

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1225 of 2019

IN THE MATTER OF:

Mr. Abhay Mehta

...Appellant

Vs.

**Industrial X-Ray & Allied
Radiographers Pvt. Ltd. & Ors.**

...Respondents

Present: For Appellant: - Mr. Rohit Rathi, Advocate.

**For Respondents: - Mr. Abhinav Gupta, Advocate for R-1.
Mr. Dhawal Deshpande, Advocate for R-2.**

O R D E R

25.11.2019— ‘M/s. Industrial X-Ray & Allied Radiographers Pvt. Ltd.’- (‘Operational Creditor’) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘Indus Projects Ltd.’- (‘Corporate Debtor’).

2. Learned counsel for the Appellant submits that after admission of the application under Section 9 and before constitution of the ‘Committee of Creditors’ parties have reached settlement on 5th October, 2019 in terms of which post-dated cheques have been issued.

3. The ‘Terms of Settlement’ reads as follows:

“CONSENT TERMS

The Operational Creditor and Corporate debtor above named had held an extensive discussion on the aforesaid matter and finally arrived at the following consent terms:

Contd/-...

1. The Corporate debtor agreed to pay an amount of Rs. 44,50,000/- (Rupees Forty Four Lakhs Fifty Thousand Only) in full and final settlement towards all its claims raised in the petition before the Hon'ble Tribunal.

The aforesaid agreed amount shall be paid by the Corporate debtor in by following manner.

<u>S. No.</u>	<u>Cheque Date</u>	<u>Cheque No.</u>	<u>Amount (Rs.)</u>
1.	21/04/2020	631731	22,25,000=00
2.	21/07/2020	631732	22,25,000=00

2. It is agreed, declared and confirmed that upon execution of these consent terms and compliance of terms thereof, both parties claims stand fully settled. It is further agreed, declared and confirmed by and between the parties that upon execution of the consent terms, neither party will make any claim, allegation and or shall file any petition, plaint, claim before any court of law, forum or tribunal. The Corporate debtor undertake that the said aforesaid agreed amount shall be paid on or before the end of the agreed date, failing which the operational creditor shall have the right to pursue the company petition before Hon'ble Tribunal and other legal remedies available.

3. Each party to bear costs.

4. Copy of present consent terms shall be submitted to Hon'ble NCLT at Mumbai with the prayer to dispose of the aforesaid matter as per provisions of law.

5. A copy of the present consent terms shall be submitted to the I.R.P, if required, who has been appointed by the Hon'ble NCLT vide order dated 1st October, 2019.

6. The Operational Creditor shall file a miscellaneous application in Company Petition stating that they do not wish to pursue the matter, in view of the settlement.”

4. Mr. Abhinav Gupta, learned counsel appearing on behalf of ‘M/s. Industrial X-Ray & Allied Radiographers Pvt. Ltd.’- (‘Operational Creditor’) admits that the ‘Term of Settlement’ has been reached between the parties prior to the constitution of the ‘Committee of Creditors’.

5. Mr. Dhawal Deshpande, learned counsel appearing on behalf of Mr. Uday Sakrikar, ‘Interim Resolution Professional’ also accepts that the ‘Terms of Settlement’ has been reached between the parties prior to the constitution of the ‘Committee of Creditors’. He further submits that the Appellant has agreed to pay Rs.50,000/- to Mr. Uday Sakrikar, ‘Interim Resolution Professional’ towards fees and costs.

6. Having heard learned counsel for the parties and taking into consideration the fact that the parties have reached settlement on 5th October, 2019 i.e. prior to the constitution of the ‘Committee of Creditors’ and in exercise of powers conferred under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we set aside the impugned order dated 1st October, 2019 and allow ‘M/s. Industrial X-Ray & Allied Radiographers Pvt. Ltd.’- (‘Operational Creditor’) to withdraw the application under Section 9 which stands disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The ‘Interim Resolution Professional’, on receipt of fee, will immediately hand over the records and assets of the ‘Corporate Debtor’ to the management of the ‘Corporate Debtor’. The ‘Corporate Debtor’ (company) is released from all the rigours of Law and is allowed to function independently through its Board of Directors from immediate effect.

7. So far as the 'Terms of Settlement' is concerned, it should be treated to be a direction issued by this Appellate Tribunal to be complied by the Appellant, Promoters and all Directors etc. and the 'Corporate Debtor' by 21st July, 2020.

8. In the meantime, except release of amount in favour of the 'Operational Creditor' and day-to day functioning of the 'Corporate Debtor' including the current payment of dues to the other Creditors etc., no amount should be diverted or withdrawn from the 'Corporate Debtor' till the total amount is paid to the 'Operational Creditor'. On failure, if the matter is brought to the notice of this Appellate Tribunal, the 'Corporate Insolvency Resolution Process' may be allowed to continue and the present order may be recalled. However, the Appellant, the Board of Directors, the Directors, the Employees or any other person/ Shareholders of the 'Corporate Debtor' will not sell or transfer or alienate any moveable or immoveable property of the 'Corporate Debtor' nor can create any third party encumbrance till the amount is paid in favour of the 'Operational Creditor'.

The Appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M)
Member(Judicial)

Ar/g