

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 270 of 2017**

**IN THE MATTER OF:**

**Twenty First Century Wire Rod Ltd.**

**...Appellant**

**Versus**

**Nijinoy Trading Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant : Ms. Ranjana Roy Gawai, Ms. Vasudha Sen and Ms. Rishika Raha, Advocates**

**ORDER**

**21.08.2017** The appellant has challenged the order dated 4<sup>th</sup> July, 2017 passed by the National Company Law Tribunal, Ahmedabad Bench, Ahmedabad (hereinafter referred to as the 'Tribunal') whereby and whereunder the petition preferred by the appellant in a company petition which was already disposed of in the year 2011, has been dismissed with the following observations :

*"This application is filed by M/s Twenty First Century Wire Rods Pvt. Ltd., Mumbai to enforce the order dated 09.11.2011 passed by Hon'ble CLB in Company Petition no. 44/2009 r/w Deed of settlement dated 08.11.2011.*

*Learned Counsel appearing for the Applicant contended as per the terms of settlement deed dated 08.11.2011 Respondent have to pay outstanding amounts and transfer the land and the same can be enforced by this Tribunal since the CP was*

withdrawn in view of the terms of settlement deed dated 08.11.2011. He further contended that CA 79/634-A/CLB/MB/2015 now TP no.112/2016 filed by N K Vasu for enforcement of order of CLB was withdrawn against the interest of the present applicant company.

2<sup>nd</sup> Respondent appeared in person and opposed the admission of the application. None present for other Respondent.

Following is the order passed by the CLB on 09.11.2011 in CP 44/2009 :

*“The parties have filed an application stating that the disputes and differences have been amicably settled between them and accordingly executed the Deed of Settlement dated 8<sup>th</sup> November, 2011 and sought permission to withdraw the petition in terms of Deed of Settlement. Permission is accorded and CP no.44 of 2009 is dismissed as withdrawn. No order as to costs. All the interim orders stand vacated.”*

In view of the above said order it is clear that CP 44/2009 is dismissed as withdrawn. It is not stated in the order of CLB that CP 44/2009 is disposed of in terms of settlement deed dated 08.11.2011. Unless and until the Deed of settlement is merged into the order of the CLB this Tribunal cannot enforce the terms of settlement deed dated 08.11.2011, in this enforcement application. Moreover, CA 79/2015 (Old) now TP 112/2016 (New) filed or enforcement or order was dismissed as withdrawn.

*If there is any violation of terms of settlement deed dated 08.11.2011 it amounts to violation of contractual terms for which the remedy is elsewhere and in a different forum but not in the form of enforcement or order dated 09.11.2011 passed by CLB in CP No. 44/2009, before this Tribunal.*

*In view of the above discussion, there are no grounds to admit the application. Application is dismissed at admission stage. No order as to costs."*

2. Learned counsel for the appellant submits that the case was withdrawn in view of the amicable settlement reached between the parties and the Deed of Settlement was executed on 8<sup>th</sup> November, 2011. The respondent having violated the terms of settlement, it was open to the appellant to bring the fact to the notice of the Tribunal.

Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***Salkia Businessmen's Association and others vs. Howrah Municipal Corporation and others, [ (2001) 6 SCC 688 ]***.

3. From the impugned order, it is clear that the Company Law Board on 9<sup>th</sup> November, 2011 noticed the application preferred by the parties stating that they have amicably settled the matter and executed the Deed of Settlement dated 8<sup>th</sup> November, 2011 and the parties sought permission to withdraw the petition in terms of Deed of Settlement. The Company Law Board accorded permission to withdraw the company petition whereby the petition was disposed of as

withdrawn. From the said order, it is clear that no direction was issued by the Company Law Board nor the case was decided on merits.

4. Insofar as the case of ***Salkia Businessmen's Association and others (Supra)*** as referred by the learned counsel for the appellant, the said filed in different context. In the said case, the parties reached compromise memorandum and the Hon'ble High Court disposed of the petition in terms of the compromise reached between the parties. Thereby the order passed by the Hon'ble High Court for all purpose amount to direction of the Hon'ble High Court in terms of settlement. The case of the appellant being different, in absence of any direction by Company Law Board, the appellant cannot derive the advantage of the aforesaid decision.

5. We find no merit in the appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Balvinder Singh ]  
Member (Technical)