

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) (Ins.) No. 994 of 2019

IN THE MATTER OF:

Dr. Mahesh Chowdappa

...Appellant

Versus

M/s Draeger India Private Limited & Ors.

...Respondents

Present:

For Appellant: Ms. Anuparna Bordolbi, Advocate.

**For Respondent: Mr. Arnab Ghosh and Mr. Manoj Khatri, Advocates for
Respondent No. 1**

O R D E R

16.12.2019 M/s Draeger India Private Limited- 'Operational Creditor' moved application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation for 'Corporate Insolvency Resolution Process' against M/s Chaya Health Care Private Limited. The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 9th August, 2019 admitted the application.

On 25th September, 2019, learned counsel for the appellant submitted that M/s Chaya Health Care Private Limited - 'Corporate Debtor' is a super speciality of 100 bedded Hospital. The 'Corporate Debtor' is viable and is a going concern who is capable to pay the claimed amount of M/s Draeger India Private Limited - 'Operational Creditor,' therefore, the appellant is ready to pay the claimed amount as sought for. It was further observed that the public notice was issued but no claim has been received by 'Interim Resolution Professional' from any other Creditor and the 'Committee of Creditors' has not been constituted.

In the circumstances, we passed interim order directing the 'Interim Resolution Professional' not to constitute the 'Committee of Creditors' if not, yet constituted and allowed him to keep the Company as a going concern. Parties are allowed to reach settlement.

Mr. Arnab Ghosh, Advocate appearing on behalf of the Respondent - M/s. Draeger India Private Limited submits that the parties have reached settlement and the 'Terms of Settlement' dated 13th December, 2019 has been kept on record, as extracted below:-

INDIA NON JUDICIAL
Government of Karnataka

Rs. 100

e-Stamp

Certificate No.	IN-KA57908147534834R
Certificate Issued Date	11-Dec-2019 11:46 AM
Account Reference	NONACC (FI) kaacs108/ HRBR LAYOUT/ KA-BA
Unique Doc. Reference	SUBIN-KAKACRSFL0832267974357738R
Purchased by	DR MAHESH CHOWDAPPA
Description of Document	Article 32(A) License of Immovable and Movable Property
Description	MEMORANDUM OF SETTLEMENT
Consideration Price (Rs.)	0 (Zero)
First Party	DR MAHESH CHOWDAPPA
Second Party	DRAEGER INDIA PVT LTD
Stamp Duty Paid By	DR MAHESH CHOWDAPPA
Stamp Duty Amount (Rs.)	100 (One Hundred only)

MEMORANDUM OF SETTLEMENT

This MEMORANDUM OF SETTLEMENT (this "Memorandum") is made of as is 13th day of December, 2019 (referred hereafter as "Date of Execution"); by and between;

- DR. MAHESH CHOWDAPPAS/o** DoddaChowdappa (late), Aged About 44 Years, Shareholder of M/s Chaya Health Care Private Limited, No. 6, 5th Main, B Channasandra Main Road, Kasturi Nagar, Bengaluru - 560 043, hereafter shall be referred as **First Party**.

GENERAL NOTE:
1. The authenticity of the Stamp Certificate issued by online or manual mode is the responsibility of the purchaser.
2. The rules governing the payment is on the basis of the certificate.
3. In case of any discrepancy please inform the Licensing Authority.

DRAEGER INDIA PVT LTD

(which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include all his legal heirs, successors, nominees, assignees affiliates, associates, executors, relatives group companies and firms), of the **First Part**;

And

2. **M/S DRAEGER INDIA PRIVATE LIMITED**, a private limited Non-Government Company, limited by shares registered under the provisions of the Companies Act, 1956 having its registered office 10th Floor, Commerz II, International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon, hereafter shall be referred as **Second Party**, (which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include all his legal heirs, successors, nominees, assignees affiliates, associates, executors, relatives group companies and firms), of the **Second Part**;

For the purpose of this Memorandum, the First Party and Second Party shall be referred as "**Party**" individually, and "**Parties**" collectively;

WHEREAS;

- A. Company Appeal no. 994/2019, is being filed by First Party, to challenge the orders dated 09.08.2019 (for short "the impugned orders") passed by the Hon'ble National Company Law Tribunal, Bangalore Branch, Bangalore (for short "**the Hon'ble NCLT**") in CP/88/BB/2019, titled as M/S DRAEGER INDIA PRIVATE LIMITED –VERSUS- M/S CHAYA HEALTH CARE PRIVATE LIMITED, being a proceeding U/s 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
- B. Without prejudice to any other legal rights/remedy of the Parties, the Parties have amicably arrived at a settlement in respect of the claim amount under Corporate Insolvency Resolution Process No. CP/88/Bb/2019 and are desirous to bind themselves, as per the terms and conditions of this Memorandum.

IN WITNESS WHEREOF THE PARTIES HAVE AGREED TO BIND THEMSELVES WITH THE FOLLOWING TERMS AND CONDITIONS;

Disposal of litigation:

- 1.1. Subject to the Terms and Conditions of this Memorandum, the parties hereby unequivocally agrees and undertakes to place this Memorandum of Settlement on record before the Hon'ble National Company Law Appellate Tribunal, New Delhi and to get the Appeal under Section 61(2) of the Code, entitled Dr. Mahesh Chowdappa v. M/S Draeger India Private Limited bearing No. Company Appeal no. 994/2019 before the Hon'ble National Company Law Appellate Tribunal, New Delhi, disposed off in terms of this Memorandum of Settlement, on the first date of hearing after the execution hereof, i.e., 16.12.2019.

2. Payment of Assured Returns:



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- 2.1. Subject to the mutual settlement arrived at 12.12.2019, the First Party has undertaken to pay the Second Party, an total amount of Rs. 29,00,000 /-(Rupees Twenty Nine Lakhs only)+ Rupees 4,00,000.00 (Rupees Four Lakhs Only) as a one-time settlement payment of the total claim under Appeal under Section 61(2) of the Code, entitled Dr. Mahesh Chowdappa v. M/S Draeger India Private Limited Company Appeal no. 994/2019 before the Hon'ble National Company Law Appellate Tribunal, New Delhi and Application under Section 9 of the Code, entitled Dr. Mahesh Chowdappa v. M/s. Draeger India Private Limited bearing No. CP/88/Bb/2019 before the Hon'ble National Company Law Tribunal, Bangalore (hereafter referred as "One-Time Settlement Amount") by or before 03-04-2020, which shall be payable as below:
- 2.1.1. Rs. 5,00,000/- (Rupees Five Lakh Only) will be paid vide Demand Draft No. 012989 dated 29-11-2019
- 2.1.2. A sum of Rs. 8,00,000/- (Rupees Eight Lakh Only) has already been issued in favour of the Second Party by the First Party bearing cheque no. 050046 dated 03-01-2020 drawn on Axis bank, which has been duly received by the Second Party.
- 2.1.3. A sum of Rs. 8,00,000/- (Rupees Eight Lakh Only) has already been issued in favour of the Second Party by the First Party bearing cheque no. 050047 dated 03-02-2020 drawn on Axis bank, which has been duly received by the Second Party.
- 2.1.4. A sum of Rs. 4,00,000/- (Rupees Four Lakh Only) has already been issued in favour of the Second Party by the First Party bearing cheque no. 050048 dated 03-03-2020 drawn on Axis bank, which has been duly received by the Second Party.
- 2.1.5. A sum of Rs. 4,00,000/- (Rupees Four Lakh Only) has already been issued in favour of the Second Party by the First Party bearing cheque no. 050049 dated 03-04-2020 drawn on Axis bank, which has been duly received by the Second Party.
- 2.1.6. Rs. 29,00,000/- + Rs. 4,00,000/- shall be paid by the First Party to the Second Party by or before 03.05.2020.
- 2.1.7. The Full and Final settlement of Rs. 29,00,000 + Rs. 4,00,000 /- is inclusive of all the claims of the Second Party including IRP fee and Legal Fee and on the basis of the representation given by the Second Party that the IRP is raising invoice of Rs. 2,00,000/- per month.
- 2.1.8. Second Party have represented the First Party that the IRP has raised an invoice for Rs. 2,00,000 per month, whereas the Hon'ble NCLAT had directed the IRP to charge Rs. 1,00,000/- per month. Second Party further informed the First Party that IRP has refused to reduce their fee.
- 2.1.9. Second Party undertakes to hand over the invoices raised and payments made to the IRP immediately upon signing of this Agreement in order to enable the First Party to produce the same before the Hon'ble NCLAT.
- 2.1.10. To secure the Second Party's interest, over and above the sum of Rs. 29,00,000/-, the First Party has agreed to pay a sum of Rs. 4,00,000/- with an understanding that the said amount will be payable if the IRP refuses to reduce her fee and no order is passed for reduction of the fees. The First Party has drawn a cheque for a sum of Rs. 4,00,000/- (Rupees Four Lakh Only) bearing no. 050052 dated 03.05.2020 drawn on Axis bank, which has been duly received by the Second Party in this regard.



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2.1.11. The second party agrees to return the said cheque of Rs. 4,00,000/- (Rupees Four Lakh Only) immediately within 7 days upon the order of the Hon'ble NCLAT directing the IRP to charge Rs. 1,00,000/- per month as their professional fee.

2.1.12. If the said cheque of Rs. 4,00,000/- (Rupees Four Lakh Only) is not returned to the First Party after the direction of the Hon'ble Tribunal, the First Party is entitled to give stop payment instructions to their bank and the Second Party will not initiate any proceedings against the aforementioned cheque of Rs. 4,00,000/- (Rupees Four Lakh Only)

2.2. The First Party herein undertakes that after fulfilment of the obligations undertaken in clause 2 of this Memorandum, no claim of the Second Party shall subsist and survive against the First Party, in respect of Company Appeal no. 994/2019 before the Hon'ble National Company Law Appellate Tribunal, New Delhi and Application under Section 9 of the Code, entitled Dr. Mahesh Chowdappa v. M/s Draeger India Private Limited bearing No. CP/88/BB/2019 before the Hon'ble National Company Law Tribunal, Bangalore and all such claims shall stand satisfied in toto.

2.3. The Second Party agrees and undertakes to withdraw the application filed before the Hon'ble National Company Law Tribunal, Bangalore in CP/88/BB/2019 before the Next Date of hearing i.e. 16.12.2019

2.4. The Parties agree that in case any of the cheques given under the settlement agreement are dishonoured, the appointment of the IRP will be restored and Second Party will be entitled to commence the proceeding under the code where it stopped and claim the entire sum as mentioned in the Application for initiating Corporate Insolvency Resolution Process (form 5) filed before the Hon'ble NCLT Bangalore Bench, after deducting the amounts received under the present agreement. Needless to mention, the same will be at the cost and consequence of the First Party.

2.5. If any of the representations, given in the memorandum are not honoured by the Second Party, the First Party is entitled to give stop payment instructions to their bank and the Second Party will not initiate any proceedings against the aforementioned cheque

3. Confidentiality:

3.1. The Parties agree and undertake that this Memorandum, and the terms thereof, and any transactions or dealings between the parties in accordance with or in relation to the terms of this Memorandum shall be deemed to be confidential.

4. Severability:

4.1. If any term or provision of this Memorandum is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable, or against its regulatory policy, the remainder of the terms or provisions of this Memorandum shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

5. Miscellaneous:



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- 5.1. **Governing Law:** This Memorandum shall be governed and construed in accordance with the laws of Republic of India. The Parties agree to submit to the exclusive jurisdiction of courts of Bangalore.
- 5.2. In the event of breach of the terms of this agreement or in the event of any differences or disputes arising between the parties in regard to this agreement or any matter relating thereto, the same shall be referred to and settled by Arbitration by a sole Arbitrator appointed mutually by both parties, under the Provisions of the Arbitration and Conciliation Act, 1996.
- 5.3. The language of Arbitration shall be in English and the venue of Arbitration shall be in Bangalore. Each party will equally bear the costs of such arbitration and will bear their respective legal costs.
- 5.4. **Waivers:** Except as otherwise provided in this Memorandum, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum to be signed (or by their respective officers thereunto duly authorized) as of the date first written above.

FIRST PARTY

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WITNESS :

1) _____

2) _____

SECOND PARTY

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Ms. Meghna Rao, Advocate appears on behalf of the 'Interim Resolution Professional' accepted the claim of Respondent 'M/s. Draeger India Private Limited and stated that the 'Committee of Creditors' has not been constituted. She submits that a sum of Rs. 6,23,000/- approximately has already been paid by the 'Operational Creditor'.

In view of the fact that the parties have reached settlement and in exercise of powers conferred under Rule 11 of the NCLAT Rules, 2016, we set aside the impugned order dated 9th August, 2019 passed by the Adjudicating Authority, National Company Law Tribunal, Bengaluru Bench and dispose of the application filed under Section 9 of the '**I&B Code**' preferred by M/s Draeger India Private Limited as withdrawn. The 'Corporate Debtor' 'M/s.

Chaya Health Care Private Limited is released from all the rigours of law and is allowed to function independently through its Board of Directors from immediate effect. The 'Interim Resolution Professional' will hand over the assets and records to the Board of Directors immediately.

In the facts and circumstances, we assess the fee and cost of the 'Interim Resolution Professional' / 'Resolution Professional' at Rs. 6,23,000/- (approximately) which has already been received. Parties are directed to comply with the 'Terms of Settlement' in letter and spirit.

The Appeal is allowed with the aforesaid observation(s) and direction(s).
No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

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