

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

I.A. No.147/ 2017 IN CP (IB) 02/BB/2017

UNDER RULE 11 OF NCLT RULES, 2016

IN THE MATTER OF Ms. NYSA ENTERPRISES PRIVATE LIMITED

Coram: Hon'ble Shri.Ratakonda Murali, Member Judicial.

Hon'ble Dr Ashok Kumar Mishra, Member Technical.

Order delivered on 23rd November, 2017.

For the Petitioner: M/s. Crest Law Partners, Advocates

ORDER

This application is filed under Rule 11 of NCLT Rules, 2016 with a prayer to recall the order of this Tribunal dated 30.03.2017 passed in CP (IB) 02/BB/2017.

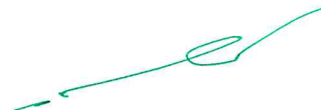
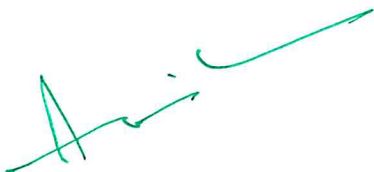
The averments in the application is that this Tribunal had passed an order dated 30.03.2017 directing the applicant/corporate debtor to serve on the creditors of the applicant/corporate debtor viz., Zen Lefin Pvt. Ltd., ICICI Bank and HDFC Bank. It is averred that Section 10 of I&B Code 2016 does not contemplate issuing of any notice to the creditors of the corporate applicant. It is further averred that the role of the adjudicating authority in triggering the Insolvency Resolution Process and conforming to the time schedule prescribed has now been elucidated by the Hon'ble Apex Court in the case of (1) Innovative Industries Ltd. Vs. ICICI Bank & Anr.; (2) Mobila Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. It is also averred that the applicant herein has also questioned the jurisdiction of this adjudicating authority by filing Writ Petition on 06.04.2017, before the Hon'ble High Court of Karnataka in WP No.14990/2017 for ordering notice to the creditors and the same is pending consideration by the Hon'ble High Court. It is further averred that the adjudicating authorities shall strictly adhere to time schedule prescribed under the Code, wherein issuing of notices to the creditors is not contemplated. It is further stated that Section 10(4) of the I&B Code contemplates that an

application is either to be admitted or to be rejected within 14 days of the receipt of the application. However, issuing of notice to the creditors would defeat the purpose. Hence, this application.

It is further stated in the application that the matter is currently subdice and it is pending in the Hon'ble High Court of Karnataka. It is also averred that this Tribunal was a party to the said Writ Petition represented by its Registrar and that the objections are also filed. It is, therefore, prayed to recall the order dated 30.03.2014 wherein the corporate debtor/applicant herein was directed to serve notice on the creditors.

A preliminary objection is raised by the Registry with regard to the maintainability of this application. The learned counsel for the corporate applicant would contend that the Tribunal has to either admit or reject the application filed by the corporate applicant within 14 days under Section 10(4) of the I&B Code. The counsel would also contend that issuing of notice to the creditors by corporate applicant before admission is not contemplated under the Code which is against the time schedule prescribed under the Code. The counsel would contend that the Hon'ble Apex Court has dealt in length the importance of time limits prescribed under the Code in the two decisions cited supra. The counsel contended that though the matter is pending in the Hon'ble High Court, since the adjudicating authority is required to adhere to the time limits prescribed under the Code, it is necessary to recall the order dated 30.03.2017 of this Tribunal.

It is an undisputed fact that the order dated 30.03.2017 of this Tribunal is challenged by the applicant before the Hon'ble High Court of Karnataka in WP No.14990/2017. Thus, the very order of this adjudicating authority is under challenge before the Hon'ble High Court and the matter is subjudice. Interestingly, the adjudicating authority is also one of the respondents in the Writ Petition filed by the corporate applicant in which the order of the adjudicating authority



dated 30.03.2017 is questioned. Thus, the adjudicating authority is also a party to the Writ Petition pending before the Hon'ble High Court.

When the applicant is challenging the order dated 30.03.2017 of this Tribunal before the Hon'ble High Court, then, how can the applicant again pray before this adjudicating authority to recall the very same order by this application? The application, per-se, is not maintainable when the Writ Petition is pending before the Hon'ble High Court. This Tribunal cannot interfere with the order dated 30.03.2017 at this stage when the proceedings against the said order is pending before the Hon'ble High Court of Karnataka.

The application, therefore, deserves to be rejected as it is not maintainable.

In the result, I.A. No.147/2017 is rejected.


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

psp.