

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

**Company Appeal (AT) (Insolvency) No. 587 of 2019**

**IN THE MATTER OF:**

Shyam Kumar Garg .... Appellant

Vs

Sunrise 14-A/S Demnark & Anr. .... Respondents

**Present:**

**For Appellant: Ms. Ranjana Roy Gawai, Advocate with Mr. Shyam Kumar Garg, Appellant.**

**For Respondents: Mr. Manish Kumar Jha, Advocate for Respondent No.1.**

**Mr. Anil Bhatia, Interim Resolution Professional.**

**ORDER**

**10.06.2019** Sunrise 14 A/S Denmark ('Financial Creditor') filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) against Metalore Overseas Pvt. Ltd. ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 13<sup>th</sup> May, 2019 having admitted the application, the present Appeal has been preferred by Shyam Kumar Garg, Shareholder of Metalore Overseas Pvt. Ltd. ('Corporate Debtor').

2. When the matter was taken up on 29<sup>th</sup> May, 2019, learned Counsel for the Appellant submitted that the parties have reached settlement in principle and a formal agreement in regard to terms of settlement will be placed by the next date. The parties were allowed to reach settlement. Matter was posted to 4<sup>th</sup> June, 2019 and in the meanwhile 'Interim Resolution Professional' was directed not to constitute 'Committee of Creditors', if not yet constituted.

3. An affidavit has been filed on behalf of the Appellant, enclosing the terms of settlement dated 4<sup>th</sup> June, 2019, which are as follows: -

**“Execution Version**

**June 4, 2019**

**SETTLEMENT AGREEMENT**

*THIS Settlement Agreement (“**Agreement**”) executed on this 4<sup>th</sup> day of June 2019*

*By and Between*

**Maersk Trade Finance A/S**, a public limited liability company incorporated under the laws of Denmark, having its registered address at Esplanaden 50, DK-1263 Copenhagen K, with company registration no. (CVR) 32345808 hereinafter referred to as “**MTF**” (which expression shall unless repugnant to the context or meaning thereof mean and include its successors and assigns).

**And**

**Mr. Shyam Kumar Garg and Mr. Rahul Garg**, erstwhile Promoters/Directors and Shareholders of Metalore Overseas Private Limited (“**Metalore**”) (having majority control in the management of Metalore Overseas Private Limited), having their office address at 536, DLF Tower, Shivaji Marg, Moti Nagar, New Delhi- 110015 hereinafter referred to as “**Metalore Promoters**” (which expression shall unless repugnant to the context or meaning thereof be deemed to include their heirs, executors, administrators and assigns).

MTF And Metalore Promoters are hereinafter collectively referred to as “**Parties**”.

**WHEREAS:**

- A. A Trade Finance Facility Agreement (“**Facility Agreement**”) dated February 14, 2017 was executed by and between MTF and Metalore. MTF had sanctioned a trade finance facility to Metalore for an amount of up to USD 250,000 (United States Dollars Two Hundred and Fifty Thousand only) for the purposes and in accordance with the terms and conditions set forth in the Facility Agreement.
- B. The shareholding structure of Metalore as on the date of execution of these presents is more particularly itemized in **Annexure - A** hereto.
- C. On March 30, 2017, a sum of USD 247,392, was accordingly disbursed by MTF to Metalore in accordance with the terms of

*the Facility Agreement. However, upon the contractual date of repayment i.e. Due Date May 9, 2017, Metalore failed to make payment to Metalore.*

- D. Consequent thereto, MTF issued several reminders to Metalore qua payments due under the Agreement. As no payments were forthcoming from Metalore, MTF was constrained to file an Insolvency Application before the NCLT, Principal Bench i.e. C.P. No. 832(P.B.)/2018 under the Insolvency and Bankruptcy Code, 2016 (“**Code**”).*
- E. The outstanding payable by **Metalore** to MTF under the Facility Agreement as on May 1, 2018 is USD 222,722 (including LIBOR interest and default interest) (United States Dollars Two Hundred and Twenty Two Thousand seven hundred and Twenty Two only).*
- F. The Insolvency Application was finally disposed vide Order dated May 13, 2019 wherein the NCLT, Principal Bench directed initiation of the Corporate Insolvency Resolution Process. In accordance with the Code, Mr. Anil Bhatia, Interim Resolution Professional (“**IRP**”), has taken charge over the control and management of Metalore.*
- G. Being aggrieved, Mr. Shyam Kumar Garg (in his capacity as aggrieved party) filed an Appeal before the NCLAT i.e. Company Appeal (Ins.) No.587/2019 (“**Appeal**”).*
- H. During the pendency of the Appeal, the Metalore Promoters have approached MTF with an offer to pay a sum of USD 150,000 (United States Dollars One Hundred and Fifty Thousand only) (“**Settlement Amount**”) in full and final settlement of all the dues and liabilities of Metalore towards MTF and MTF has agreed to accept the Settlement Amount in full and final satisfaction of all outstanding dues.*
- I. For the above-mentioned purpose, the Parties are desirous of recording the terms and conditions of their settlement in writing to regulate their rights and obligations in accordance with terms and conditions mutually agreed to as follows.*

**NOW THEREFORE, the Parties agree as follows:**

- 1) The above Preamble shall be considered as an integral part of the present Agreement.*
- 2) As per records maintained by MTF, the total amount due and payable as on May 1, 2018 by Metalore to MTF is USD 222,722 (including LIBOR interest and default interest) (United States Dollars Two Hundred and Twenty Two Thousand seven hundred and Twenty Two only). However, in accordance with*

*the settlement arrived at between MTF and the Metalore Promotors, the Metalore Promotors agree and undertake that they shall pay to MTF the Settlement Amount of USD 150,000 (United States Dollars One Hundred and Fifty Thousand only) in full and final settlement of outstanding dues under the Facility Agreement, on the following terms and conditions:*

- a) *The Metalore Promotors shall make available the Settlement Amount in the account of Metalore i.e. Indusind Bank Sector 18 NOIDA. Account Number C/A 259810009430 upon execution of the present Agreement;*
- b) *Upon directions from the NCLAT on the next date of hearing of the Appeal i.e. June 4, 2019, the IRP will forthwith transfer the Settlement Amount to the account designated by MTF i.e. USD Account Beneficiary Name: Maersk Trade Finance A/S Beneficiary Address: Esplanaden 50, DK-1263 Copenhagen K Beneficiary Bank Name: Citi Bank London Beneficiary Bank Address: Canary Wharf Group, 25 Canada Square, Canary Wharf, London E14 5LB, UK Beneficiary Account No: 17777647 Beneficiary Swift Code: CITIGB2LXXX Beneficiary IBAN No: GB35CITI18500817777647 Bank Key / ABA no: 185008; and*
- c) *The settlement arrived at between the Parties will be taken on record by the NCLAT and accordingly the pending proceedings shall stand disposed by Order of the NCLAT.*

**3) Undertaking by Metalore Promotors:**

*Metalore Promotors hereby irrevocably and unconditionally agree, confirm and undertake that:*

- a) *They shall strictly comply with all the terms and conditions of the present Agreement;*
- b) *They shall execute such further documents, deeds and writings and do such further acts, deeds or things as may be necessary or required to effectuate the settlement arrived at between the parties;*
- c) *They are entering into the present Agreement in their own volition without any representation or warranty made by MTF.*

4) **Undertaking by MTF**

*MTF shall upon receipt of the Settlement Amount, hereby irrevocably and unconditionally agrees, confirms and undertakes that:*

- a) *It shall issue an email to the IRP and the Metalore Promoters acknowledging receipt of the Settlement Amount;*
- b) *The receipt of the Settlement Amount will be towards full and final settlement of the financial dues payable by Metalore to MTF under the Facility Agreement; and It will strictly comply with all the terms and conditions of the present Agreement;*

5) **Indemnity**

- (i) *Metalore Promoters shall defend, indemnify and hold harmless MTF and its officers, directors, employees, agents and affiliates, from and against all the losses incurred or suffered by MTF or any such person arising out of, resulting from any breach of Metalore Promoter's warranties, representations, covenants or undertaking contained herein.*
- (ii) *Notwithstanding anything contained in any other provision of this Agreement, MTF shall not be liable for any indirect, incidental or consequential loss or damage (including lost profits or loss of business) suffered or incurred by the other party in connection with the present Agreement.*

6) **Miscellaneous**

**(i) Governing Law**

*This Contract shall be governed by and construed in accordance with Indian Law with non-exclusive jurisdiction of the courts of New Delhi.*

**(ii) Entire Agreement**

*On and from the date of execution of this Agreement, this Agreement shall constitute an integral part of each of the Facility Agreement and shall always be read along with the Facility Agreement. No amendment to this Agreement shall be valid unless agreed to in writing by both the Parties.*

**(iii) Captions**

*The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.*

**(iv) Assignment**

*Neither Party shall transfer or assign this Agreement to any third party in whole or in part without the prior written consent of the other Party.*

**(v) Counterparts**

*This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.*

**IN WITNESS WHEREOF** the Parties hereto have here in set and subscribed their respective hands on the day and year first herein above mentioned.

*Signed and delivered by the within named*

- 1. Shyam Kumar Garg (Sd/-)**
- 2. Rahul Garg (Sd/-)**

*Signed and delivered by the within named*

**Maersk Trade Finance A/S**

**Sd/-**

*Signed and delivered by the within named*

*In the presence of witnesses:*

- 1) *Manish K. Jha (Sd/-)*  
*B-303, Ansal Plaza, Delhi-49.*
- 2) *(Sd/-) Ram Mohan Singh*  
*114, Canare Apartment,*  
*Sec 13, Rohini N Delhi 110085*

*Annexure-A*  
*METALORE OVERSEAS PVT. LTD.*  
*LIST OF SHARE HOLDERS*

<i>S.No</i>	<i>Name</i>	<i>Address</i>	<i>No. of shares</i>	<i>Face value</i>	<i>Amount</i>	<i>% of share</i>
1	SHYAM KUMR GARG	S/O LATE SH. T.R. GARG, C-2, PLOT C-5, BHAMASHAH MARG, DELHI-110009	921900	10	9,219,000	50.022
2	SARITA DEVI GARG	W/O SH SHYAM GARG, C-2, PLOT C-5, BHAMASHAH MARG, DELHI-110009	15000	10	150,000	0.814
3	ASHOK KUMAR JAYSAL		10000	10	100,000	0.543
4	ASHOK GOYAL	S/O SH. M.R. GOYAL, KD-124 PITAM PURA, DELHI-110034	1100	10	11,000	0.060
5	RAHUL GARG	S/O SH SHYAM GARG, C-2, PLOT C-5, BHAMASHAH MARG, DELHI-110009	125000	10	1,250,000	6.782
6	KRAC Securities Pvt. Ltd.		20000	10	200,000	1.085
7	Gomati Consultants Private Limited	333A, 2 <sup>nd</sup> Floor, Santmagagar, East of Kailash, New Delhi-110065	50000	10	500,000	2.713
8.	Karda Traders Private Limited	B-163, 1 <sup>st</sup> Floor, Amar Colony, Lajapat Nagar-IV, New Delhi-110024.	50000	10	500,000	2.713
9	Marco IT Systems Private Limited	326, L.G.F., Sant Nagar, East of Kailash, New Delhi-110065.	50000	10	500,000	2.713
10	Commo Info Solutions Private Limited	333A, 2 <sup>nd</sup> Floor, Santmagagar, East of Kailash, New Delhi-110065	50000	10	500,000	2.713

11.	<i>Techno Soft Infosystem Private Limited</i>	<i>36, 3<sup>rd</sup> Floor, Deepak Building, 13 Nehru Place, New Delhi-110019.</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
12	<i>Yunan Sales Private Limited</i>	<i>B-87, Block-B, Defence Colony, New Delhi-110024</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
13	<i>Sai Infoweb Private Limited</i>	<i>326, L.G.F., Sant Nagar, East of Kailash, New Delhi-110065.</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
14	<i>Purus Marketing Private Limited</i>	<i>B-87, Block-B, Defence Colony, New Delhi-110024</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
15	<i>Kushaagra Exports Private Limited</i>	<i>R-17, Private Colony, Sri Niwaspuri, New Delhi-110065</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
16	<i>M3M Traders Private Limited</i>	<i>7B/11, Sri Niwaspuri, New Delhi-110065</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
17	<i>Next Generation Exim Private Limited</i>	<i>R-17, Private Colony, Sri Niwaspuri, New Delhi-110065</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
18	<i>Groupone Informative Services Private Limited</i>	<i>7B/11, Sri Niwaspuri, New Delhi-110065</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
19	<i>Round Square Exim Private Limited</i>	<i>B-163, 1<sup>st</sup> Floor, Amar Colony, Lajapat Nagar-IV, New Delhi-110024.</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
20	<i>Third Generation Traders Private Limited</i>	<i>R-17, Private Colony, Sri Niwaspuri, New Delhi-110065</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713</i>
21	<i>Pragaya Multi Traders Private Limited</i>	<i>B-163, 1<sup>st</sup> Floor, Amar Colony, Lajapat Nagar-IV, New Delhi-110024.</i>	<i>50000</i>	<i>10</i>	<i>500,000</i>	<i>2.713”</i>

4. Mr. Manish Jha, learned Counsel appearing on behalf of Sunrise 14 A/S/ Denmark (‘Financial Creditor’) accepted that the parties have reached  
*Company Appeal (AT) (Insolvency) No. 587 of 2019*



settlement, as quoted above. However, it is informed that the Respondent is yet to receive the amount in terms of the settlement.

5. Mr. Anil Bhatia, Interim Resolution Professional appears in person and submits that he has already incurred expenses of Rs.1,65,000/- towards advertisement and some litigation. He further submitted that he is entitled for a fee for working about 30 days. He also accepted that 'Committee of Creditors' have not yet been constituted.

6. Taking into consideration the aforesaid fact that the parties have settled the matter, in exercise of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we allow the settlement and set-aside the impugned order dated 13<sup>th</sup> May, 2019. In the result, Company Petition No. IB-832(PB)/2018 filed by Sunrise 14 A/S, Denmark is disposed of as withdrawn. The Appellant, other Shareholders/ Directors of the 'Corporate Debtor' and Sunrise 14 A/S, Denmark will be bound by the terms of settlement. In case, the Appellant or Shareholders/ Directors or the 'Corporate Debtor' fails to pay the amount in terms of the settlement, it will be open to the Respondent Sunrise 14 A/S Denmark ('Financial Creditor') to move before this Appellate Tribunal for recall of this order and to revive the 'Corporate Insolvency Resolution Process' against M/s Metalore Overseas Private Limited. They may also file an application for initiation of contempt proceedings against the concerned Managing Director/ Directors and Shareholders including the Appellant.

7. Taking into consideration the fact and that 'Interim Resolution Professional' has worked for 30 days, we assess his fee at Rs.1,00,000/-. This apart, he will also be entitled for an amount of Rs.1,65,000/- towards cost incurred by him, i.e. total Rs.2,65,000/-. The Respondent Sunrise 14 A/S Denmark has advanced a sum of Rs.2,00,000/-, after deducting TDS. Therefore, 'Interim Resolution Professional' will be entitled for another sum of Rs.65,000/- only. The 'Corporate Debtor' will pay Rs.2,00,000/-, which includes TDS amount to the Sunrise 14 A/S Denmark, apart from the amount payable in terms of settlement. The amount of Rs.2,00,000/- be paid within 15 days. The rest amount of Rs.65,000/- be paid by the 'Corporate Debtor' to the 'Interim Resolution Professional' (Mr. Anil Bhatia)

within 15 days. We also make it clear that if the amount is being received by the 'Corporate Debtor' in US Dollar, parties will intimate the matter to the concerned Authority of the Government of India and may enclose a copy of this order.

8. In effect, 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 7 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.

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

[Justice S. J. Mukhopadhaya]  
Chairperson

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

[Kanthi Narahari]  
Member (Technical)

Ash/SK