NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.424/2022

In the matter of:

Shri Rokadoba Maharaj Ginning & Pressing Pvt. Ltd.
478, Lihakhedi, Sillod, Aurangabad (M.H.) – 431112 **… Appellant**

V

The Sri Venkatesa Mills Limited
132, Palani Road, Venkatesa Mills Post, Udamalpet,
Coimbatore, TN 642128 **... Respondent**

Present :

For Appellant : Mr. Rishabh Gupta, Advocate
For Respondent : No Appearance

ORDER
(Hybrid Mode)

20.11.2025:

Oral: Justice Sharad Kumar Sharma, Member (Judicial):

The substantial procedural law under any statute is to be strictly construed so as to be ensured to be applied in its true objective. The proceedings under the Company Petition under any of the provisions contained under the Companies Act and I&B Code, are governed by its procedures, which are regulated by Section 424 of the Companies Act, which itself under sub section (3) of Section 424, prescribes for a procedure for execution of the orders passed by the Tribunal. The question would be; "As to whether an exception could be carved out to file an application for recall in a decided petition, to enforce an order, in a manner to avoid filing of an execution proceedings as against the order passed by the Tribunal in favour of the recall applicant".

The brief facts, as it engages consideration, are as follows:

2. The Appellant herein happens to be the Operational Creditor, on an application preferred by it, to the proceedings of the Company Petition No. 605/IB/2017, being the proceedings, which has been drawn under Section 9 of I&B Code. When these Company Petitions was taken up, the parties have entered into a settlement and a compromise order was passed on 25.09.2018. In terms of the said compromise order, the Corporate Debtor was supposed to remit the balance amounts as per terms of compromise, which was subject matter of the proceedings under Section 9 of I&B Code and consequent to which, it was settled that the Corporate Debtor would pay in all amount of Rs.25,00,000, out of which Rs.15,00,000, would supposed to be paid as an upfront money and the remaining amount was agreed to be paid in 10 equal installments of Rs.2,50,000 each. Accordingly, by an order of 25.09.2018, the Company Petition was closed, in terms of the admitted and accepted compromise.

3. A decree or an order under the Civil laws, if it is an adjudication of any rights on merits or whether it is an adjudication based upon the terms of compromise, that too would takes the shape of a decree, as it attaches a finality to a lis, and any such order, which is passed on merits, having a nature of determining the rights inter se between the parties or is determining the dispute finally based upon the terms of settlement, where certain monetary liabilities are required to be discharged. In that eventuality, if there is non-compliance of any

of the conditions of the compromise decree or an order, which in the case happens to be the order of 25.09.2018.

4. We are of a confirm view that, such an order will fall to be an order deciding the rights, which ought to have been executed as per law. And in an event, if there is any violation of non-compliance of the conditions of the compromise order, that could not have been permitted to be enforced by an invocation of Rule 11 of the NCLT Rules, for seeking an exercise of inherent powers for recall of the order, which the applicant had not been able to get it executed.

5. In fact, the recall preferred by the Appellant, at its inception, could not be taken as to be an alternative basis for enforcement of the order dated 25.09.2018, which has finally closed the proceedings of the Company Petition. The powers under Rule 11 of the NCLT Rules, cannot be permitted to be abused to an extent, to be adopted as a platform to avoid a recourse to the regular procedural law contemplated under Section 424 of the Companies Act, which has now been made applicable to the proceedings under the I&B Code, for filing of an execution.

6. Be that as it may. When the conditions enshrined and settled in the order of 25.09.2018 were not complied, the Appellant for the first time had invoked Rule 11 of the NCLT Rules, by filing an **MA No. 67/2019**, seeking a restoration of the CP No. 605/IB/2018. The grounds, which were agitated therein

for recalling and the restoration of the Company Petition was merely on the basis of non-compliance of the compromise order dated 25.09.2018. The concept of recall is only available when an order, which has been sought to be recalled has been inadvertently passed because of the error of the Court or Tribunal or because of some inadvertent error of the Counsel or the parties to the proceedings. No order, which has been passed or solicited to be passed on the basis of a consent, which is of a final nature could be brought within an ambit of recall, as it will not take the shape of being an order, which has been passed because of any inadvertent mistake either of the parties to the proceedings or by the Court. Thus, the recall infact will not be the process available to the Appellant, for reviving of the proceedings of the Company Petition in which the decision has been taken finally on merits by an order of 25.09.2018 and that when it was order induced to be passed at the behest of the Appellant, and was accept him, having attained finality.

7. Be that as it may. MA No. 67/2019 was allowed and the Company Petition was taken up once again on merits. It was yet again for the second time, that a compromise was entered and the Company Petition was disposed of by an order passed on 10.12.2019. The said order dated 10.12.2019 is extracted here under:

> *Counsel for both the parties are present. A joint memo of compromise has been filed by the Operational Creditor and the Corporate Debtor seeking for withdrawal of this Petition as the Corporate Debtor has issued post dated cheques in*

> *regard to the claims as reflected in the joint memo of compromise. The joint memo of compromise also contains a clause that in case if the Corporate Debtor is not honouring the commitments as given in the joint memo of compromise, the Petitioner should have an opportunity to revive the above CP before this Tribunal. Counsel for the Petitioner represents that in terms of the joint memo of compromise the petitioner may be permitted to withdraw this Petition. Taking into consideration, the joint memo of compromise as filed by the parties, representation of the Learned Counsel for the Petitioner as well as Rule 8 of I&B (Application to Adjudicating Authority) Rules, 2016, this Petition stands* ***dismissed as withdrawn*** *with an opportunity given to the Petitioner to approach this Tribunal on the same cause of action afresh if the claim which is required to be settled by the Corporate Debtor is not adhered.* ***Files to records****.*

8. The conditions as settled for withdrawal of the Company petition was as the Corporate Debtor had issued post dated cheques, as regards to the claim, which was settled by the earlier order of 25.09.2018. The decision, which was rendered on 10.12.2019, was yet again on merits on the basis of a compromise which was incited by the Appellant. Though, the compromise which has been thus taken, as to be the basis for passing of the subsequent order dated 10.12.2019, is being argued that, it contained an exception clause, leaving it open for the Appellant to revive the Company Petition, if the settlement has referred to, in the order dated 10.12.2019, is not complied with, but however the said commitment of making the payment of amount due as made in the compromise for revival of the Company Petition, was never taken as to be the basis for withdrawing of the

Restoration application except for, it was observed that it will be open for the petitioner to approach the Tribunal for the same cause of action by filing a fresh claim. It is under that latitude granted by the order of 10.12.2019, the second Restoration Application was alleged to have been preferred and the same has been rejected.

9. The Learned Tribunal while passing the impugned order on 29.06.2022, has clear in its explicit terms observed that, a company petition was dismissed as withdrawn at the behest and request of the Appellant, and it was left open for the petitioner to approach the Tribunal afresh by raising a claim. The order passed there on 10.12.2019, did not granted any liberty to the Appellant "**to revive the Company Petition incase of default in compliance of the terms of the compromise order dated 10.12.2019".** Hence, a subsequent application preferred by the Appellant being IA(IBC) No. 612/CHE/2022 praying for recall of order dated 10.12.2019, for revival of the Company Petition. Due to the non-compliance of the terms of the order dated 10.12.2019, was not maintainable and has been rightly rejected by the Tribunal by the impugned order. We are not inclined to interfere in the Company Appeal for the reasons,

1. Under the Corporate Law, the procedure has to be strictly adhered to, as governed by Section 424 of the Companies Act, made applicable to the proceedings under I&B Code too.
2. Compromise order too is in the shape of final adjudication or a decree for that matter.

3. If it is a final order, which contains the terms of payment of the defaulted amount, if the terms of the compromise is not adhered to, by either of the parties to the proceedings or the settlement, which is basis of the final order, the recourse would be to seek an execution of the compromise order and not to file a recall for no fault of the Tribunal, which not apparent on the face of the order itself.
4. Filing of a recurring recall due to non-compliance of the consecutive compromises and final orders, will not in itself make Rule 11 of NCLT Rules, available to be abused for the purposes of revival of the proceedings of the Company Petition, which was otherwise shown to have been finally dismissed as withdrawn, based upon certain admitted terms.

10. We are of the confirmed opinion that, even if the second terms of compromise had raised a pleading, though not granted, that a recall could be filed that in itself will not make the recall maintainable particularly when the same was not left open to be resorted to, by the order of 10.12.2019. In that eventuality, the instant Company Appeal happens to be nothing but a pure abuse of process of law. The same cannot be entertained and is accordingly dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

YS/MS/AK