

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.999 of 2019

IN THE MATTER OF:

Rajesh Chopra

...Appellant

Versus

**FP India Project Management
Consultancy Services Pvt. Ltd. & Anr.**

...Respondents

For Appellant:

**Shri Sanjeev Kumar Sharma and Shri Anirudh K.
Gandhi, Advocates**

For Respondents:

**Shri Vivek Malik, Shri Pradeep Sawanth and Shri
Vivek Sinha, Advocates**

**Shri Chandra Bhushan Prasad, Advocate (for IRP)
Shri Chandra Prakash, IRP**

O R D E R

19.11.2019 Heard learned Counsel for the Appellant and Advocate for the Operational Creditor – Shri Vivek Malik. Advocate – Shri Chandra Bhushan Prasad for IRP is present. Counsel for Appellant and Counsel for Respondent No.1 – Operational Creditor say that IA No.3799 of 2019 is filed by Operational Creditor to withdraw Application filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC - in short) which has been admitted vide Impugned Order dated 17.09.2019. The IRP - Shri Chandra Prakash is present with the Advocates and confirms that Committee of Creditors (COC – in short) has not yet been constituted. Counsel for both sides state that the dispute between the parties is already settled as per the Settlement Agreement (copy of which is at Annexure 1 –Diary No.27573) which is as follows:-

"

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this "Settlement Agreement") is made on this 6th day of November 2019 at New Delhi, by and among

1. **Parsons Brinckerhoff India Pvt. Ltd.**, having its registered office at 210, II Floor, Elegance, Jasola Distt. Centre, Old Mathura Road, New Delhi 110025, represented by Mr. Rajesh Chopra, hereinafter referred to as "**PB or the Consultant**".

AND

2. **FP India Project Management Consultancy Services Pvt. Ltd.**, (formerly known M/s. Frischmann Prabhu (India) Private Limited) having its registered office at 315, Balgovind Wadi, New Prabhadevi Road, Prabhadevi, Mumbai - 400 025 represented by Mr. Rajesh Samarth, hereinafter referred to as "**FPI or the Associate Consultant**".

PB and FPI are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**".

RECITALS

- A. Whereas FPI had filed CP No. (IB)-809(ND)/2019 against PB before the Hon'ble Adjudicating Authority, New Delhi, for initiation of the corporate insolvency resolution process in respect of PB, for the alleged default of PB in making payment of Rs. 2,81,07,882/- towards the services performed by FPI ("**Petition**");
- B. Whereas the Adjudicating Authority, vide its judgment dated 17.09.2019, had admitted the Petition against PB and appointed Mr. Chandra Prakash as the Interim Resolution Professional ("**Judgment**");
- C. Whereas WSP International LLC (majority shareholder of PB) has filed the Company Appeal (AT) (Insolvency) No. 999 of 2019 before the Hon'ble Appellate Authority, New Delhi, for challenging the Judgment dated 17.09.2019 ("**Appeal**");
- D. Whereas the Appellate Authority has, vide its order dated 27.09.2019, while staying the constitution of the Committee of Creditors, granted one opportunity to the Parties to amicably settle their disputes.
- E. Whereas the Parties have subsequently entered into discussions to resolve the differences that have arisen between them and to enter into this Agreement to settle their differences in terms of the conditions enshrined in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, representations and warranties set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties hereby agree as follows:

1. The Parties agree that FPI shall, in full and final settlement of amounts regarding the services performed by it in connection with the Associate Consultancy Agreements dated 22.09.2011 ("**Associate Consultancy Agreements**"), issue a valid GST invoice for a base amount of INR 15,000,000/- (Indian Rupees Fifteen Million Only) (hereinafter referred to as "**Settlement Amount**") to PB. PB shall make payment of the Settlement Amount, plus applicable GST, after deducting the applicable TDS, plus INR 100,000/- (Indian Rupees



Rajesh Samarth



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One Lakh Only) as noted in Clause 6, to FPI within 7 calendar days of receipt of GST invoice from FPI.

2. FPI acknowledges that the Settlement Amount paid under this Agreement shall be in full and final settlement of all the disputes and/or claims, whether past, present or future arising in any manner out of or in connection with the Associate Consultancy Agreements or otherwise. The Parties confirm that upon receipt of the Settlement Amount by FPI from PB, no amounts shall remain outstanding from PB to FPI.
3. FPI undertakes to file application for withdrawal of the petition and disposal of appeal in Company Appeal (AT) (Insolvency) No. 999 of 2019 before the Hon'ble Appellate Authority, New Delhi on or before 19th November 2019 under Rule 11 of NCLT Rules 2016 within 14 (fourteen) calendar days after receiving the Settlement Amount and INR 100,000/- (Indian Rupees One Lakh Only) as noted in Clause 6.
4. FPI further undertakes to render necessary assistance and cooperation to PB and IRP for the disposal of Appeal, and withdrawal of corporate insolvency resolution process.
5. PB and FPI shall equally bear and directly pay the balance expenses of Mr. Chandra Prakash, Interim Resolution Professional ("IRP") as mutually decided with IRP or directed by Hon'ble Appellate Authority as the case may be.
6. PB shall also pay INR.1,00,000/- (Indian Rupees One Lakh Only) to FPI towards its share of fees already paid by FPI to IRP during CIRP as directed by the Appellate Authority.
7. Each Party hereto shall bear its own expenses, costs and attorney's fees associated with preparation and execution of this Settlement Agreement and disposal of Petition/ Appeal. The Parties agree that there shall not be any cross charging of legal and professional costs, and costs already incurred (except noted in Clause 6) or to be incurred for the filing and disposal of Petition and Appeal.

8. **Representations and Warranties of FPI**

FPI hereby represents and warrants that this Settlement Agreement has been duly executed by FPI and is the valid, binding and enforceable agreement. FPI through Mr. Rajesh Samarth who has the corporate power and authority to execute this Settlement Agreement and to consummate the transactions provided herein.

9. **Representations and Warranties of PB**

PB hereby represents and warranties that this Settlement Agreement has been duly executed by PB and is the valid, binding and enforceable agreement. PB through Mr. Rajesh Chopra who has the corporate power and authority to execute this Settlement Agreement and to consummate the transactions provided herein.

10. **Acknowledgment:**

Each Party acknowledges that it has carefully read this Settlement Agreement, that it fully understands its final and binding effect, that it has had an opportunity to consult with an attorney of its own choice prior to signing this Settlement Agreement, and that it is executing this Settlement Agreement voluntarily and without coercion or duress.



Rajesh



11. Indemnity:

Each Party agrees to defend, indemnify and hold harmless the other Party from and against any and all costs, damages, claims, liabilities or expenses (including reasonable attorneys' fees), arising from or resulting from any breach of the Party's representations, warranties or covenants under this Settlement Agreement

12. Miscellaneous:

- a) Each Party shall promptly sign and deliver any additional documents and instruments and perform all acts reasonably requested of the other Party necessary to perform its obligations and carry out the intent expressed in this Settlement Agreement.
- b) This Settlement Agreement (together with any other documents referred to herein or therein) constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any prior agreements, understandings and communications, oral or in writing, relating to such subject matter.
- c) No modification or amendment of this Settlement Agreement and no waiver of any of the terms or conditions hereof shall be binding unless made by an instrument in writing signed by each Party to the Settlement Agreement.
- d) Each and every obligation under this Settlement Agreement shall be treated as a separate obligation and shall be severally enforceable as such and in the event of any obligation or obligations being or becoming unenforceable in whole or in part to the extent that any provision or provisions of this Settlement Agreement are unenforceable they shall be deemed to be deleted from this Settlement Agreement and any such deletion shall not affect the enforceability of the remainder of this Settlement Agreement not so deleted, provided that the fundamental terms of the Agreement are not altered.
- e) Simultaneously PB will issue a certificate to FPI for the work done by FPI clearly identifying the section of work completed by FPI.
- f) The Settlement Agreement shall be executed in English in Three (3) original copies, and each original has the same legal effect. Each Party shall receive one (1) original copy, and one (1) original copy for filing before the Authority as stated in clause 3 above. The signed copies will together form a single binding agreement.

IN WITNESS WHEREOF THE PARTIES CAUSE THIS SETTLEMENT AGREEMENT TO BE EXECUTED AND MADE EFFECTIVE ON THE DAY, MONTH AND YEAR FIRST SET FORTH ABOVE.

Signed as a duly authorized representative of PB

Name:..... Rajesh RAJESH CHOPRA Signature:..... Rajesh
For Parsons Brinckerhoff India Pvt. Ltd.

Position:..... Director Date:..... 06-11-2019
Authorised Signatory



[Handwritten signature]



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Signed as a duly authorized representative of FPI

RAJESH SAMARSH

Name:.....

Rajesh Samars

Signature.....

Rajesh Samars

Position: AUTHORIZED SIGNATORY.....

Date: 06-11-2019.....

Witness 1

Name: ANKUR NAGARIA.....

Signature.....

Ankur Nagaria

Position & Address FC-24, sector 16A
Film City Noida
U.P. - 201301

Date: 06-11-2019.....

Witness 2

Name: AMIT SEJWAL.....

Signature.....

Amit Seawal

Name:.....

Signature: 05-11-2019.....

Position & Address FC-24, sector 16A
Film City, Noida

Date:.....

Rajesh



COC has not been still constituted. Joint Application has been filed for taking on record the above Settlement Agreement. In the Settlement Agreement, the Operational Creditor and the Corporate Debtor have agreed to equally bear and directly pay the balance expenses to the IRP. The Counsel for IRP states that he has already received dues from the Appellant. Counsel for Respondent – Operational Creditor states that the share of Respondent would be paid. Operational Creditor and Corporate Debtor shall equally bear fees payable to IRP, and CIRP costs.

The settlement is taken on record. The Operational Creditor and Corporate Debtor and their Promoters, Directors, Shareholders shall be bound by this Agreement. In view of the aforesaid, in exercise of powers conferred on this Appellate Tribunal under Rule 11 of NCLAT Rules and the decision of the Hon'ble Supreme Court of India in **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.” in 2019 SCC Online SC 73**, we set aside the Impugned Order dated 17th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Court – VI) and allow the Application IA No.3799 of 2019 permitting the Respondent No.1 – Operational Creditor (FP India Project Management Consultancy Services Pvt. Ltd.) to withdraw the Application CP No.IB-809(ND)/2019. The Application under Section 9 is disposed as withdrawn.

The IRP will raise claim of fees payable and CIRP costs incurred with the Operational Creditor and the Corporate Debtor and they are liable to equally pay the amount to the IRP within a month from date of this Order, if

not yet paid. In default, the IRP may move this Tribunal for initiating action of contempt against the defaulting party. In such case, it would be open for this Tribunal to recall present Order and to restore the CIRP process.

The Adjudicating Authority will now close the CIRP proceedings and the Corporate Debtor is released from the rigour of Corporate Insolvency Resolution Process and the IRP will hand over the charge to Promoter/Board of Directors of the Corporate Debtor along with records.

Appeal is disposed accordingly.

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

/rs/md