

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 279 of 2020

IN THE MATTER OF:

Sartaj Ali

...Appellant

Vs.

Madhu Khandelwal & Anr.

...Respondents

**Present: For Appellant: - Mr. Sanwar Raza, Ms. Ishita Sharma
and Mr. Arnab Chakraborty, Advocates.
Mr. R.K. Duggal, IRP**

For Respondents: - Mr. Anjuman Tripathi, Advocate.

O R D E R

17.02.2020— 1st Respondent- Ms. Madhu Khandelwal ('Operational Creditor') moved application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Nice Projects Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court III), by impugned order dated 7th February, 2020 admitted the application.

2. On 14th February, 2020, when the matter was taken up, learned counsel for the 1st Respondent and the 'Interim Resolution Professional' appeared and following order was passed:

"14.02.2020— Learned counsel for the Appellant submitted that the application under Section 9 was not maintainable, but the parties have orally reached settlement.

2. It is submitted that the 'Committee of Creditors' has not been constituted and the Appellant is ready with the draft of Rs.25,00,000/- . If time is allowed, they may also sign 'Terms of Settlement'.

3. Ms. Sreenita Ghosh, Advocate appears on behalf of the 1st Respondent ('Operational Creditor'). She submits that the Appellant is agreed to reach settlement.

4. In the circumstances, we allow counsel for the Respondent to file Vakalatnama by 17th February, 2020.

5. Mr. R.K. Duggal, Interim Resolution Professional is present and accepts that the 'Committee of Creditors' has not been constituted. However, publication has been made. He further submits that he has already incurred Rs.20,000/- towards CIRP costs and he is also entitled for fees. An amount of Rs.1,00,000/- shall be paid to the 'Interim Resolution Professional' towards CIRP costs and fees, which is agreed to by 'Interim Resolution Professional' Mr. R.K. Duggal and the Appellant.

Post the appeal 'for orders' on 17th February, 2020 before the 1st Bench.

In the meantime, the 'Interim Resolution Professional' will not constitute the 'Committee of Creditors', if not yet constituted, to enable the parties to reach settlement. However, the 'Interim Resolution Professional' will ensure that the

company remains a going concern and will take assistance of the (suspended) Board of Directors and the officers/ Directors/employees. The person who is authorised to sign the bank cheques may issue cheques but only after approval of the 'Interim Resolution Professional'. The Bank Account 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 Employees'/workmen, Electricity Bills etc."

3. Mr. Anjuman Tripathi, Advocate appearing on behalf of the 1st Respondent accepts that the settlement has been reached and 'Terms of Settlement' have been signed in Non-Judicial Stamp Paper, as extracted below:

Deed of Settlement
Between
Madhu Khandelwal Proprietor of Tatar Trading
& Ishwar Khandelwal Proprietor of Balaji International (Hereinafter
referred to as OC)
&
Nice Projects Ltd (NPL)
13.02.2020

That OC had instituted an IBC petition u /s 9 of the code, which was admitted by the Hon`ble NCLT Delhi on 07.02.2020. In addition to that OC has also instituted Negotiable Instrument (NI) Case in Tis Hazari Court for bouncing of cheques of Rs. 13,79,098 & 23,97,916 for (Tatar TRADING Company) and Rs.14,18,405/- for (Balaji International). NPL preferred an appeal in Hon`ble NCLAT which is yet to be mentioned. During the pendency of appeal and NI cases, the parties have settled the matter amicably in the following payment terms.

COMPUTATION OF CLAIM AGAINST NICE PROJECTS LIMITED

S.No	Particular(s)	Principal Amount (in INR)	Interest computed from the date of default @ 9% per annum	Total Amount (Pricipal + Accrued Interest)
1	Invoice dated 10.03.2018 mentioned in CP (IB) No.2706 (ND) of 2019	13,79,098/-	2,15,932/-	15,95,030/-

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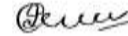
Ques.

2	Invoice dated 16.04.2018 mentioned in C.P. (IB) No. 2706 (ND) of 2019	23,97,916/-	3,55,351/-	27,53,267/-
3	Invoice dated 12.05.2018 mentioned in C.P. (IB) No. 2707 (ND) of 2019	14,18,405/-	2,11,245/-	16,29,650/-
TOTAL		51,95,419/-	7,82,528/-	59,77,947/-

PAYMENTS TERMS:

S. No.	Date	Amount (in INR)	Installment	Mode of Payment
1	At the time of signing of the settlement	25,00,000/-	Initial Payment	Demand Draft
2	Within one month from date of settlement	11,59,315/-	1 st Installment	Post Dated Cheque
3	Within two months of date of settlement	11,59,315/-	2 nd Installment	Post Dated Cheque
4	Within three months of date of settlement	11,59,317/-	3 rd Installment	Post Dated Cheque

Note: If the payment terms are breached, the amount deposited on behalf of M/s. Nice Projects Limited shall be forfeited and Smt. Madhu Khandelwal and Shri. Ishwar Khandelwal shall be entitled to institute proceedings for

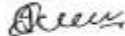



the entire amount due, i.e., a sum of Rs. 59,77,947/- (Rupees Fifty Nine Lac Seventy Seven Thousand Nine Hundred and Forty Seven only). The said clause is to be incorporated for the satisfaction of the Operational Creditor that the Corporate Debtor is committed to make the installment payments.

All cases under IBC and Negotiable Instrument Act shall stand withdrawn and the Parties will not have any claim whatsoever against each other after the entire payment is made.

For and on behalf of Madhu Khandelwal

And Ishwar Khandelwal



For and on behalf of Nice Projects Ltd

(SARTAJ ALI)

4. Ms. Ishita Sharma, Advocate appearing on behalf of the 'Corporate Debtor' handed over Demand Draft for Rs.25 lakhs and four post-dated cheques, as detailed below:

- (i) Demand Draft No.004825 dated 13.02.2020 issued by 'HDFC Bank' for Rs.25,00,000/- (Rupees Twenty Five Lakh Only) issued in the name of 'Tatar Trading Company' (Operational Creditor).
- (ii) Cheque No.933303 dated 14.03.2020 issued by 'State Bank of India' for Rs.11,59,315/- (Rupees Eleven Lakh Fifty Nine Thousand Three Hundred Fifteen Only) issued in the name of 'Tatar Trading Company' (Operational Creditor).
- (iii) Cheque No.933304 dated 14.04.2020 issued by the 'State Bank of India' for Rs.6,88,982/- (Rupees Six Lakh Eighty Eight Thousand Nine Hundred Eighty Two Only) issued in the name of 'Tatar Trading Company' (Operational Creditor).
- (iv) Cheque No.933305 dated 14.04.2020 issued by the 'State Bank of India' for Rs.4,70,333/- (Rupees Four Lakh Seventy Thousand Three Hundred Thirty Three Only) issued in the name of 'Shri Balaji International' (Operational Creditor).
- (v) Cheque No.933307 dated 14.05.2020 issued by the 'State Bank of India' for Rs.11,59,317/- (Rupees Eleven Lakh Fifty Nine Thousand Three Hundred Seventeen Only) issued in the name of 'Shri Balaji International' (Operational Creditor)

5. Mr. R.K. Duggal, 'Interim Resolution Professional' is present in person. Learned counsel for the Appellant submits that Demand Draft for Rs.90,000/- has been prepared for handing over to 'Interim Resolution Professional' after deduction of Rs.10,000/- towards TDS. The fee has

been calculated at the rate of Rs.1,00,000/-. It is further intimated that separately a sum of Rs.20,000/- will be paid towards Corporate Insolvency Resolution Process Costs to the 'Interim Resolution Professional' by 18th February, 2020. Demand Draft for Rs.90,000/- is handed over to Mr. R.K. Duggal in the Court.

6. Taking into consideration that the parties have reached settlement and the 'Committee of Creditors' has not been constituted, we in exercise of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 while directing the Appellant to pay the rest of the amount in terms of Settlement within the specified period to the 'Operational Creditor', set aside the impugned order dated 7th February, 2020. The application under Section 9 preferred by the 'Operational Creditor' is disposed of as withdrawn. The Appellant is directed to pay the 'Interim Resolution Professional'. The 'Interim Resolution Professional' will hand over the assets and records to the Promoters on receipt of Rs.20,000/-. In case the Appellant failed to pay the rest of the amount to the 'Operational Creditor', it will be open to her to move petition for initiation of contempt on the Promoters/ Directors and Officers of the 'Corporate Debtor' and for revival of the 'Corporate Insolvency Resolution Process'. The company is released from all rigours of the 'Corporate Insolvency Resolution Process'.

The appeal is allowed with aforesaid directions and costs. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

Ar/rr