

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.1000 of 2019

IN THE MATTER OF:

Ruchita Modi

...Appellant

Versus

Mrs. Kanchan Ostwal & Anr.

...Respondents

For Appellant: Ms. Ani Singh Jhala, Company Secretary

For Respondents: Shri Praveen Kumar Sharma, Company Secretary
(for Operational Creditor)

ORDER

04.11.2019 Company Secretary Ani Singh Jhala appears on behalf of the Appellant – Shareholder of MEC Shot Blasting Equipment Private Limited – Corporate Debtor. She states that she has directions from the Appellant who is present as also from Advocate - Shri Susshil Daga who could not appear today, to request recording of settlement deed between the Operational Creditor and the Corporate Debtor which is executed on 02.11.2019. She tenders the deed of settlement.

2. Company Secretary - Shri Praveen Kumar Sharma appears on behalf of the Operational Creditor – Mrs. Kanchan Ostwal. None present for IRP in spite of service of Notice.

3. Both the Company Secretaries state that there is settlement as per the deed of settlement which has been tendered at Bar.

4. This matter had earlier come up before this Tribunal on 26th September, 2019 when while issuing Notice, direction was given not to constitute Committee of Creditors if not yet constituted. Both the Company Secretaries make statement that Committee of Creditors has till now not been constituted.

5. As the Committee of Creditors has not been constituted and the Operational Creditor and the Corporate Debtor have settled their disputes, we take the deed of settlement on record. The deed of settlement tendered is taken on record and marked 'X' for identification. It reads as under:-

“DEED OF SETTLEMENT

This Deed of Settlement is executed on this 2nd day of November, 2019 at Jodhpur

BY AND BETWEEN

1. *Ms. Ruchita Modi, Mr. Anand Kishore Modi and Mr. Vaibhav Modi, erstwhile promoters/Directors and Shareholders of Mec Shot Blasting Equipments Private Limited (**'Mec Shot'**) (having majority control in the management of Mec Shot Blasting Equipments Private Limited), having their office at E-279, Marudhar Industrial Area, Phase II, Basni, Jodhpur – 342005 hereinafter referred to as **“Mec Shot Promoters”**, which expression shall unless repugnant to the context or meaning thereof be deemed to include their heirs, executors, administrators and assigns.*

AND

2. *Mrs. Kanchan Ostwal, Sole proprietor of J.K. Electricals, having office at 32, Baktawarmal ji ka Bagh, Chopasani Road, Jodhpur – 342003 (hereinafter referred to as the **'Operational Creditor'**)*

Operational creditor and Mec Shot Promoters are hereinafter collectively referred to as **“the parties”**.

WHEREAS

- A. *The operational creditor has supplied goods from time to time to Mec Shot. Upon the contractual date of payment Mec Shot failed to make payment of the operational debt to Operational Creditor against such supplies.*
- B. *After several reminders and rounds of negotiations relating to repayment of the due operational debt, Mec Shot acknowledged the debt on 30-01-2016 and issued 97 cheques against the total dues of operational creditor out of which some were honoured and some were dishonoured.*
- C. *The operational creditor again approached Mec Shot for payment but didn't get any proper response in the matter. Facing this the operational creditor was constrained to file an insolvency application before the National Company Law Tribunal, Jaipur Bench under Section 9 of Insolvency and Bankruptcy Code, 2016 ('IBC') vide company petition No. (IB)/93/9/JPR/2018.*
- D. *The insolvency application was finally disposed vide order dated 18-09-2019 wherein Hon'ble NCLT, Jaipur Bench ordered initiation of Corporate Insolvency Resolution Process against Mec Shot. In accordance with IBC, Mr. Anoop Kumar Goyal, Interim Resolution Professional (“IRP”) has taken charge over the control and management of Mec Shot.*
- E. *Being aggrieved, Ms. Ruchita Modi (in her capacity as shareholder and aggrieved party) filed an Appeal before National Company Law Appellate Tribunal, New Delhi vide Company Appeal (AT) Insolvency No. 1000 of 2019 (“Appeal”) and submitted that she is ready to settle the claim amicably if operational creditor approaches her for the same. Hon'ble NCLAT ordered Interim Resolutuion Professional not to constitute committee of creditors, if not already constituted, till 04-11-2019 i.e. the next date of hearing*

in the matter and issued necessary instructions in the matter.

- F. *The operational creditor in pursuance of the order of Hon'ble NCLAT approached the Mec Shot Promoters for settlement and Mec Shot Promoters offered to pay a sum of Rs. 60,65,668/- (Rupees Sixty Lac Sixty Five Thousand Six Hundred Sixty Eight only) ("Settlement amount") in full and final settlement of the dues and liabilities of Operational Creditor and Operational Creditor agreed to accept the settlement amount on the terms and conditions described in this Deed of Settlement.*
- G. *For the above mentioned purpose, the parties are desirous of recording the terms and conditions of their settlement in writing to regulate their right and obligation in accordance with the terms and conditions mutually agreed to as follows:*

NOW THIS DEED OF SETTLEMENT WITNESSTH AS UNDER:

1. *The above preamble shall be considered as an integral part of the present Deed of Settlement.*
2. *The shareholding pattern of Mec Shot as on the date of execution of these presents is attached as **Annexure - 1** hereto.*
3. *The Mec Shot Promoters acknowledge that there is a debt due and payable to the operational creditor by the corporate debtor and such debt amounts to Rs. 1,33,55,795.40 (Rupees One Crore Thirty Three Lac Fifty Five Thousand Seven Hundred Ninety Five and Forty Paise only) ("**the claim**") which includes principal amount, interest and legal expenses. Parties further agree that there is no dispute pending in respect of such claim and such amount is validly payable by the corporate debtor.*
4. *The parties sat across the table and agreed to settle the claim by making payment of following amounts:*

S. No.	Particulars	Amount (Rs.)
1	<i>Amount due and payable against supply of goods by the operational creditor</i>	53,65,668/-
2	<i>Amount towards legal expenses</i>	5,00,000/-
3	<i>Amount paid to Interim Resolution Professional as per NCLT Order dated 18-09-2019</i>	2,00,000/-
	Total	60,65,668/-

5. *Mec Shot Promoters agrees to pay the settlement amount of Rs. 60,55,668/- (Rupees Sixty Lac Fifty Five Thousand Six Hundred Sixty Eight only) to settle the claim of operational creditor which operational creditor accepted.*

6. *It was decided by the parties that the Mec Shot Promoters will make payment of Rs. 15,00,000/- (Rupees Fifteen Lac only) by way of demand draft payable to operational creditor and the balance amount will be paid in eight monthly installments for which post-dated cheques are being issued. The details of demand draft and the post-dated cheques are provided in the table given hereunder:*

S. No.	Date	Particulars	Amount (Rs.)
1	04-11-2019	<i>Initial payment by way of demand draft no. 208958</i>	15,00,000/-
2	30-12-2019	<i>Cheque No. 157780 issued by Mr. Anand Kishore Modi</i>	5.70.000/-
3	30-01-2020	<i>Cheque No. 157781 issued by Mr. Anand Kishore Modi</i>	5.70.000/-

4	29-02-2020	Cheque No. 157782 issued by Mr. Anand Kishore Modi	5.70.000/-
5	30-03-220	Cheque No. 157783 issued by Mr. Anand Kishore Modi	5.70.000/-
6	30-04-2020	Cheque No. 157784 issued by Mr. Anand Kishore Modi	5.70.000/-
7	30-05-2020	Cheque No. 157785 issued by Mr. Anand Kishore Modi	5.70.000/-
8	30-06-2020	Cheque No. 157786 issued by Mr. Anand Kishore Modi	5.70.000/-
9	30-07-2020	Cheque No. 157787 issued by Mr. Anand Kishore Modi	5,75,668/-
		Total	60,65,668/-

The above table is hereinafter referred to as **“the repayment schedule”**.

7. *The operational creditor agrees to settle the claim subject to clearing of all post-dated cheques and receipt of settlement amount as per the repayment schedule. Operational creditor confirms that there shall be no due from the corporate debtor against the claim after receipt of the settlement amount as per the repayment schedule.*
8. *The parties hereby undertake to present a copy of this Deed of Settlement to Hon'ble National Company Law Appellate Tribunal, New Delhi on 04-11-2019 with a request to stop the corporate insolvency resolution process (“CIRP”) against Mec Shot but the operational creditor reserves the right to reinstate CIRP if Mec Shot Promoters defaults in making payment as per repayment schedule. Parties further undertake to*

cooperate for taking necessary steps in this respect before the adjudicating authority.

9. *It is hereby agreed by the parties that the fees payable to Interim Resolution Professional, all other expenses relating to corporate insolvency resolution process, cost imposed by NCLT/NCLAT, if any, and all other expenses/costs of whatsoever nature, shall be borne by the Mec Shot Promoters and Mec Shot Promoters shall keep the operational creditor indemnified in respect of any such cost/liability occurring out of withdrawal of the application under IBC and any other proceeding in the matter.*
10. *Notwithstanding anything contained in any other provision of this agreement, the operational creditor shall not be liable for any indirect, incidental or consequential loss or damage (including lost profit or loss of business) suffered or incurred by the other party in connection with the present agreement.*
11. *It is hereby clarified that the operational creditor will withdraw the application under IBC only. All other legal proceedings initiated by the operational creditor against Mec Shot and/or Mec Shot Promoters shall be withdrawn by the operational creditor only after receipt of settlement amount as per the repayment schedule.*
12. *If Mec Shot Promoters fails to comply the terms of this deed and defaults in making payment as per the repayment schedule, this deed of settlement shall stand null and void and the claim of operational creditor amounting to Rs. 1,33,55,795.40 shall become payable by Mec Shot and Mec Shot Promoters without considering anything contained in this deed of settlement.*
13. *In case of default in making payment of the settlement amount as per the repayment schedule, the Operational Creditor will be open to move to adjudicating authority for revival of corporate insolvency resolution process against Mec Shot by setting aside any order passed by Hon'ble NCLAT. Operational creditor may also file an application for initiation of contempt proceedings against Mec Shot and Mec Shot Promoters in such case.*

14. That the parties to this Deed of Settlement have well understood and agreed to the above terms and conditions on their own with free will and without any coercion, pressure or undue influence.

15. This Deed of Settlement is executed in two counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument. One original will be kept by Mec Shot Promoters and One original will be kept by operational creditor.

In Witness whereof the parties hereto have hereunto set and subscribed their respective hands the day and year first hereinabove mentioned.

SIGNED AND DELIVERED BY

The within named Mec Shot Promoters

1. *Ruchita Modi*
2. *Anand Kishore Modi*
3. *Vaibhav Modi*

The within named Operational Creditor

Mrs. Kanchan Ostwal

Sole Proprietor of J.K. Electricals

In presence of Witnesses:

Witness 1

Witness 2

Signature

Name Hari Prasad Karwa

Naveen Ostwal

Father's Name

Manendra Kumar Ostwal

Address 83, Keshav Nagar, H-28-A, Bakhtawarmal ji
Jodhpur ka Bagh, Chopasani
Road, Jodhpur

Annexure 1 to the Deed of Settlement

*List of Shareholders of Mec Shot Blasting Equipments Private Limited
as on 02-11-2019*

S. No.	Name of shareholder	Address	No. of Shares held	% of holding
1	Anand Kishore Modi	47-B-5, PWD Colony, Jodhpur	1911560	48.83%
2	Vaibhav Modi	47-B-5, PWD Colony, Jodhpur	1830010	46.74%
3	Pushpa Modi	47-B-5, PWD Colony, Jodhpur	173230	4.42%
3	Ruchita Modi	47-B-5, PWD Colony, Jodhpur	100	0.01%
4	Hari Prasad Karwa	83, Keshav Nagar, Jodhpur	100	0.01%
		Total	3915000	

”

6. The Appellant hands over draft of Rs.15 Lakhs on behalf of Corporate Debtor - Mec Shot Blasting Equipment Private Limited to Company Secretary representing Mrs. Kanchan Ostwal – Operational Creditor along with post-dated cheques as mentioned in the deed of settlement.

7. Both parties state that they will be bound by this settlement. In exercise of inherent powers under Rule 11 of the NCLAT Rules, 2016, we allow the

settlement and set aside the Impugned Order dated 18th September, 2019 passed by Adjudicating Authority (NCLT) Jaipur (Court No.1). Company Petition No.(IB)-93/9/JPR/2018 filed by Mrs. Kanchan Ostwal against MEC Shot Blasting Equipment Private Limited is disposed of as withdrawn. The Appellant as well as shareholders, Directors of the Corporate Debtor will be bound by the terms of settlement. In case there is default in the payment in terms of the settlement, it will be open for the Operational Creditor to move this Appellate Tribunal for recall of this Order and to revive the CIRP process against the Corporate Debtor. The Operational Creditor may also file Application for initiation of the contempt proceedings against the defaulting Appellant, Directors/Director and shareholders.

As the IRP is functioning since 18th September, 2019 on admission of Section 9 Application, we compute the fees of IRP @ Rs.1,50,000/-. The IRP would be entitled to also recover CIRP costs as may have been incurred. The Appellant – for Corporate Debtor undertakes to contact IRP and pay fees as above and CIRP costs as may have been incurred by the IRP in 3 weeks, after deducting amount already received by IRP under the Impugned Order. In case IRP has any difficulty regarding CIRP costs, he would be entitled to move the Adjudicating Authority and the Appellant will be bound to pay the CIRP costs concerned, as may be directed by Adjudicating Authority.

8. The Impugned Order admitting Section 9 Application and 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.

The Company Appeal stands disposed of.

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

[Justice Venugopal M.]
Member (Judicial)

[Justice Jarat Kumar Jain]
Member (Judicial)

/rs/sk