditional withdrawal having a provision for

revival of the petition withdrawn earlier on non-compliance of pre-conditionalities. It was submitted that present is a case of unconditional withdrawal as there was no settlement term on record which provided for revival of the original proceedings. Hence, revival of the original petition could not have been allowed by the Adjudicating Authority.

10. In addition, distinction was also drawn between an out of court settlement where settlement terms are not on the record of the court and a Settlement Agreement whose terms form part of court records. To lend support to this argument, reliance has been placed by the Appellant on the judgment of this Tribunal in ***Pooja Finlease Ltd. Vs Auto Needs (India) Pvt. Ltd. & Anr.*** in ***CA(AT)(Ins.) No. 103 of 2022*** and ***Krishna Garg & Anr. Vs Pioneer Fabricators Pvt. Ltd.*** in ***CA(AT)(Ins.) No. 92 of 2021***. It was pointed out that while in ***Pooja Finlease judgment supra***, the Adjudicating Authority had allowed revival of the Section 7 application since in that case the consent terms which enabled the revival of the Section 7 application had been filed before the Court and had also been taken on record, in ***Krishna Garg judgment supra*** the revival of the original petition had not been allowed since the settlement term was neither filed with the revival application nor was the settlement terms on record before the Adjudicating Authority. It was contended that in the present case, as the settlement term was neither filed with the restoration application nor placed on record before the Court, the Adjudicating Authority should not have allowed the revival of the original petition.

11. Per contra, it is the contention of the Respondent that it is mis-conceived on the part of the Appellant to contend that the Financial Creditor had made an

unconditional withdrawal. It was submitted that Clause 6 of the Settlement Agreement clearly contemplated that the parties agreed to abstain from initiating or continuing with legal proceedings only if obligations stipulated under Clause 3 of the Settlement Agreement were fully met by the Appellant. However, it was contended that the Appellant-Corporate Debtor had failed to fulfil the obligations envisaged under Clause 3 since they had only made partial payment to the Financial Creditor. As certain amounts still remained outstanding for payment by the Corporate Debtor, this constituted sufficient ground for reviving the original petition.

12. On the contention raised by the Appellant that the Settlement Agreement was entirely an 'outside the court' settlement, it was controverted by the Financial Creditor that this was not an accurate depiction. It was pointed out that the Settlement Agreement between both the parties had been brought to the notice of the Adjudicating Authority at the time of filing of withdrawal I.A. Thus, Adjudicating Authority was pretty much aware and conscious of the Settlement Agreement between the two parties. The Adjudicating Authority while taking note of the Settlement Agreement however did not insist on the Settlement Agreement to be formally placed on record. It was added that the Financial Creditor was able to place on record the Settlement Agreement on its release from the custody of the Escrow Agent on 09.01.2025. The Settlement Agreement was placed on record in the Restoration IA on 23.01.2025. Thus, when the Settlement Agreement had been brought to the clear knowledge of the Adjudicating Authority, it is skewed on the part of the Appellant to create the misleading impression that the Settlement Agreement was a purely out of court settlement

which was not placed on record before the Adjudicating Authority. It was also contended that the Adjudicating Authority did not commit any error in allowing the revival of the First CP being fully cognisant of the Settlement Agreement terms, which terms were purportedly not honoured by the Corporate Debtor. The Adjudicating Authority had not committed any error in reviving the original petition in light of the terms envisaged in the Settlement Agreement.

13. It was stoutly canvassed that the Financial Creditor was fully entitled to revive the First CP in terms of the Settlement Agreement. In support of their contention, the Financial Creditor has relied on the judgment of this Tribunal in ***Bahadur Ram Mallah Vs Assets Reconstruction Company (India) Ltd.*** in ***CA(AT)(Ins.) No. 66 of 2025*** wherein it has been held that if a Settlement Agreement is entered into between the parties which Settlement Agreement suffers breach, the nature of the debt does not change. Neither does it destroy the character of the original lender as a Creditor. Hence, the Adjudicating Authority had rightly allowed the revival of the original petition since the obligations of the Corporate Debtor under the Settlement Agreement remained unmet.

14. Before we analyse the weight of the rival contentions made by both parties, for a proper appreciation of the issue at hand, it may be helpful if we first look at the Withdrawal order of 08.04.2024 passed by the Adjudicating Authority alongwith the terms of the Settlement Agreement of 03.02.2024 which predated the Withdrawal order.

15. Coming to the relevant extracts of the Withdrawal order of 08.04.2024 as reproduced hereunder:

“2) Counsel for the Financial Creditor orally prays for withdrawal of the Company Petition contending that he has instruction to withdraw the same as the matter has been settled amicably out of the Court between the Parties.

3) As the issue involved in the present Company Petition has been settled out of the Court between the Parties; hence, nothing remains to be adjudicated in the present Company Petition and thus, this Bench is not insisting for the Formal Interlocutory Application to have it on record for withdrawal of the present Company Petition.

4) In that view of the matter, the Company Petition bearing CP (IB) No. 1166 of 2023, is thus, disposed of as dismissed as allowed to be withdrawn.”

(Emphasis supplied)

16. When we read the above order, it is clear that while allowing the withdrawal of the Company Petition No. 1166 of 2023, the Adjudicating Authority had expressly waived the need to formally file the settlement terms even after the factum of settlement was brought to the knowledge of the Adjudicating Authority. This, therefore, does not discount the fact that the Settlement Agreement had been brought to the knowledge of the Adjudicating Authority.

17. Now we come to the relevant terms of the Settlement Agreement of 03.02.2024 which is reproduced hereunder:

“3(b)(iv) Waiver of other outstanding amounts and liabilities:
Simultaneously with the transfer of entire partnership interest and profit share in Yukti in favour of the Anchor Point Group and/or its nominees as contemplated under Clause 3(a)ii, above, the Anchor Point Group confirms that no amount (including amount of Rs.10.25 crore and Rs.36.75 crore or any part thereof) shall be due and/or payable by Nirmohaaya and/or Transcon Skycity to the Anchor Point Group and/or its nominee. Simultaneously with the transfer of entire partnership interest and profit share in Yukti in favour of the Anchor Point Group and/or its nominees as contemplated under Clause 3(a)ii above, the Anchor Point Group confirms that/amount of Rs. 10.25 cr standing as liability in Nirmohaaya shall not

payable by Nirmohaaya and/or the Transcon Group and the amount of Rs. 36.75 crore paid by the Anchor Point Group to Transcon Skycity is not payable by Transcon Skycity and/or Transcon Group. Further, the Anchor Point Group hereby confirms that other than the obligations and liabilities of the Transcon Developers as per Clause 3(a)i of this Agreement, all other outstanding amounts and/or liabilities of any Transcon Group is not payable by any of Transcon Group to the Anchor Point Group, and the Anchor Point Group shall not make any claim in respect of such outstanding amounts and/or liabilities of any of Transcon Group or any part thereof, ,and in any event all other outstanding amount and/or liabilities of any of Transcon Group shall stand waived and released by the Anchor Point Group.

***6.** Subject to compliance with Clause 3 of this Agreement and in consideration of the mutual representations, warranties and covenants as set out hereinabove, the Anchor Point Group and the Transcon Group agree to forbear from initiating any legal proceedings and/or taking or continuing any legal actions with respect to the investment of the Investment Amount and/or the allotment of all rights, title and interest in the Total Allotted Area (and in furtherance of the aforesaid, adjournments will be taken in the relevant hearing(s) which are/ may be scheduled (before withdrawal as mentioned in Clause 3(b)i. of this Agreement above) and the Parties shall intimate the relevant forum/tribunal/court regarding the settlement process being ongoing between the Parties).*

(Emphasis supplied)

18. When we look at the Settlement Agreement, we notice that Clause 6 clearly provided that the parties had agreed to forbear either initiating or continuing a legal action contingent upon compliance to the terms laid down under Clause 3 of the Settlement Agreement. We now proceed to find out if the terms of the Settlement Agreement stood complied to or was breached by the Corporate Debtor. It is the case of the Financial Creditor that pursuant to the Settlement Agreement, the Corporate Debtor had only paid Rs 23.75 Cr. and an amount of Rs 34.27 Cr. (Principal: Rs 13,01,57,725/- and interest: Rs 21,25,78,904/-) was still due and payable by the Corporate Debtor. When we look at the material placed on record, we find that the Financial Creditor had purportedly sent a

letter dated 26.07.2024 to the Corporate Debtor mentioning all the breaches committed by it alongwith details of breaches as placed at page 126-130 of Appeal Paper Book (“**APB**” in short). The Corporate Debtor had also been asked by the Financial Creditor to remedy the failure. We also note that the terms contemplated in the Settlement Agreement not having been fully complied to by the Corporate Debtor has not been controverted by the Corporate Debtor. In fact when we peruse the pleadings of the Corporate Debtor at para 7.18 in their Appeal petition, we notice that there is categorical admission to the effect that they were still ready to fulfil their remaining obligation. In other words, the Corporate Debtor by implication admitted that the terms of Settlement Agreement had not been performed by them. The relevant pleadings are at page 34 of APB which is as extracted below:

“a. transferred its share in Yukti Infra projects LLP in favour of the Anchor Point Group, thus handing over an extremely valuable real estate project to the Anchor Point Group;

b. made payment of substantial sums to the Anchor Point Group out of the total fixed amount that the Anchor Point Group is due, and having fully secured the balance due and payable;

c. and being ready and willing to fulfil all its remaining obligations and commitments under the Settlement Agreement, the Anchor Point Group egregiously breached the same. The Appellant craves leave to refer to and rely upon the correspondence exchanged between the parties in this regard as and when required.”

(Emphasis supplied)

19. We have also perused the judgments of this Tribunal on which reliance has been placed by the Appellant on the judgment viz. **IDBI Trusteeship Services Ltd.** and **SRLK Enterprises LLP judgments supra**. We have no

quarrels with the findings returned by this Tribunal in the above two matters. Be that as it may, these judgments were passed in the facts and circumstances of those cases without propounding any universally applicable legal precept for all cases. Hence, these two judgments do not come to the aid of the Appellant.

20. In the facts of the present case, indubitably there was an out of court settlement between the two parties. It is also an undisputable fact that the settlement was brought to the knowledge of the Adjudicating Authority. However, the Adjudicating Authority vide its order dated 08.04.2024 had suo moto dispensed with the requirement for filing a formal application to place on record the Settlement Agreement. From the facts available on record there is also an admission on the part of the Appellant that there was an element of non-compliance on their obligations qua the Settlement Agreement in that the entire payment obligations by them to the Respondent had not yet been discharged. Given this backdrop we are satisfied that there was Settlement Agreement which was in the knowledge of the Adjudicating Authority at the time of filing the Withdrawal I.A. and that the Settlement Agreement obligations were admittedly not discharged by the Corporate Debtor.

21. What now remains to be seen is whether the Adjudicating Authority committed any error in allowing the Restoration IA of the Financial Creditor to revive the First CP for the original debt.

22. When there is incidence of breach of settlement terms by the Corporate Debtor, the legal right of the Respondent in seeking their legal remedy by revival of original petition cannot be denied as any such denial, on the one hand, would amount to causing serious prejudice to the rights and interest of the Respondent

and on the other hand, would amount to giving unjust leeway and undue benefit to the Corporate Debtor inspite of having breached the settlement terms. We also notice that the Adjudicating Authority while allowing the Restoration IA has given opportunity to the Appellant-Corporate Debtor to file their reply in the context of the Restoration IA including raising of objections. To meet the ends of justice, the Adjudicating Authority has therefore been very fair and reasonable in giving liberty to the Appellant to contest the revival of the First CP thereby protecting the interest of the Corporate Debtor. We are therefore of considered view that the Adjudicating Authority did not commit any error in allowing revival of the original petition.

23. In view of the foregoing discussion, we find that the appeal is devoid of merit. The appeal is dismissed. The impugned order does not warrant any interference. We however make it clear that we have not expressed any opinion with regard to any other issue in the main Company Petition No. 1166 of 2023. No costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Place: New Delhi

Date: 09.07.2025

Abdul/Harleen