

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 1487 of 2019**

**IN THE MATTER OF:**

**Udyavar Vittal Kamath** **...Appellant**

**Vs**

**Veekay General Industries** **....Respondent**

**Present:**

**For Appellant: Mr. Krishnendu Datta, Mr. Zorawar Singh and Mr. Rahul Gupta, Advocates.**

**For Respondent: Mr. S. K. Paul, Advocate for R-1.**

**With**

**Company Appeal (AT) (Insolvency) No. 1488 of 2019**

**IN THE MATTER OF:**

**Texmaco Rail & Engineering Ltd.** **...Appellant**

**Vs**

**Veekay General Industries** **....Respondent**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Ms. Ishita Bhardwaj and Mr. Kalpataru Tripathy, Advocates.**

**For Respondent: Mr. S. K. Paul, Advocate for R-1.**

**ORDER**

**03.01.2020:** 'Veekay General Industries' (Operational Creditor) moved application under Section 9 of the Insolvency and Bankruptcy Code against 'Bright Power Projects (India) Private Limited' (Corporate Debtor), which was admitted by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata on 6<sup>th</sup> December, 2019. Same was challenged by the Appellant – 'Udyavar Vittal Kamath', Shareholder of the alleged Corporate Debtor and 'Texmaco Rail & Engineering Ltd.' in which the Corporate Debtor has already merged.

2. Earlier when the matter was taken up on 18<sup>th</sup> December, 2019, following order was passed:-

**“O R D E R**

**18.12.2019** *Learned counsel appearing on behalf of ‘Taxmaco Rail & Engineering Limited’ submits that ‘Bright Power Projects (India) Pvt. Limited’ (Corporate Debtor) is non-existent in view of the fact that it merged with Appellant – ‘Texmaco Rail & Engineering Limited’ on 4<sup>th</sup> April, 2019 and the application under Section 9 of the ‘I&B Code’ was subsequently filed on 10<sup>th</sup> April, 2019. In view of the merger, the Appellant should have been pleaded as party-Respondent and in such case the Appellant could have offered the amount as due to the ‘Veekay General Industries’ (Operational Creditor) or would have contested the matter on the ground of ‘existence of dispute’ or otherwise would have settled the matter. It is submitted that even the Appellant - ‘Texmaco Rail & Engineering Limited’ is ready to settle the matter.*

*Similar plea has taken by ‘Udyavar Vittal Kamath’, a shareholder of the ‘Corporate Debtor’ now shareholder of the Corporate Debtor - now ‘Texmaco Rail & Engineering Limited’).*

*Mr. S. K. Paul, Advocate appears on behalf of 'Veekay General Industries'. Learned counsel for the Appellant will serve a copy of the paper-book on him in the course of the day. Respondent is allowed to file a reply-affidavit within a week.*

*Learned counsel for the Appellant will implead the 'Interim Resolution Professional' as party-respondent. Necessary corrections be made in the course of the day.*

*Let notice be issued on the newly impleaded Respondent (Interim Resolution Professional) and other Respondents, if any, by Speed Post. Requisites along with process fee, if not filed, be filed by 19<sup>th</sup> December, 2019. Dasti service is permitted.*

*During the pendency of the appeal, it will be open to the parties to reach 'Terms of Settlement'.*

*Place the case 'for orders' on **3<sup>rd</sup> January, 2020**. The appeal may be disposed of on the next date.*

*In the meantime, the 'Interim Resolution Professional' will not issue any publication, if not yet published, nor constitute 'Committee of Creditors', if not yet constituted. However, he will find out whether the 'Bright Power Projects (India) Pvt. Ltd. is existing or not. The 'Interim Resolution Professional' will*

*ensure that the company remains as an on-going concern and will take the assistance of the (suspended) Board of Directors and the employees. The person who is authorised to sign the Bank Cheques may issue cheques but only after authorisation of the 'Interim Resolution Professional'. The Bank Accounts of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the paid Director, the Employees'/workmen, electricity bills etc."*

3. It is informed that parties have reached Terms of Settlement on 31<sup>st</sup> December, 2019. A copy of it has been produced and kept on record. Mr. S. K. Paul, learned counsel appearing for the Respondent (Operational Creditor) while accepted that the Settlement has been reached also informs that Committee of Creditors had not been constituted. Notice has been served on Interim Resolution Professional, however, it is informed that he is not available today. From the terms of settlement it is found that the parties have also reached settlement with regard to payment of fee and insolvency resolution cost. The Terms of Settlement dated 31<sup>st</sup> December, 2019 reads as follows:-

## TERMS OF SETTLEMENT

This Terms of Settlement (“**Terms of Settlement**”) is executed at New Delhi on this 31st day of December 2019 by and between:

**Texmaco Rail and Engineering Limited**), a company incorporated under the Companies Act, 1956 having its registered office at Belgharia, 24 Parganas (North), Kolkata-700 056, West Bengal, {hereinafter referred to as “**Texmaco**” which shall include **Bright Power Projects (India) Private Limited and all its Directors and share holders**, hereinafter referred to as “**Bright Power**” (Now merged into M/s Texmaco Rail and Engineering Limited), its successors in interest and permitted assigns}; and

**Veekay General Industries**, a partnership firm having its principal place of business at B-46, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi – 110095 (hereinafter referred to as “**Veekay Industries**” its partners, successors in interest and permitted assigns).

*(Texmaco/Bright Power and Veekay Industries may hereinafter be referred to as such, or collectively be referred to as “Parties”, and individually as “Party”, as the case may be)*

### WHEREAS:

- A. Veekay Industries had filed an insolvency application under Section 8 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) before the Hon’ble National Company Law Tribunal, Kolkata Bench (“**Adjudicating Authority**”) against Bright Power, being CP (IB) 982 (KB)/2019, for an alleged operational debt (“**Application**”). The Application was made by Veekay Industries pursuant to alleged non-payment by Bright Power towards discharge of the Letter of Credit No.0006ILC00181819 dated 10.01.2019 drawn under ICICI Bank issued against Proforma Invoice dated 05.01.2019 and subsequent Invoice dated 12.01.2019 raised by Veekay Industries on Bright Power (“**Dispute**”). Bright Power in its Reply to the Application objected to the petition on various grounds as per the records of the case, however, vide its order dated 06.12.2019 (“**Order**”), the Adjudicating Authority admitted the Application and passed directions for initiation of the corporate insolvency resolution process against Bright Power and appointed an Interim Resolution professional.

*Signature*



*Signature*

- B. **Mr. Udyavar Vittal Kamath** (erstwhile shareholder of Bright Power and now shareholder of Texmaco) preferred an Appeal bearing, Comp. App. (AT) (Ins) No. 1487 of 2019 ("**Appeal No.1**") before Hon'ble National Company Law Appellate Tribunal, New Delhi ("**NCLAT**") assailing the Order passed by the Adjudicating Authority. **Texmaco** also preferred an Appeal bearing, Comp. App. (AT) (Ins) No. 1488 of 2019 ("**Appeal No.2**") before Hon'ble NCLAT. The Appeals came to be listed for hearing before Hon'ble NCLAT on 18.12.2019. (*Appeal No.1 and Appeal No.2 may hereinafter be referred to as such, or collectively be referred to as "Appeals", as the case may be*)
- C. After hearing submissions of all the parties in both the Appeals, wherein intent to settle the dispute was expressed by all the parties, the Hon'ble NCLAT considering the submissions so made across the bar was pleased to stay the operation of the Order vis-à-vis staying the corporate insolvency resolution process, including public announcement, constitution of committee of creditors if not already done and/or other actions by the Insolvency Resolution Professional ("**IRP**") till the next date of hearing in the Appeals, i.e., 03.01.2020. The Hon'ble NCLAT was pleased to further observe that during the pendency of the Appeals, it will be open to the Parties to reach for a 'Terms of Settlement'.
- D. In view of the observations of Hon'ble NCLAT, Parties made an attempt and have agreed to amicably settle the Dispute on the basis of their mutual agreement, and these Terms of Settlement are being executed to record the terms and conditions governing the settlement of the Dispute to the mutual satisfaction of the Parties.

**NOW, THEREFORE**, in consideration of the mutual covenants and other good and valuable consideration (the receipt and adequacy of which is hereby acknowledged), the Parties, with the intention of legally bound, agree as follows:

1. That Texmaco has agreed to settle the alleged operational debt of Bright Power (now merged to itself since 04.04.2019) and pay to Veekay Industries, a total amount of INR 1,00,00,000/- (Rupees One Crore only) inclusive of any/all fee if found payable to the IRP appointed by NCLT, Kolkata on 06.12.2019 as one time full and final settlement of all present and past claims/dues/advances of both the Parties against each other (i.e., Veekay Industries on one hand, and Bright Power/ Texmaco on the other hand), including towards their legal cost, interests, and/or any other losses as may have been decided and agreed by the Parties. The Parties declare that they have adjusted all their claims against each other

*Dasgupta*



Page 2 of 5

*Deepal Mittal*

while arriving at this one time "**Settlement amount**" and have / shall have no further right or claim or cause of action against each other and that they have expressly and with their own sweet will adjusted all past financial claim(s) including any damages against all past/old Purchase order(s), advances for 125 Tons (or any part thereof) of Copper and/or any other head against each other or any of its past or present partners, directors, employees and/or representatives in this "**Settlement amount**" and covenants to not engage in any litigation or initiate any proceedings of any nature whatsoever against each other and its past or present partners, directors, employees and/or representatives with respect to their transactions since beginning, till date including all dispute(s) or previous/old purchase order(s) at any time hereinafter, save and except for any guarantees/warrantees, if provided, under such respective supplies by Veekay Industries.

2. Texmaco agrees to tender the Post dated Account payee Cheque No. 526995 of Rupees One Crore drawn on ICICI Bank, Kolkata Branch inclusive of any/all fee if found payable to the IRP appointed by NCLT, Kolkata on 06.12.2019 only as the one time full and final "**settlement amount**" between the parties subject to the permission of Hon'ble NCLAT on the next date of hearing in the Appeals, i.e., on 03.01.2020.
3. Consequent to signing this settlement, Texmaco or any of its share holders, and Directors hereby agrees and undertakes as follows:
  - (i) it unconditionally waives all claims it has / may have against Veekay Industries till this date or in future regarding the Dispute or any previous purchase orders, and covenants to not engage in any litigation or initiate any proceedings of any nature whatsoever against Veekay Industries with respect to the Dispute or previous purchase orders at any time hereinafter, save and except for any guarantees/ warrantees, if provided, under such respective supplies by Veekay Industries.
  - (ii) It declares that they have the written concurrence of **Mr. Udyavar Vittal Kamath** (erstwhile shareholder of Bright Power and now shareholder of Texmaco) to the effect that this settlement binds him also and he also unconditionally waives all claimshe or Bright Power has / may have against Veekay Industries till this date or in future regarding the Dispute or any previous purchase orders, and covenants to not engage in any litigation or initiate any proceedings of any nature whatsoever against Veekay Industries with respect to the Dispute or previous purchase orders at any time hereinafter, save and except for any guarantees/warrantees, if provided, under such respective supplies by Veekay Industries.

*Udyavar Vittal Kamath*



Page 3 of 5

*Dipu Mittal*

4. Consequent to such receipt, Veekay Industries hereby agrees and undertakes as follows:
- i. it shall undertake all actions and omissions to unconditionally withdraw the Application (*including execution, filing and due perusal of a withdrawal application under Section 12A or any other appropriate provision of the Code in the form agreed between the Parties*) at the earliest before Adjudicating Authority, and in any case before 10.01.2020;
  - ii. it shall execute, deliver and/or file all documents and provide all necessary cooperation to Bright Power/Textmaco, as may be required to withdraw/cause and ensure the withdrawal of the Application as per this settlement and render the Order dated 06.12.2019 without effect.
  - iii. it shall return the original Letter of Credit No.0006ILC00181819 dated 10.01.2019 drawn under ICICI Bank, RN Mukherjee Road Branch, Kolkata ("LC") to Textmaco simultaneous with receipt of the payment before NCLAT on 03.01.2020, and that Veekay Industries acknowledges that it has / shall have no further right or claim or cause of action against Bright Power;
  - iv. it undertakes to execute all necessary documents and cooperate with Bright Power to have the LC revoked/cancelled;
  - v. it unconditionally waives all claims it has / may have against Bright Power and/or Textmaco till this date or in future regarding the Dispute or any previous purchase orders, and covenants to not engage in any litigation or initiate any proceedings of any nature whatsoever against Bright Power and/or Textmaco with respect to the Dispute or previous purchase orders at any time hereinafter, save and except for any guarantees/warrantees, if provided, under such respective supplies by Veekay Industries.
5. Parties have finalized a joint application to the Adjudicating Authority praying for unconditional withdrawal of the Application in terms of Section 12A or any other provision of the Code, and are willing to seek appropriate orders to revoke/vacate the NCLT Kolkata Order dated 06.012.2019 passed in CP (IB) 982 (KB)/2019 and/or render the said Order

*Signature*



Page 4 of 5

*Signature*




without effect, and not proceed with corporate insolvency resolution process of Bright Power/Texmaco, and release Bright Power/Texmaco from all rigours of law pursuant thereof, which has been initiated by the Parties for identification. Parties shall cause the aforesaid joint application to be filed before the Hon'ble Adjudicating Authority simultaneous with (and in any case within 4 (four) days of) receipt of the Settlement Amount mentioned herein by Veekay Industries, and shall pursue the same to ensure unconditional withdrawal of the Application, and the Order being rendered ineffective, at the earliest.

6. Each Party represents to the other Party that the execution of these Terms of Settlement has been duly authorised, and Terms of Settlement create a valid and legally binding obligations for the Parties.

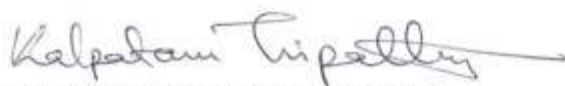
**IN WITNESSES WHEREOF** the Parties hereto have subscribed their respective hands to this Deed on the day, month and year mentioned above.


For **Texmaco Rail & Engineering Limited** For **M/s Veekay General Industries**

  
Authorised Representative  
Name: Prakash Chandra Kejriwal  
Designation: C.F.O - Rail EPC



  
Authorised Representative  
Name: Kapil Mittal  
Designation: Partner

Witness 1: Kalpataru Tripathy,   
CISRS House-14, Jugpura-B, Mathura Road, New Delhi-110014.

Witness 2: Arun Pal   
A-1102 Pratap Eclijice, Sector -107, Noida, UP-201301

Attached :

1. Copies of due Authorisation from the Board of Directors of Texmaco Rail & Engineering Limited and Veekay General Industries to sign this agreement.
2. Copy of the written concurrence of **Mr. Udyavar Vittal Kamath** (erstwhile shareholder of Bright Power and now shareholder of Texmaco) to the effect that this settlement binds him.

4. The Terms of Settlement has taken care of the fee of the Interim Resolution Professional and cost incurred by him, as informed by the parties. Learned counsel appearing on behalf of the Appellant hands over Cheque No. 526995 dated 3<sup>rd</sup> January, 2020 issued by ICICI Bank, Kolkata R N Mukherjee Branch, Kolkata in the name of 'Veekay General Industries' for Rs.1,00,00,000/- (Rupees One Crore Only) to Mr. S. K. Paul, learned counsel for the Respondent - 'Veekay General Industries' for onward transmission to the said Respondent.

5. In view of the fact that 'Bright Power Projects (India) Private Limited' merged with 'Texmaco Rail & Engineering Ltd.' on 4<sup>th</sup> April, 2019 much prior to the date of filing of the application under Section 9 and therefore there is a defect in the application filed under Section 9 and now the parties have reached settlement, we in exercise of power conferred under Rule 11 of NCLAT Rules, 2016 set aside the impugned order dated 6<sup>th</sup> December, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata and dispose of the application under Section 9 filed by 'Veekay General Industries' as withdrawn.

6. The parties are directed to comply with the Terms of Settlement and pay the due amount including the amount payable to the Interim Resolution

Professional within the time frame. The Corporate Debtor is released from rigour of Corporate Insolvency Resolution Process and will function through its present Promoters and Directors. The Interim Resolution Professional will hand over the assets and records to the Promoter/ Directors immediately. Appeals are allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/sk*