

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

**Company Appeal (AT) (Insolvency) No. 1153 of 2019**

**IN THE MATTER OF:**

Saurav Garg

...Appellant

Versus

Socrato Capital Pvt. Ltd. & Anr.

...Respondents

**Present:**

**For Appellant: Mr. Arjun Asthana and Ms. Sreenita Ghosh, Advocates.**

**For Respondents: Mr. Kunal Tandon, Ms. Richa Sandilya and Ms. Niti Jain, Advocates for Respondent No.1.**

**Mr. Pranay Agarwal, Advocate for Respondent No.2 – IRP.**

**ORDER**

**06.12.2019** Socrato Capital Private Limited ('Financial Creditor') filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') for initiating 'Corporate Insolvency Resolution Process' against Tirumala Realcon Private Limited ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata admitted the application on 31<sup>st</sup> October, 2019.

2. The Appellant, Director challenged the said order. On 6<sup>th</sup> November, 2019, the learned Counsel for the Appellant submitted that the Appellant intends to settle the matter and pay the claimed amount along with interest. With a view to give an opportunity to the Appellant, notice was issued on Respondents, who had appeared. The 'Interim Resolution Professional' was directed not to constitute the 'Committee of Creditors', if not yet constituted.

3. On 19<sup>th</sup> November, 2019, the learned Counsel for the Appellant submitted that the Appellant is agreed to pay the total claimed amount of 2,48,41,009/- along with the interest and the following order was recorded:-

*“Learned counsel for the Appellant submits that the Appellant has agreed to pay total amount of Rs.2,48,41,009/- (Rupees Two Crore Forty Eight Lakh Forty One Thousand and Nine Only) in favour of the Respondent – ‘Socrato Capital Private Limited’ (Financial Creditor). He is ready with Demand Drafts for Rs.1.40 Crore for immediate payment and assures to pay rest of the amount by 5<sup>th</sup> December, 2019. Mr. Kunal Tandon, learned counsel for the Respondent received three Demand Drafts - DD No. 054015 dated 4<sup>th</sup> November, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.50 Lakhs; DD No. 054036 dated 14<sup>th</sup> November, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.50 Lakhs and DD No. 054045 dated 18<sup>th</sup> November, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.40 Lakhs, for onward transmission to the Respondent (Financial Creditor).*

*Mr. Pranay Aggarwal, Advocate appears alongwith Mr. Pradeep Kr. Goenka, Interim Resolution Professional submits that he has received only one claim i.e. of ‘Socrato Capital Pvt Ltd’ (Respondent No. 1). No other claim has been received.*

*Post the case ‘for orders’ on 6<sup>th</sup> December, 2019 to enable the Appellant to handover rest of the Draft(s) in favour of the 1<sup>st</sup> Respondent, if not handed over in the meantime.*

*In the meantime, the Interim Resolution Professional will not constitute Committee of Creditors as ordered on 6<sup>th</sup>*

*November, 2019 nor make correspondence with any creditor.”*

4. Today, Mr. Pranay Agarwal, learned Counsel appearing on behalf of ‘Interim Resolution Professional’ submits that till date he has received only one claim, i.e., of the Respondent and the claimed amount is Rs.2,47,58,904/-. In this regard, the learned Counsel for the Appellant submits that the amount with interest has been calculated, which comes to Rs. 2,48,41,009/-.

5. Today, the learned Counsel for the Appellant has handed over four Demand Drafts, i.e., - DD No. 054093 dated 4<sup>th</sup> December, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.30 Lakhs; DD No. 054094 dated 4<sup>th</sup> December, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.30 Lakhs; DD No. 054097 dated 5<sup>th</sup> December, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.33,56,996/- and DD No. 054102 dated 5<sup>th</sup> December, 2019 issued by State Bank of India, Shakespeare Sarani (Calcutta) in the name of ‘Socrato Capital Pvt Ltd’ for Rs.10 Lakhs totaling Rs.1,03,56,996/- which is after deduction of 10% TDS amount on the interest. The aforesaid demand drafts have been handed over to Mr. Kunal Tandon, learned Counsel for the Respondent – Socrato Capital Pvt. Ltd. (‘Financial Creditor’).

6. The learned Counsel for the Appellant submits that the Bill raised by ‘Interim Resolution Professional’, which includes fee and cost, will be paid to him within 15 days, which is also agreed by the learned Counsel for the ‘Interim Resolution Professional’.

7. Taking into consideration the fact that except Respondent, there is no other claimant and the ‘Committee of Creditors’ has not been constituted, the Appellant has satisfied the claim of the Respondent - Socrato Capital Pvt. Ltd. (‘Financial Creditor’) and agreed to pay the fee and cost of ‘Interim Resolution Professional’ within 15 days, we in exercise of power conferred

under Rule 11 of NCLAT Rules, 2016, set-aside the impugned order of admission of application under Section 7 of the I&B Code dated 31<sup>st</sup> October, 2019 and allow the Respondent – Socrato Capital Pvt. Ltd. (‘Financial Creditor’) to withdraw the application filed under Section 7 of the I&B Code, which stands withdrawn. The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata will close the proceeding. The Appellant is directed to pay the total fee and cost incurred by the ‘Interim Resolution Professional’ within 15 days. On receipt of such amount, the ‘Interim Resolution Professional’ will immediately handover the assets and records of the ‘Corporate Debtor’ to the Appellant, Director. The Appellant is also directed to handover the TDS certificates to the Respondent within one month. The ‘Corporate Debtor’ would be out of the rigor of the ‘Corporate Insolvency Resolution Process’. The Appeal is allowed with the aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

Ash/SK