

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 968 of 2019

IN THE MATTER OF:

Parvinder Singh

...Appellant

Vs

Intec Capital Ltd. & Anr.

...Respondents

Present:

For Appellant: Ms. Amrita Mishra, Advocate.

**For Respondents: Mr. Vinod Chaurasia, Advocate for IRP.
Mr. Piyush Moona, IRP.**

ORDER

06.12.2019: 'M/s Intec Capital Ltd.' (Financial Creditor) moved application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s Jagtar Singh and Sons Hydraulics Private Limited' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench – III by impugned order dated 3rd September, 2019 admitted the application.

2. Mr. Parvinder Singh, Authorised Representative of the Promoter of the Corporate Debtor preferred appeal against the said order. On 19th September,

2019, while the Appellant was substituted, learned counsel for the Appellant submitted that the Appellant on behalf of the Promoters is ready to settle the claim of the Financial Creditor. If necessary, they are ready to move before a 'Mediator', who may be appointed by this Appellate Tribunal. It was also submitted that Committee of Creditors has not been constituted till date.

3. For the said reason, the Interim Resolution Professional was while directed to ensure that the Corporate Debtor remains a going concern, also directed not to constitute Committee of Creditors, if not constituted, to enable the parties to reach amicable settlement.

4. Mr. Ketan Madan, learned counsel appearing on behalf of the Respondent – 'Intec Capital Ltd.' agreed for mediation and the matter was referred to Hon'ble Mr. Justice (Retd.) A. K. Sikri, Former Judge of the Hon'ble Supreme Court for mediation.

5. Hon'ble Mr. Justice (Retd.) A. K. Sikri, Former Judge of the Hon'ble Supreme Court forwarded the Mediation Report dated 2nd December, 2019 enclosing the Settlement Terms, as extracted below:-

**BEFORE JUSTICE A.K. SIKRI, FORMER JUDGE
SUPREME COURT OF INDIA MEDIATOR
MEDIATOR**

**Company Appeal (AT) (Insolvency) No. 968 of 2019
At the National Company Law Appellate Tribunal, New Delhi**

IN THE MATTER OF:

Parvinder Singh

.....Appellant

Versus

Intec Capital Ltd. & Anr.

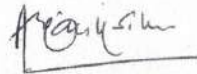
.....Respondents

राष्ट्रीय कम्पनी विधि अपील अधिकरण
NCLAT, Secretariat
ड. सं/Dy. No. 28232
दिनांक/Date. 03/12/19

REPORT

The Hon'ble Appellate Tribunal appointed undersigned as Mediator in the captioned matter. Mediation proceedings were held on 19.11.2019 and 23.11.2019 and have resulted in amicable settlement between the parties which are recorded in the settlement terms annexed with this report.

The Hon'ble Tribunal may pass appropriate Orders in terms of the said settlement.



New Delhi
02.12.2019

**Justice A.K. Sikri
Former Judge, Supreme Court of India
Mediator**

BEFORE JUSTICE A.K. SIKRI, FORMER JUDGE
SUPREME COURT OF INDIA MEDIATOR
MEDIATOR

Company Appeal (AT) (Insolvency) No. 968 of 2019
At the National Company Law Appellate Tribunal, New Delhi

IN THE MATTER OF:

Parvinder SinghAppellant

Versus

Intec Capital Ltd. & Anr.Respondents

SETTLEMENT TERMS

1. This Settlement Agreement is entered into between:

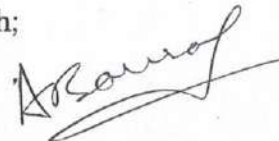
M/s Jagtar Singh & Sons Hydraulics Pvt. Ltd., a company incorporated under the Indian Companies Act, 1956, having its registered office at C-1/B, Mansarover Garden, New Delhi 110015, Mr. Parvinder Singh, S/o Mr. Hardeep Singh, R/o C-1/B, Mansarovar Garden, New Delhi 110015 (hereinafter referred to as the Corporate Debtor).

AND

M/s Intec Capital Limited having its registered office at 708, Manjusha Building, 57, Nehru Place, New Delhi 110019 through Mr. Ajay Bansal, Chief Consultant (Treasury & Client Resolution (hereinafter referred to as the Financial Creditor).



2. WHEREAS Agreement dated 28.03.2013 was signed between the Corporate Debtor and the Financial Creditor whereby a loan of Rs.3.18 crores (hereinafter referred to as the first loan) was given by the Financial Creditor to the Corporate Debtor which carried an interest @ 13.75%;
3. AND WHEREAS the said loan was to be paid back by the Corporate Debtor to the Financial Creditor in 60 monthly instalments of Rs.7.27 lakhs each for which Post Dated Cheques (PDCs) were given by the Corporate Debtor to the Financial Creditor;
4. WHEREAS Corporate Debtor paid about 13-14 instalments on time and thereafter paid some more instalments, though delayed, and in this manner, paid 38 instalments with interest and penalty on delayed payments;
5. AND WHEREAS the Corporate Debtor committed default in making the payments of the instalments thereafter as the cheques given by the Corporate Debtor were bounced and payment against those bounced cheques was not made and the account was seized by the bank due to account becoming NPA;
6. AND WHEREAS, in order to regularise the aforesaid account, the Financial Creditor agreed advance another sum of Rs.41,32,383 (hereinafter referred to as the second loan) which carried interest @ 13% on 31.05.2016 and this loan was to be repaid in 36 instalments of Rs.1.57 lakhs each;



7. AND WHEREAS the Corporate Debtor paid 34 instalments of second loan, but neglected to pay the amount of remaining 22 instalments in respect of the first loan;

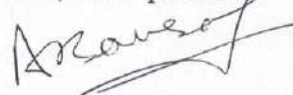
8. AND WHEREAS after payment of 34 instalments of the second loan, 2 instalments in respect of second loan were also not paid.

In this manner, 22 instalments of the first loan and 2 instalments of the second loan remained outstanding;

9. AND WHEREAS, Loan Agreement dated 28.03.2013 contains clause on payment of penal interest @ 36% in case of default. On account becoming irregular, the Financial Creditor adjusted Inter Corporate Deposit (ICD) of Rs.95.40 lakhs, without paying interest thereof, which was not payable in the event of default in repaying the loans;

10. AND WHEREAS the Financial Creditor initiated proceedings under Section 138 of the Negotiable Instrument Act on dishonouring of the cheques and also started Arbitration Proceedings against the Corporate Debtor;

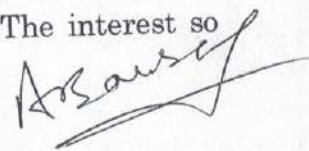
11. AND WHEREAS the Financial Creditor issued Notice dated 18.07.2017 to the Corporate Debtor and on the failure of the Corporate Debtor to pay the amount the Financial Creditor approached NCLT Bench III by filing CP-IB-619/New Delhi/2019 u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) and whereas *vide* Orders dated 03.09.2019, said petition



stands admitted in terms of Section 7 of the IBC and the NCLT has also appointed Mr. Piyush Moona as the Interim Resolution Professional (IRP);

12. AND WHEREAS the Corporate Debtor has preferred appeal against the said Order before the NCLAT, which is pending before it and in this Appeal, Orders were passed appointing Justice A.K. Sikri, Former Judge, Supreme Court of India as the Mediator;
13. AND WHEREAS the Mediator held Mediation sittings on 19.11.2019 and 23.11.2019 and as a result of the said Mediation discussion in the aforesaid hearings, the parties have amicably resolved all their disputes pertaining to the aforesaid two loans, out of which various proceedings have been initiated, including proceedings u/s 138 of Negotiable Instrument Act, arbitration proceedings, and IBC proceedings on the terms and conditions contained in this Settlement Agreement.
14. NOW, this Settlement Agreement executed between the parties on 23rd day of November 2019, witnesseth as under:
 - a. During the proceedings, the Financial Creditor stated that a sum of Rs.1.99 crore (consisting of principal amount, normal interest and delay interest) was outstanding as on 31.10.2019, in respect of loan granted *vide* Agreement dated 28.03.2013. Likewise, two instalments of Rs.1.57 lakh in respect of second loan are unpaid along with interest, which as accrued thereupon from May/June 2019.

- b. On the other hand, as per the Corporate Debtor, a sum of Rs.2,90,87,646 has been paid by the Corporate Debtor till December 2018 plus ICD amount of Rs.95.40 lakhs. The Corporate Debtor also maintained that on Rs.95.40 lakhs, no interest is paid. On the aforesaid respective basis, negotiation started between the parties, and it was agreed that the Corporate Debtor shall pay a sum of Rs.1.20 crore in respect of first loan given by the Agreement dated 28.03.2013 in full and final settlement of the said entire loan amount, in all respects. Further, the Corporate Debtor shall pay a sum of Rs. 5.00 lakhs in respect of second loan in full and final settlement.
- c. The amount of Rs.1.20 crore shall be paid in six instalments of Rs.20 lakhs starting from March 2020 as under:
- | | | |
|---------------------|---|-------------------------|
| - First instalment | - | on or before 20.03.2020 |
| - Second instalment | - | on or before 20.04.2020 |
| - Third instalment | - | on or before 20.05.2020 |
| - Fourth instalment | - | on or before 20.06.2020 |
| - Fifth instalment | - | on or before 20.07.2020 |
| - Sixth instalment | - | on or before 20.08.2020 |
- d. The Corporate Debtor shall not pay any interest on the aforesaid amount of Rs.1.20 crore till December 2019. However, simple interest @ 12% on reducing balance shall be calculated and paid w.e.f. 01.01.2020. The interest so



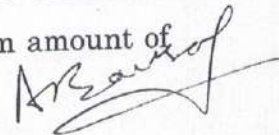
accrued shall be paid on 15th of next month whereby the interest for 20 days of August 2020 will be paid at the time of last instalment itself.

- e. The amount of Rs.5.00 lakhs to be paid in lump sum towards second loan shall be paid on or before 25.02.2020 for which PDCs shall be handed over to the Financial Creditor.
- f. In order to ensure payment of the aforesaid amounts, the Corporate Debtor shall give PDCs viz., 6 cheques of Rs.20 lakhs each towards payment of the first loan, cheque of Rs.5.00 lakhs towards payment of the second loan and seven cheques representing interest in respect of first loan. These cheques shall be handed over at the time of passing of the Order by the Hon'ble NCLAT on this settlement. The particulars of the PDCs are as under:

Cheque No.	Date	Amount	Drawn On
415774	25.02.2020	5,00,000/-	SBI, Mansarovar Garden
415759	20.03.2020	20,00,000/-	SBI, Mansarovar Garden
415760	20.04.2020	20,00,000/-	SBI, Mansarovar Garden
415761	20.05.2020	20,00,000/-	SBI, Mansarovar Garden
415762	20.06.2020	20,00,000/-	SBI, Mansarovar Garden
415763	20.07.2020	20,00,000/-	SBI, Mansarovar Garden
415764	20.08.2020	20,00,000/-	SBI, Mansarovar Garden
415765	15.02.2020	1,20,000/-	SBI, Mansarovar Garden
415766	15.03.2020	1,20,000/-	SBI, Mansarovar Garden
415767	15.04.2020	1,00,000/-	SBI, Mansarovar Garden
415768	15.05.2020	80,000/-	SBI, Mansarovar Garden
415769	15.06.2020	60,000/-	SBI, Mansarovar Garden
415770	15.07.2020	40,000/-	SBI, Mansarovar Garden
415773	15.08.2020	33,000/-	SBI, Mansarovar Garden

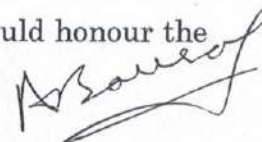
- g. Insofar as fee of IRP and other legal fee/expenses in respect of the said IRP are concerned, the Financial Creditor shall pay the same up to a maximum amount of





Rs.10.00 lakhs that too up to December 4, 2019. In case the said amount exceeds Rs.10 lakhs, the balance over and above Rs.10.00 lakhs shall be paid by the Corporate Debtor. The fee and expenses of IRP shall be paid by the Financial Creditor on the receipt of instalment from the Corporate Debtor, from time to time.

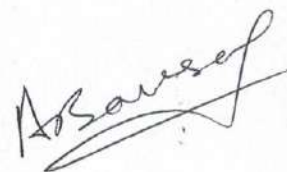
- h. Since the IBC Petition in respect of the Corporate Debtor stand admitted and the Board of Directors of the Company stand superseded with the appointment of IRP, the erstwhile Board is not competent to pass any Resolution authorising any person to enter into this settlement. This is the peculiar situation which has arisen in the matter. Though the Appeal before the NCLAT was initially filed by the Corporate Debtor Company, thereafter, Mr. Parvinder Singh, one of the employee, got himself impleaded in the Appeal and is signing the Settlement Agreement as well.
- i. Insofar as Mediation proceedings are concerned, Mr. Hardeep Singh attended the proceedings, representing Mr. Jagtar Singh and Mr. Sukhwant Singh, the erstwhile Directors, who have given Letter of Authority in his favour. In order to bind the company, the Hon'ble NCLAT may pass appropriate Orders.
- j. Both Mr. Jagtar Singh and Mr. Sukhwant Singh are ready to give undertaking and assurance to the NCLAT in the form of Affidavits to the effect that they would honour the



terms of this settlement and ensure that all cheques (PDCs) are encashed on presentation. They have also agreed to give undertaking to the Hon'ble NCLAT in this behalf with the stipulation that in case of breach of the Agreement, they would personally liable for the consequences, including contempt of Court. They have also agreed to give their personal guarantee for fulfilment of the obligations under the Agreement.

- k. It is agreed between the parties that on the recording of this settlement by the Hon'ble NCLAT, IBC Petitions filed by the Financial Creditors before the NCLT shall be disposed of on the aforesaid terms. It is also agreed between the parties that in case of default of first instalment or any two consecutive instalments thereafter in respect of the main loan, it will be treated as default on the part of the Corporate Debtor and the unpaid amount shall also be treated as admitted debt, entitling to the Financial Creditor to file fresh petition under Section 7 of the IBC, which shall be admitted by the NCLT forthwith.
- l. On payment of the entire amount as per this Settlement, the Financial Creditor shall withdraw all the cases filed by it against the Corporate Debtor their Directors, and personal guarantors, etc., including the following cases pending before the learned Metropolitan Magistrate, Saket Court:

Criminal Case No. 8115/2017



- Criminal Case No. 3030/2017
- Criminal Case No. 1732/2017
- Criminal Case No. 1110/2017
- Criminal Case No. 175/2017
- Criminal Case No. 637938/20176
- Any other cases filed by Financial Creditor

In the meantime, the proceedings shall be kept in abeyance on submission of this agreement in the courts and rendering a joint statement in this behalf. In case of default mentioned, it will be open to the para (k) above, the Financial Creditor to proceed with the cases and to have these cases decided on expeditious basis.

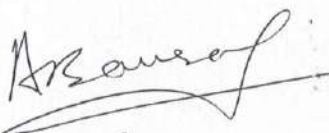
- m. On payment of the amount in terms of the Settlement, the Financial Creditor shall also return all the cheques given by way of security by the Corporate Debtor to the Financial Creditor, which are lying with the Financial Creditor.

IN WITNESS WHEREOF, the parties hereby sign the Agreement on this 2nd day of December 2019 at New Delhi.

For Jagtar Singh & Sons
Hydraulics Pvt. Ltd.


Parvinder Singh

For Intec Capital Ltd.


Ajay Bansal

State Bank Of India
 SEC-32-33 BLOCK-F MANASAROVAR GARDEN NEW DELHI
 DELHI 110015
 Tel: 11-25458017 IFS Code : SBIN003429

वैधता 3 महीने के लिए है / VALID FOR 3 MONTHS ONLY
 20052020
 D D M M Y Y Y Y

को या उनके आदेश पर OR ORDER

म/s Jutee Capital Ltd.
 Twenty Lacs Only

अदा करें ₹ 20000000/-

36473518563
 VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
 36581537463

CURRENT A/C
 PREFIX:
 0523500064

JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

VOID

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

Please sign above

⑈41576⑈ ⑈10002072⑈ 001252⑈ 29

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 SEC-32-33 BLOCK-F MANASAROVAR GARDEN NEW DELHI
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म/s Jutee Capital Ltd.
 Twenty Lacs Only

अदा करें ₹ 20000000/-

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Tel: 11-25458017 IFS Code : SBIN003429

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₹ Rupees Twenty Lacs Only → अदा करें ₹ 200000/-

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A/c No.

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केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
15022020
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को या उनके आदेश पर ~~OR ORDER~~

₹ Rupees One Lac Twenty Thousand Only → अदा करें ₹ 120000/-

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VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
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JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

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केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
15032020
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को या उनके आदेश पर ~~OR ORDER~~

₹ Rupees One Lac Twenty Thousand Only → अदा करें ₹ 120000/-

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JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

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 DELHI 110015
 Tel: 11-25458017 IFS Code : SBIN003429

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अदा करें ₹ 100000/-

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 VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
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JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

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केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
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को या उनके आदेश पर ~~OR ORDER~~

अदा करें ₹ 80000/-

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 CURRENT A/C
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 VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
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JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

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भारतीय स्टेट बैंक
 State Bank Of India

(03429) - MANASAROVAR GARDEN (NEW DELHI)
 SEC32-33 BLOCK-F MANASAROVAR GARDEN NEW DELHI
 DELHI 110015
 Tel: 11-25458017 IFS Code : SBIN003429

केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
 15 06 20 20
 D D M M Y Y Y Y

को या उनके आदेश पर ~~OR ORDER~~

अदा करें ₹ 60000/-

36473518583
 CURRENT A/C
 PREFIX: 0523500064
 VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
 36581537463

VOID

JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

Please sign above

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भारतीय स्टेट बैंक
State Bank Of India

(03429) - MANSAROVER GARDEN (NEW DELHI)
SEC/32-33 BLOCK-F MANASAROVAR GARDEN NEW DELHI
DELHI 110015
Tel: 11-25458017 IFS Code : SBIN0003429

केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
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D D M M Y Y Y Y

को या उनके आदेश पर ~~OR ORDER~~

MPG Intec Capital Ltd.
RUPEES Forty Thousand Only

अदा करें ₹ 40000/-

बि. नं. 36473518563
A/c No. 36473518563

VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
36581537463

VOID CURRENT A/C
PREFIX: 0523500064

JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

Please sign above

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भारतीय स्टेट बैंक
State Bank Of India

(03429) - MANSAROVER GARDEN (NEW DELHI)
SEC/32-33 BLOCK-F MANASAROVAR GARDEN NEW DELHI
DELHI 110015
Tel: 11-25458017 IFS Code : SBIN0003429

केवल 3 महीने के लिए वैध / VALID FOR 3 MONTHS ONLY
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D D M M Y Y Y Y

को या उनके आदेश पर ~~OR ORDER~~

MPG Intec Capital Ltd.
RUPEES Thirty Three Thousand Only

अदा करें ₹ 33000/-

बि. नं. 36473518563
A/c No. 36473518563

VALID UPTO ₹ 50 LACS AT NON-HOME BRANCH
36581537463

VOID CURRENT A/C
PREFIX: 0523500064

JAGTAR SINGH & SONS HYDRAULICS PVT LTD.

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI

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7. This Appellate Tribunal directed the Appellant to file affidavit on behalf of the Promoter of the Corporate Debtor giving undertaking that the post-dated cheques will be encashed on presentation and they will not be defaulted. An affidavit has been filed by the Appellant on behalf of the Promoter to that effect. It is stated that on default of any of the cheques, 'Parvinder Singh' (Appellant) and the Promoter will be personally liable.

8. The aforesaid post-dated cheques are being handed over to Mr. Ketan Madan, learned counsel for 'Intec Capital Ltd.' for onward transmission to the Respondent – Financial Creditor.

9. Interim Resolution Professional has worked for about three months. He was also present before the Hon'ble Mediator and his fee and cost has been determined in the Settlement Terms. Therefore, he will be entitled for the same. Mr. Piyush Moona, Interim Resolution Professional, who is present before this Appellate Tribunal will receive the amount in terms of the Settlement Terms.

10. In the fact and circumstances, in the light of decision of Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.**', **Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73** and in exercise of power conferred under Rule 11 of NCLAT Rules, 2016, we set aside impugned order dated 3rd September, 2019 passed by the Adjudicating Authority initiating Corporate Insolvency Resolution Process against 'M/s Jagtar Singh and Sons Hydraulics Private Limited' conditionally,

subject to the compliance of the Terms of Settlement by the end of August, 2020.

11. Terms of Settlement as recorded by the Hon'ble Mediator should be treated to be order and direction of this Appellate Tribunal to be complied by all the parties including the Promoters of 'M/s Jagtar Singh and Sons Hydraulics Private Limited' (Corporate Debtor); Parvinder Singh, Authorized Representative; Intec Capital Ltd. And Interim Resolution Professional. In the present, whole process practically stands suspended for compliance of the Terms of Settlement. The Corporate Insolvency Resolution Process can be revived by the Petitioner in case of breach of Terms of Settlement or default of any post-dated cheque. On completion of compliance of terms and conditions, the application under Section 7 will be deemed to have been withdrawn by 'Intec Capital Ltd.', otherwise the order setting aside the impugned order dated 3rd September, 2019 shall stand recalled and the Corporate Insolvency Resolution Process will continue. The Interim Resolution Professional may allow the Promoters/ Board of Directors to run the Corporate Debtor through Board of Directors. However, the Appellant, the Corporate Debtor, its Directors, Officers, Employees will not sell, alienate, transfer or create third party encumbrance on any of the movable or immovable property of the Corporate Debtor during the period Terms of Settlement are complied.

12. The Corporate Debtor may incur expenditure required for keeping the Company going concern, that is, for payment of salaries/wages of Directors;

Officers; employees'; workmen; current bills of the suppliers, electricity/water bills etc. However, it will not transfer any amount in favour of any shareholder or related party till the compliance.

13. It will be open to the parties to file appropriate application in this appeal for revival of the matter, in case of default.

14. The appeal stands disposed of with aforesaid observations and directions. No costs.

15. Let the Mediation Report filed by the Hon'ble Mediator be kept in a sealed cover alongwith the record.

16. Let the disposed of appeal be listed for reporting of compliance on **7th September, 2020.**

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/gc