NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Ins) No. 645 of 2020

In the matter of:
Sirajudin Qureshi   **....Appellant**

Vs.

Parsvnath Developers Ltd. & Anr.   **....Respondents**

Present:

Appellant:	Mr. Jayant Mehta, Sr. Advocate alongwith Mr. Anshumaan Sahni.
Respondents:	Mr. Manoranjan Sharma and Mr. Vijay Nair, Advocates for R-1. Mr. Naresh Kr. Munjal, for IRP.

ORDER
(Virtual Mode)

15.09.2020: It is represented on behalf of the Appellant as well as the 1st Respondent through their Learned Counsels that a 'Memorandum of Understanding' dated 01.09.2020, was arrived at between the Parties.

2.   As a matter of fact, the terms of 'Memorandum of Understanding' dated 01.09.2020, entered into between the Parsvnath Developers Ltd. (1st Respondent) and the Appellant (Sirajudin Qureshi) read as under;

> *"1. That in terms of the settlement arrived between the Parties, the Second Party shall:*
>
> > *1.1 Pay to the First Party, a sum of Rs. 12,00,000/- (Rupees Twelve Lakhs only) ("Settlement Amount") through Demand Draft only, simultaneously with the execution of this MOU, as one time full and final settlement amount, against the payment of unpaid operational debt of Rs. 16,20,145/- (Rupees Sixteen Lakhs Twenty Thousand One Hundred and Forty-Five only) with regard to the Said Property under the Agreement.*

1.2 Pay to the RP a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) ("Fee") per month with effect from June 16, 2020 up to the date of withdrawal order to be passed by the Hon'ble NCLT, towards his fee.

1.3 Pay to the RP amount towards miscellaneous expenses at actuals with an upper limit of Rs. 50,000/- (Rupees Fifty Thousand only).

1.4 Provide to the First Party TDS certificate for a sum of Rs. 2,74,212/- (Rupees Two Lakhs Seventy Four Thousand Two Hundred and Twelve only) for the amount of TDS deducted in the financial year 2013-14 and Rs, 2,05,000/- (Rupees Two Lakhs Five Thousand only) for the financial year 2014-15 immediately but in any case not later than 01 (one) month from the date of execution of this MOU. In case the Second Party or Company fails to provide the TDS Certificates within specified timeline, the Second Party and Company jointly and severally shall be liable to pay the total TDS amount i.e. Rs. 4,79,212/- (Rupees Four Lakhs Seventy Nine Thousand Two Hundred and Twelve only), within 15 days after the expiry of 01 (One) month of previous time period, to the First Party.

2. That Second Party shall pay the Settlement Amount and the Fee agreed to be paid under this MOU, net of tax deduction at source as per provisions of Income Tax Act, 1961, and exclusive of Goods and Service Tax (GST) which shall be borne and paid by the Company.

3. That the settlement terms arrived between the Parties and as mentioned in Clause 1 above is in full and final settlement of all and any dispute between the First Party and the Company towards the outstanding Sub Licence Fee and such other amount due under the Agreement, Erstwhile MOU-I and Erstwhile MOU-II.

4. That the Parties have agreed to withdraw the Insolvency Application and the Appeal, subject to the compliance of the terms and condition of this MOU by the Second Party.

5. That with the execution of this MOU, the First Party shall file requisite applications and

necessary paperwork and appear before the Hon'ble NCLT so as to withdraw as dismissed, its Insolvency Applications on receiving the payments due under this MOU. It is however clarified that in the event if the Second Party or Company fails to comply with the terms hereof within the timelines as agreed hereunder, the First Party shall have the liberty to approach the Hon'ble NCLT to revive the Insolvency Application or file fresh application as the case may be and/or any other appropriate legal proceedings.

6. *That the Parties further confirm that till date they have not initiated any complaints, suit, cases etc. (except the Insolvency Application and the Appeal filed before the Hon'ble NCLT and Hon'ble NCLAT, respectively), in any Court, Authority, Police station etc. against each other. The Parties further undertakes that upon the compliance of the terms as mentioned in Clause 1 above by the Second Party and Company, they shall not file any suit, complaint before any court or police or Authority with respect to the instant claim and their entire grievances with respect to the same shall stand settled in full and final.*

7. *That the Second Party has entered into this MOU in his personal capacity for undertaking settlement of dues of the Company against the First Party and has represented that it has/it shall obtain(ed) all requisite authorizations as may be required to undertake the transaction contemplated herein, for and on behalf of the Company.*

8. *This MOU constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior communications, negotiations and representations either oral or written, between the Parties. It is expressly declared that no variation, amendment, modification or addition to this MOU shall be effective and binding or any Party unless set forth in writing and duly authorized by the Parties hereto.*

9. *That both the Parties to this MOU are fully satisfied with this settlement and agreed with the*

terms of this MOU and they agreed that subject to the timely performance of the terms of this MOU, the Parties shall be left with no claim or demand on account of interest, damages, compensation etc. in any manner whatsoever with respect to the outstanding Sub-Licence Fee and such other amount due under the Agreement, Erstwhile MOU-I and Erstwhile MOU-II.

10. That the terms of this MOU and all negotiations concerning this MOU are confidential and shall not be disclosed to any other person or entity not a party to this MOU, unless required by law.

11. The Parties have assured each other that they have executed this MOU out of their free will and full knowledge of all the facts.

12. That the Parties mutually undertake that this MOU has been concluded without any coercion, undue influence, threat etc. The terms of this MOU are binding on both the Parties respectively.

13. That all claims, disputes, conflicts of the First Party against the Company shall be finally considered as settled for once subject to fulfilment of the terms of this MOU.

14. That two copies of this MOU have been executed and a copy each of which will be retained by both the Parties.

15. This MOU shall be governed by the laws of India and the courts of New Delhi alone shall have jurisdiction over any dispute arising out of this MOU, including interpretation of the terms of this MOU."

3.   Indeed, the settlement arrived at between the Parties are not in dispute. Further, pursuant to the 'Memorandum of Understanding' dated 01.09.2020, it is brought to the notice of this Tribunal that the 1st Respondent/Parsvnath Developers Ltd. had received the Demand Draft bearing No. 004069 for Rs. 12/- Lakhs from the Appellant. Added further, the Resolution Professional, Mr. Naresh Kumar Munjal informs this Tribunal that he is yet to receive the

remuneration for the month of August and September, 2020 and in respect of the 'Miscellaneous Expenses', he had raised his invoice to an extent of Rs. 53,000/- etc.

4. In view of the fact that, the 'Memorandum of Understanding' dated 01.09.2020, was reached between the Parties culminating in settlement, this Tribunal recording the said fact disposes of the Appeal, but without costs.

5. Before parting, this Tribunal deems it fit and proper in directing the Resolution Professional, Mr. Naresh Kumar Munjal to file an Application under Section 12A of the I&B Code 2016, for 'Withdrawal of Application' before the Adjudicating Authority, within three days from today, without any delay. Soon after filing of the withdrawal of Application in terms of Section 12A of the Code, the Adjudicating Authority shall do the needful in this regard, within a period of one week thereafter.

[Justice Venugopal M.]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

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