

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 1118 of 2020

With

Company Appeal(AT) (Insolvency) No. 388 of 2020

IN THE MATTER OF:

Rajesh Nagpal

Erstwhile Director,
M/s Straight Edge Contracts Pvt. Ltd.,
B22, Swasthya Vihar,
Delhi – 110 092

...Appellant

Vs

1. Gupta Ji Electric Company

82, Ambedkar Marg, Ghazabad,
Uttar Pradesh – 201 001

**Respondent No. 1/
Operational Creditor
/ Original Applicant**

2. M/s Straight Edge Contracts Pvt. Ltd.

(Through IRP Mr. Ranjit Kumar)
Ground Floor, 4, Dayanand Vihar,
Delhi – 110 092

**Respondent No. 2
/Corporate Debtor
/Original Respondent
....Respondents**

Present:

For Appellant: Mr. Aviral Kapoor, Advocates

For Respondents: Mr. Ritesh Agarwal, Mr. Tejas Bhatia and Ms. Aishwarya Adlakha, Advocates for Respondent No. 1

Mr. Shailendra Singh and Mr. Abhishek Parmar, Advocates for IRP.

ORDER

13.03.2020 This matter was not on Board but has been taken up on mentioning.

2. Heard Advocate Shri Aviral Kapoor present for the Appellant. It is stated that the Appellant Mr. Rajesh Nagpal is also present. Advocate Shri Tejas Bhatia who appeared for Operational Creditor before Adjudicating Authority, New Delhi (See Impugned Order) is present on behalf of Respondent No. 1 - Gupta Ji Electric Company- Operational Creditor. It is stated that the authorised representative of Respondent No. 1, namely, Mr. Dhiraj Gupta is also present.

Advocate Mr. Abhishek Parmar is present on behalf of Interim Resolution Professional (in short '**IRP**')- Mr. Ranjeet Kr. Verma.

3. Learned Counsel for IRP states that Committee of Creditors (in short '**CoC**') has not yet been constituted in this matter. It is stated that the IRP has not received claims other than from the present Operational Creditor.

4. Learned Counsel for the Appellant and Respondent No. 1 submits that they have settled the dispute between them and the Corporate Debtor has issued different Post-dated cheques to settle the claim of the Operational Creditor. It is stated that post-dated cheques have also been issued to IRP to settle the Fees of IRP including CIRP cost.

5. The learned Counsel present referred to Memorandum of Understanding (in short '**MoU**') executed between the Appellant and Respondent No. 1 and state that the Respondent No. 1 wants to withdraw the Application which was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') before the Adjudicating Authority.

6. Learned Counsel for the Appellant states that the settlement has been arrived at with the consent of other Directors and Corporate Debtor will honour all the cheques issued and will ensure that the payments due to the IRP are also promptly made.

7. Learned Counsel for the Appellant further states that IRP has been issued cheque dated 30.03.2020 and the learned Counsel assures that the cheque would be honoured.

8. MoU entered into between the parties is as under:



सत्यमेव जयते

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL24134118945348S
Certificate Issued Date	: 15-Feb-2020 01:20 PM
Account Reference	: IMPACC (IV)/ d/860303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL24134118945348S
Purchased by	: STRAIGHT EDGE CONTRACTS PVT LTD
Description of Document	: Article 58 Memorandum of Settlement
Property Description -	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: STRAIGHT EDGE CONTRACTS PVT LTD
Second Party	: GUPTA JI ELECTRIC COMPANY
Stamp Duty Paid By	: STRAIGHT EDGE CONTRACTS PVT LTD
Stamp Duty Amount (Rs.)	: 100 (One Hundred only)



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MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made between M/s Straight Edge Contracts Pvt. Ltd through its director Mr. Rajesh Nagpal having registered

For Straight Edge Contracts Pvt. Ltd

Rajesh Nagpal
Authorised Signatory

Ph. : 4121437, 2797596
For GUPTA JI ELECTRIC CO.

Shreyansh
PARTNER

Statutory Alert:

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2. The onus of checking the legitimacy lies on the users of the certificate.
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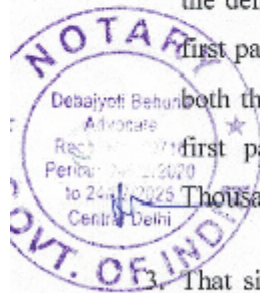
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office at Ground Floor, 4, Dayanand Vihar, Main Vikas Marg, Delhi-110092, also at 2C, Vaibhav Khand, GC Grand, Indirapuram, Gaziabad, Uttar Pradesh -201014, Also at B-22, Swasthya Vihar, Delhi- 110092 (**hereinafter referred as First Party**) and M/s Gupta Ji Electric Company through its Partner Mr. Dheeraj Gupta having their registered office at 82, Ambedkar Marg, Ghaziabad, Uttar Pradesh-201001 (**hereinafter referred as Second Party**) on this 12th day of March 2020 which reads as under:

1. That the first party had approached the second party for supply of electrical fittings, components, electrical wires, electrical switch, switch boards etc. Accordingly, the second party had supplied the aforesaid material to the first party at their project "Greenpolis" situated at Sector 89, Gurugram, Haryana and Zing located at Sector 168, Noida from December 2017 to April 2018.

2. That the materials were supplied by the second party on different dates as per the demands of the first party, against which the payments were made by the first party. The total amount due which is reflected from the ledger account of both the parties with respect to the supplies made by the second party to the first party is Rs. 1,46,49,934/- (One Crore Forty Six Lakh Forty Nine Thousand Nine Hundred Thirty Four Only).

3. That since the first party failed to make payment of the aforesaid dues, the second party filed CP (IB) No. 1071 (ND) OF 2019 before the Hon'ble National Company Law Tribunal, New Delhi which was admitted vide judgement and order dated 26.02.2020.



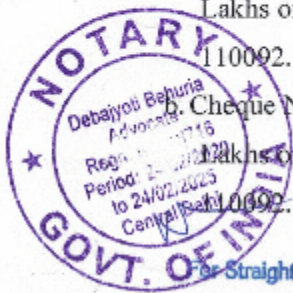
For Straight Edge Contracts Pvt. Ltd.
Rajesh Jagan
Authorised Signatory

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For GUPTA JI ELECTRIC CO.
Dheeraj Gupta
PARTNER

4. That against the order passed by the Hon'ble National Company Law Tribunal, New Delhi, the First Party filed an Company Appeal (Ins.) no.388/2020 before the Hon'ble National Company Law Appellate Tribunal, New Delhi. In the said appeal the Hon'ble National Company Law Appellate Tribunal, New Delhi vide its order dated 04.03.2020 issued notice but refused to grant any stay.
5. That now the First Party in discharge of their aforesaid liability of Principal amount of Rs.1,46,49,934/- (One Crore Forty Six Lakh Forty Nine Thousand Nine Hundred Thirty Four Only) has agreed to make the payment of the sum of Rs.1,46,49,934/- (One Crore Forty Six Lakh Forty Nine Thousand Nine Hundred Thirty Four Only) towards the full and final settlement.
6. That the first party has agreed to pay the aforesaid sum of Rs.1,46,49,934/- (One Crore Forty Six Lakh Forty Nine Thousand Nine Hundred Thirty Four Only) within a period of Two months through eighteen post dated cheques. The following post-dated cheques have been prepared and will be handed over by the First party to the Second Party before the NCLAT at the time of the settlement of the case. The details of the aforesaid cheques are as follows:

a. Cheque No. 002278 dated 01.04.2020 amounting to Rs. 5,00,000/- (Five Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.

b. Cheque No. 002279 dated 01.04.2020 amounting to Rs. 15,00,000/- (Fifteen Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.



Straight Edge Contracts Pvt. Ltd.

Rajesh Naffar
Authorised Signatory

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For GUPTA JI ELECTRIC CO.

Dhruv Gupta
PARTNER

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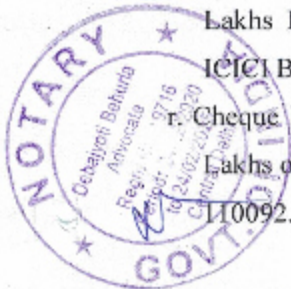
- c. Cheque No. 002280 dated 01.04.2020 amounting to Rs 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- d. Cheque No. 002281 dated 01.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- e. Cheque No. 002282 dated 06.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- f. Cheque No. 002283 dated 06.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- g. Cheque No. 002284 dated 06.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- h. Cheque No. 002285 dated 06.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- i. Cheque No. 002286 dated 21.04.2020 amounting to Rs 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- j. Cheque No. 002287 dated 21.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- k. Cheque No. 002288 dated 21.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.



For Straight Edge Contracts Pvt. Ltd
Rajesh Chandra
Authorised Signatory

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For GUPTA JI ELECTRIC CO.
Dijit
PARTNER

- l. Cheque No. 002289 dated 21.04.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- m. Cheque No. 002290 dated 06.05.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- n. Cheque No. 002291 dated 06.05.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- o. Cheque No. 002292 dated 06.05.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- p. Cheque No. 002293 dated 06.05.2020 amounting to Rs. 8,00,000/- (Eight Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- q. Cheque No. 002294 dated 06.05.2020 amounting to Rs. 4,49,935/- (Four Lakhs Forty Nine Thousand Nine Hundred thirty Five only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.
- r. Cheque No. 002303 dated 06.05.2020 amounting to Rs. 10,00,000/- (Ten Lakhs only) drawn on ICICI Bank Hargobind Enclave Branch, New Delhi-110092.



7. That the First Party has also agreed to make payment of the complete legal expenditure incurred by the second party in pursuing the litigation with relation to the present dispute before the Hon'ble National Company Law Tribunal, New Delhi and the Hon'ble National Company Law Appellate Tribunal, New Delhi and also make payment of the fee of the IRP and other

For Straight Edge Contracts Pvt. Ltd.

Rajesh Nigam
Authorised Signatory

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For GUPTA JI ELECTRIC CO.

Dhruv Jha
PARTNER

miscellaneous expenses incurred by the IRP, to the Second Party and already paid before the execution of the present MOU.

- 8. That the First Party undertakes to honour the aforesaid cheques towards discharge of their aforesaid liability and towards full and final settlement of the aforesaid dispute.
- 9. That In case the first party defaulted in payment of the money referred in this MOU, the second party will be at liberty to revive the Insolvency Proceedings initiated against the First Party vide order dated 26.02.2020 in CP (IB) No. 1071/ND/2019 passed by the Hon'ble National Company Law Tribunal, New Delhi and claim the whole amount from the first party and also to initiate appropriate legal proceedings against the first party.
- 10. That the First Party submits that no Insolvency Proceedings is pending against the First Party before any court of Law. That First Party also agreed that if any petition with respect to initiation of insolvency proceedings against the First Party is filed before the Hon'ble National Company Law Tribunal, New Delhi, the first party will ensure that before the hearing of the said case, they will honour the Cheques referred in the present MOU in favour of the Second Party or make sure that the payment in lieu of the due cheque amount is immediately made vide demand draft or electronic transfer to the second party.
- 11. That since the first party has entered into this MOU and agreed to make payment of the aforesaid dues, the second party agreed for disposal of pending



For Straight Edge Contracts Pvt. Ltd.
Rajesh Nigam
 Authorised Signatory

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 For GUPTA JI ELECTRIC CO.
Dhanjoti
 PARTNER

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Company Appeal (Ins.) no.388/2020 before the Hon'ble National Company Law Appellate Tribunal, New Delhi in terms of the present settlement.

12. The Second Party further agrees to withdraw IB No. 1071 of (ND) 2019 pending before the Hon'ble National Company Law Tribunal, New Delhi and any other case and notices initiated/issued by him against the First Party in relation to the disputes mentioned in the instant Memorandum of Understanding.

Executed on 12 th day March 2020. 13 MAR 2020

1. M/s Straight Edge Contracts Pvt. Ltd through its Ex director Mr. Rajesh Nagpal (First Party)

For Straight Edge Contracts Pvt. Ltd. Rajesh Nagpal Authorised Signatory

2. M/s Gupta Ji Electric Company through its partner Mr. Dheeraj Gupta (Second Party)

Ph. : 4121437, 2797596 For GUPTA JI ELECTRIC CO. Dheeraj Gupta PARTNER



WITNESSES

1. Deeksharand Deby JS 82255105

2. Satendra kumar (M) 9311803552

ATTESTED DEBAJYOTI BEHURIA NOTARY GOVT. OF INDIA CENTRAL DELHI Regn. No. 19718

13 MAR 2020

9. The Appellant and Respondent No. 1 admit the contents of the MoU and the same are taken on record. The parties would be bound by the contents of this MoU.

10. Keeping in view paragraph-79 of the Judgment in the matter of **“Swiss Ribbons Pvt. Ltd & Anr. Vs. Union of India & Ors”** in Writ Petition(C) No. 99 of 2018 (2019 SCC Online SC 73), exercising powers under Rule-11 of NCLAT Rule, 2016, we accept the MoU and we allow the Appeal and set aside the impugned order dated 26.02.2020. The Respondent No. 1, Original Operational Creditor is permitted to withdraw the Application which was filed under Section 9 of IBC.

11. The Appellant and the Directors of Shareholders of the Corporate Debtor/Respondent No. 2 – M/s Straight Edge Contracts Pvt. Ltd. shall remain bound by MoU/Agreement. In the case of default, they would be liable for action of contempt.

12. Liberty is also given to the Respondent No. 1 as well as IRP to move this Tribunal in case of any default on the part of Corporate Debtor in honouring the MoU/Agreement or non-payment of fees/CIRP costs of IRP for which cheque is stated to have been issued. If the Respondent No. 1 or IRP moves this Tribunal complaining default, this Tribunal may recall the present order and restore the Impugned Order.

13. In view of our Order in paragraph 10 supra, actions taken by IRP/RP in consequence of the impugned order are quashed and set aside. The Corporate Debtor is released from the rigour of law and is allowed to function independently

through its Board of Directors. The IRP/RP will hand back the records and management of the affairs of Corporate Debtor, to the Board of Directors.

Appeal is disposed accordingly.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn