

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

**Company Appeal (AT) (Insolvency) No. 281 of 2019**

**IN THE MATTER OF:**

**M/s. B.M. Pipes Private Limited**

**...Appellant**

**Versus**

**M/s. Eta Engineering Private Limited**

**...Respondent**

**Present:**

**For Appellant :**           **Ms. Bhumika Kapoor and Mr. Saakaar Sardana,**  
**Advocates**

**For Respondent :**       **Ms. Priyanka Ghorawat and Mr. Ajay Kohli,**  
**Advocates**

**O R D E R**

**30.09.2019**       Ms. Bhumika Kapoor, learned counsel appearing on behalf of the Appellant and Ms. Priyanka Ghorawat, learned counsel appearing on behalf of the Respondent submit that the parties have settled the matter and produce the 'Memorandum of Settlement' dated 28<sup>th</sup> September, 2019, which reads as follows:

**“MEMORANDUM OF SETTLEMENT**

*This Memorandum of Settlement is made and entered into  
at New Delhi, on this 28<sup>th</sup> day of September 2019.*

***BETWEEN***

***ETA ENGINEERING PRIVATE LIMITED, a company  
incorporated under the Companies Act 1956 having its  
registered office at 20/21, Razak Garden, Main Road, 1<sup>st</sup> Floor,***

*Arumbakkam, Chennai-600106, Tamil Nadu, India through its Authorized Representative Sh. Zafar Ahmad Khan, duly authorized in this regard vide Authority Letter dated 26.06.2019 (hereinafter referred to as “ETA Engineering” and which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its group companies, associate companies, subsidiary companies, successors and permitted assigns) of the First Part.*

**AND**

***BM PIPES PRIVATE LIMITED**, a Company incorporated under the provisions of the Companies Act 1956 having its registered office at Plot No.3, Pradhan Market, Nilothi Extension, Delhi-110041 through its Authorized Representative Sh. Vishal Bhalla, duly authorized in this regard vide Resolution of the Board of Directors dated 12.03.2019 (“hereinafter referred to as “**BM Pipes**” which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns”) of the Second Part.*

*Hereinafter, individually referred to as ‘Party’ and jointly as ‘Parties’ as the context may require.*

**WHEREAS:**

- A) *ETA had inter-alia placed various Purchase Orders [“POs”] upon BM Pipes, thereby seeking supply of “PVC, conduit pipes and pipe fittings”, at its respective project site. Pursuant to the placing of PO(s) by ETA, BM Pipes supplied the requisitioned material to ETA through various invoices drawn in consonance with the specifications enumerated in each PO.*
- B) *However due to non payment of its dues, BM Pipes instituted the following legal proceedings against ETA:*
  - i) ***Civil Suit bearing No. 376 of 2017** before Sh. Raj Kumar, Learned ADJ/PO MACT, West District, **Tis Hazari Courts, Delhi** listed on 19.10.2019 titled as “M/s. BM Pipes Pvt. Limited Vs M/s. ETA Engineering Pvt. Limited.” claiming the relief for recovery of Rs.5,09,039/- along with interest.*

ii) **Company Appeal No. 281 of 2019** titled as “M/s. BM Pipes Pvt. Ltd. Vs. M/s. ETA Engineering Pvt. Ltd.” under section 61 of the Insolvency & Bankruptcy Code, 2016 before the National Company Law Appellate Tribunal (Principle Bench), New Delhi.

C] The parties herein, having regard to their old association and for maintaining future business relations, have amicably settled their disputes and claims qua each other till date and have arrived at a **full and final settlement** on the terms and conditions enumerated hereinafter.

**NOW THE TERMS OF THIS SETTLEMENT WITNESSETH AS UNDER:**

1. ETA while acknowledging its liabilities qua BM Pipes, have agreed to pay a sum of Rs.12,00,000/- [Rupees Twelve Lacs only] and BM Pipes agreed to accept the said sum of Rs.12,00,000/- from ETA towards full and final settlement of all its claims and interests whatsoever as against ETA till date, subject to the terms as enumerated hereinafter.
2. In this regard ETA has handed over to BM Pipes the following post dated cheques, in the sum of Rs. 8 lacs, simultaneous to the signing of the present Agreement, with an undertaking and assurance that the aforesaid cheques shall be duly honoured on the presentation on the dates as mentioned therein:
  - i) Rs.2,00,000/- (Rupees Two Lacs Only) vide Cheque bearing No.000553 dated 20.10.2019 drawn on ICICIBank, Gautam Buddha Nagar, Noida Branch drawn in favour of B.M. Pipes Pvt. Ltd.
  - ii) Rs.2,00,000/- (Rupees Two Lacs Only) vide Cheque bearing No.000552 dated 20.11.2019 drawn on ICICI Bank, Gautam Buddha Nagar, Noida Branch drawn in favour of B.M. Pipes Pvt. Ltd.
  - iii) Rs.2,00,000/- (Rupees Two Lacs Only) vide Cheque bearing No.000554 dated 20.12.2019 drawn on ICICI Bank, Gautam Buddha Nagar, Noida Branch drawn in favour of B.M. Pipes Pvt. Ltd.
  - iv) Rs.2,00,000/- (Rupees Two Lacs Only) vide Cheque bearing No.000556 dated 20.01.2020 drawn on ICICI

*Bank, Gautam Buddha Nagar, Noida Branch drawn in favour of B.M. Pipes Pvt. Ltd.*

3. *It has been agreed between the parties that the Post Dated Cheques for the remaining sum of Rs. 4 Lacs, being 4 cheques of Rs. 1 Lac each dated 20.10.2019, 20.11.2019, 20.12.2019 and 20.01.2020 respectively, shall be handed over by ETA to BM Pipes within a period of two weeks from the date of signing of the present agreement.*
4. *The time shall be the essence of the present Agreement.*
5. *In view of the aforesaid Settlement and upon encashment of the all 4 aforementioned cheques, BM Pipes shall withdraw the following Civil suit bearing no. 376 of 2017 before Sh. Raj Kumar, Learned ADJ/PO MACT, West District, Tis Hazari Courts, Delhi filed against ETA Engineering. However, until such realization of the entire settlement amount, the Parties shall jointly pray that the said suit be kept in abeyance.*
6. *The parties agree that they shall jointly approach the Hon'ble National Company Law Appellate Tribunal in the Company Appeal bearing [AT] [INSOLVENCY] No. 281 of 2019 titled as "M/s. BM Pipes Pvt. Ltd. Vs. M/s. ETA Engineering Pvt. Ltd." and request the Hon'ble Tribunal to take these consent terms/settlement on record and pass an appropriate order.*
7. *After realization of the aforesaid amount of Rs.12,00,000/- as mentioned in para 2 and 3 above the parties shall have no claim whatsoever against each other and undertake not to file any case/complaint against each other in relation to any past disputes/unpaid invoices.*
8. *Notwithstanding anything that may have been stated herein to the contrary, it is mutually agreed between B.M Pipes and ETA that in case of any default/ dishonour on the part of ETA, B.M Pipes shall be entitled to claim its total outstanding dues. B.M Pipes shall further be entitled, under such circumstances, to institute/initiate/pursue all legal proceedings against ETA, including but not limited to, an application/petition before the Learned National Company Law Tribunal and proceedings under Negotiable Instruments Act.*
9. *The present Settlement has been arrived at between the parties of their own free will and without any force and/or coercion or any undue influence. The parties herein shall remain bound by*

*the terms of this Settlement and shall take all necessary steps and cooperate with each other to give effect to all the terms of this Settlement.*

*IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.*

***FOR AND ON BEHALF OF ETA ENGINEERING PRIVATE LIMITED***

*Sd/-*

-----

***Mr. Zafar Ahmad Khan***

***(Authorised Representative)***

***FOR AND ON BEHALF OF B.M PIPES PRIVATE LIMITED***

*Sd/-*

-----

***Mr. Vishal Bhalla***

***(Authorised Signatory)"***

2. In view of the aforesaid 'Terms of Settlement', we set aside the impugned order dated 29<sup>th</sup> January, 2019 and in view of the 'Terms of Settlement', the Appellant is allowed to withdraw the application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016'. The application filed under Section 9 of the 'I&B Code' is disposed of as withdrawn. The Adjudicating Authority will now close the proceedings. The parties will be bound by the 'Terms of Settlement'

and in case of failure, it will be open to the Appellant to bring the same to the notice of this Appellate Tribunal.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

[ Kanthi Narahari ]  
Member (Technical)

/ns/gc