

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 967 of 2019

IN THE MATTER OF:

Mr. Vivek Verma Appellant

Vs

M/s IPRO Sugar Engineering Pvt. Ltd. & Anr. Respondents

Present:

**For Appellant: Mr. Rajiv Ranjan, Senior Advocate with
Mr. Animesh Rastogi and Mr. Mrinal
Harshvardhan, Advocates.**

**For Respondents: Mr. R.S. Randhawa and Mr. Yashpal gupta,
Advocates for Respondent No.1.**

**Mr. Nakul Mohta, Advocate for Respondent
No.2.**

O R D E R

16.10.2019 IPRO Sugar Engineering Pvt. Ltd. ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B code') against Spray Engineering Devices Limited ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh, by the impugned order dated 3rd September, 2019 having admitted the application, the present application has been preferred by Director/ Shareholder.

2. Earlier, when the matter was taken up, learned Counsel for the Appellant submitted that during the pendency of the Arbitration proceedings, application under Section 9 was filed, which was admitted. The other ground taken is that the Appellant is ready with the Demand Draft dated 11th September, 2019 to pay the entire dues as claimed by the Respondent in their Demand Notice issued under Section 8(1) of the I&B Code. It was also informed that the 'Committee of Creditors' has not been constituted. In view of such position, we issued notice to the Respondents and allowed the

Appellant to pay the total claimed amount by the Demand Draft with liberty to 'Operational Creditor' to accept the same and if they refuse it, they should give it in writing.

3. Today, when the matter has been taken up, it is informed that the settlement has been reached between the parties and a total sum of Rs.53,40,453/- has been paid by Demand Draft. The copy of the Terms of Settlement has been placed on record, which is as follows: -

“SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is being made in duplicate sets and executed at Chandigarh on this 11th day of October, 2019 amongst:

BETWEEN

Mr. Vivek Verma, S/o Late Sh. Nand Kumar Verma, aged about 53 years, R/o H.No.485, Sector 8, Panchkula, Haryana – 134109, being the Shareholder of M/s Spray Engineering Devices Limited hereinafter referred to as “First Party” which expression unless repugnant to its meaning or context otherwise shall include its legal heirs, successors, executors, administrators and legal representative of the First Party;

AND

M/s IPRO Sugar Engineering Private Limited a company incorporated under the Companies Act, 1956 having CIN:U01403CH2007PTC030679 dated: 30.01.2007 at ROC, Chandigarh and having its registered office at H. No.651, Top Floor, Sector- 8 B, Chandigarh 160008 through its Director Mr. Harjeet Singh Bola hereinafter referred to as “Second Party” which expression unless repugnant to its meaning or context otherwise including its legal heirs, successors, executors, administrators and legal representatives of the Second Party;

AND WHEREAS the Second Party filed an application under section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 against M/s Spray Engineering Devices Limited which is currently under CIRP (Corporate Insolvency Resolution Process) by virtue of an admission of order dated 03.09.2019 passed by NCLT, Chandigarh in case bearing No.CP(IB)407/chd/chd/2018.

AND WHEREAS the First Party is a Shareholder of M/s Spray Engineering Devices Limited and signing this settlement agreement in his individual capacity without prejudice to the rights of company which is under CIRP.

AND WHEREAS the Second Party filed the case under section 9 claiming as one of the Operational Creditors of M/s Spray Engineering Devices Limited on the basis of various invoices raised between 29.02.2008 to 01.10.2009. The Second party also stated in the petition that the invoices were raised towards consulting engineering services being rendered to M/s Spray Engineering Devices Limited, therefore a total amount of debt of Rs.53,40,453/- (including interest) which was due and payable on behalf of M/s Spray Engineering Devices Limited as per the order of Hon'ble NCLT, Chandigarh.

AND WHEREAS the Hon'ble National Company Law Tribunal "Chandigarh Bench, Chandigarh" after adjudicating the claim, passed an admission order dated 03.09.2019 declaring moratorium on M/s Spray

Engineering Devices Limited Under Section 14 of IBC, 2016. In terms of the admission order the Hon'ble NCLT pleased to appoint Mr. Sudhir Kumar Jain as interim resolution professional in terms of Section 16(5) of IBC, 2016.

AND WHEREAS the First Party in his individual capacity challenged the admission order passed by Hon'ble National Company Law Tribunal "Chandigarh Bench, Chandigarh" under Section 61 of IBC, 2016 at Hon'ble National Company Law Appellate Tribunal, New Delhi which is pending till date.

AND WHEREAS Hon'ble National Company Law Appellate Tribunal, New Delhi pleased to admit the appeal filed by the first party and pleased to issue notice upon Second Party and also passed the following order.

*NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI*

Company Appeal (AT) (Insolvency) No. 967 of 2019

IN THE MATTER OF:

Mr. Vivek Verma ...Appellant

Versus

*M/s. IPRO Sugar Engineering
Pvt. Ltd. & Anr. ...Respondents*

Present:

*For Appellant : Mr. Rajiv Ranjan, Sr. Advocate with
Mr. Vaibhav Gaggar, Mr. Sanchit Uppal, Mr. Animesh
Rastogi and Mr. Mrinal Harshvardhan, Advocates*

O R D E R

*19.09.2019 One of the ground taken by the learned
counsel for the Appellant is that during the pendency of*

Arbitration proceedings the application under Section 9 was filed which has been admitted.

The other ground taken by the Appellant is that the Appellant is ready with the Demand Draft dated 11th September 2019 to pay the entire dues claimed as were made in the Demand Notice under Section 8(1) and application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016. However, the Respondent - 'Operational Creditor' is not accepting the amount therefore, it is submitted that the application under Section 9 was filed by the respondents with intent other than the 'Resolution' or 'Liquidation', as prohibited in terms of Section 65 of the 'I&B Code'.

Let notice be issued on the Respondents by Speed Post. Requisite along with process fee, if not filed, be filed by 20th September, 2019. If the appellant provides the e-mail address of respondents, let notice be also issued through e-mail. Dasti service is permitted.

Post the Case 'for Orders' on 16th October 2019. The Appeal may be disposed of on the next date.

During the pendency of the appeal the appellant may pay the total claimed amount by Demand Draft. The Respondent - 'Operational Creditor' may accept the same and if they refuse it, they should give in writing.

Until further orders, the 'Interim Resolution Professional' will not constitute the "Committee of Creditors", if not yet constituted. However, in the meantime, the 'Interim Resolution Professional' will ensure that the company remains 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.

*[Justice S.J. Mukhopadhaya]
Chairperson*

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

*[Kanthi Narahari]
Member (Technical)*

AND IN CONSIDERATION OF THESE PRESENTS, THIS AGREEMENT WITNESSETH AS UNDER:

That both first party and second party have mutually agreed and arrived at an amicable settlement of the subject matter of section 9 petition which was filed by the second party against M/s Spray Engineering Devices Limited, which subsequently got admitted by Hon'ble NCLT, Chandigarh. It is made clear that First Party has agreed and arrived settlement in his individual capacity and not on behalf of M/s Spray Engineering Devices Limited which is currently under CIRP.

TERMS OF SETTLEMENT

- 1. That both the parties have agreed that in terms of the order dated 19.09.2019 passed by Hon'ble NCLAT, New Delhi, the First Party has paid an*

amount of Rs.53,40,453/- (Rupees Fifty Three Lacs Forty Thousand Four Hundred Fifty Three Only) to the Second party vide Demand Draft No.500447 dt: 11-09-2019 issued by ICICI Bank Limited, Sector 70, Mohali towards the subject matter, on which the admission order was passed by Hon'ble NCLT, Chandigarh.

- 2. Upon accepting the same the second party undertakes to withdraw the petition admitted by Hon'ble NCLT, Chandigarh under Section 9 of IBC at Chandigarh.*
- 3. That both the parties mutually agreed that the second party upon accepting the demand draft of Rs. 53,40,453/-(Rupees Fifty Three Lacs Forty Thousand Four Hundred Fifty Three Only) shall immediately file an application for withdrawal of CIRP under Rule 11 of NCLT Rules before Hon'ble NCLT, Chandigarh. The second party further undertakes that to inform the IRP about the acceptance of aforesaid amount and filing of withdrawal of application before Hon'ble NCLT, Chandigarh.*
- 4. That both the parties have mutually agreed that the withdrawal of instant Petition admitted under Section 9 shall not cause prejudice to the rights of the respective parties in relation to other transactions/disputes.*
- 5. That both the parties mutually agreed to make a joint statement before Hon'ble NCLAT, New Delhi about the acceptance of the amount and*

consequent to that withdrawal of petition by the Second Party. That both the parties mutually agreed to get the appeal disposed off in terms of this agreement and withdrawal of Section 9 petition.

6. *That it is agreed between the parties to pay the CIRP cost as well as the IRP Fee be shared equally.*
7. *This Agreement shall ensure to the benefit of and will be binding upon the respective heirs, executors, administrators, successors and permitted assigns of both the parties hereto.*

IN WITNESS WHEREOF, the parties here unto have set their hands on this 11th day of October, 2019 at Chandigarh.”

4. As per the Terms of Settlement, both the parties agreed to share the cost and fee of the 'Interim Resolution Professional'. Learned Counsel for the parties state that cost and fee of 'Interim Resolution Professional' has already been paid, which is also accepted by the learned Counsel appearing on behalf of the 'Interim Resolution Professional'.

5. In the facts and circumstances and in exercise of inherent powers conferred upon this Appellate Tribunal under Rule 11 of the NCLAT Rules 2016, we accept the Terms of Settlement and set aside the impugned order dated 3rd September, 2019 and release the 'Corporate Debtor' from rigour of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover the assets and records to the 'Corporate Debtor'/ 'Promoter'.

6. In the result, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order(s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred

by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. The Appeal is allowed with the aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

Ash/SK