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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 04.11.2020

THROUGH VIDEO CONFERENCING
CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Ashok Kumar Borah, NCLT KOCHI
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 150/BB/2020	For hearing/ clarification memo for withdrawal	Sec 9 of I&B code 2016	Hypro Engineers Pvt Ltd	Ashutosh Srivastav for AA Associates	Jungbusch Ales India Pvt Ltd	Nikit Bala for ALMT Legal

ADVOCATE FOR PETITIONER/s:

Ashutosh Srivastav

ADVOCATE FOR RESPONDENT/s:

Nikit Bala

ORDER

Heard Mr. Ashutosh Srivastav, learned Counsel for the Petitioner and Mr. Nikit Bala, learned Counsel for the Respondent through Video Conference.

C.P(IB)No.150/BB/2020 is disposed of as withdrawn by separate order.

[Signature]
MEMBER (T)

Amar

[Signature]
MEMBER (J)

Verified

[Signature]
Court Officer

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

C.P.(IB)No.150/BB/2020
U/s. 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

IN THE MATTER OF:

Hypro Engineers Private Limited
Office No.3-6, Mantri Lavendula,
Survey No.52, Hissa No.4/b/2, Paud Road,
Bavdhan Khurd, Taluk Mulshi, Pune,
Maharashtra – 411 021.

- Operational Creditor/ Petitioner

Versus

Jungbusch Ales India Private Limited
4th Floor, Sipanu east Avenue, 439,
18th Main Road, 6th Block, Koramangala,
Bengaluru - 560 095.

- Corporate Debtor/Respondent

Order delivered on: 4th November, 2020

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. Ashutosh Srivastav, Adv.

For the Respondent : Mr. Nikit Bala, Adv.

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P.(IB)No.150/BB/2019 is filed by Hypro Engineers Private Limited (hereinafter referred to as the 'Operational Creditor /Petitioner') under Section 9 of the IBC, 2016, R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of Jungbusch Ales India Private Limited





(hereinafter referred to as the 'Corporate Debtor/Respondent') on the ground that the Corporate Debtor has committed default for a principal outstanding amount of Rs.59,80,000/- (Rupees Fifty Nine Lakh Eighty Thousand Only) along with an interest of Rs.27,13,000/- (Rupees Twenty Seven Lakh Thirteen Thousand only) at 18% p.a as on 15.12.2019.

2. Brief facts of the case, as mentioned the Petition by inter alia are as follows:

- (1) The Petitioner is a private limited Company engaged in conceptualising, developing, manufacturing and installing a wide range of products for industrial breweries, industrial craft breweries, microbreweries etc. and supplied 2 Microbrewery systems for Rs Rs.1,14,56,620/- and Rs.1,59,30,000/- respectively.
- (2) Disputes arose over the payments. As per the Petition the Respondent's site was not ready, it had not obtained the licence to run the microbrewery, but instead it sent a legal Notice dated 26.11.2019 mentioning certain defects. It was informed by the Petitioner to the Respondent that the corroded pieces will be replaced by the Petitioner after receipt of the payments. In respect of the second microbrewery the Respondent failed to operate the system as per the Petitioner's SOP. The Respondent has used the equipment and wilfully breached the terms and conditions of contract by not paying the due amounts. The Petitioner provided all the services and support until September 2019 without receiving payments for the equipment supplied.
- (3) The Respondent, in its objections stated that no debt was payable to the Petitioner; that it has not received Demand Notice under section 8 of the Code, 2016 which is a prerequisite to file an application under section 9 of the Code, 2016; that the Respondent has disputed the debt prior to 27.12.2019; that the machinery supplied and installed by the Petitioner is defective and demanded the Petitioner to take the Microbrewery systems and return Rs.2,00,00,000/- (Rupees Two Crore only) which was paid as part payment; that the claim of



Rs.27,13,000/- as interest at 18% p.a. is disputed as there is no contract or agreement for the payment of any interest, etc. Reference is made to the reply notice of the Petitioner dated 09.12.2019 and its Rejoinder Notice dated 14.01.2020 to the Petitioner. Details of email correspondence have been filed to state that issue of defects in the microbreweries is going on since much earlier. It is stated that the Respondent faced huge revenue loss due to the defective machinery, and in view of termination of contract with the Petitioner and rejection of the defective machinery supplied by the Petitioner there is no debt and therefore this petition is liable to be dismissed.

3. The case was listed on various dates viz., 16.06.2020, 13.07.2020, 14.08.2020 and 09.09.2020 and the same was adjourned on the above dates at the request of parties, on one ground or the other.
4. Mr. Ashutosh Srivastava, Learned Counsel for the Petitioner and Mr. Nikit Bala, learned Counsel for the Respondent appeared and heard through **video conferencing**. Even as the case was reserved for orders, the learned Counsel for the Petitioner and the learned Counsel for the Respondent submit that after mutual discussions and negotiations, the parties are agreed to settle all claims arisen between them. They have filed a Joint Memo dated 27.10.2020 (Which is taken on record), and which reads as under:

"1. The Applicant has filed an Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the Respondent with respect to payment of dues under Purchase Order No.001/18-19 dated 11.04.2018 and Purchase Order No.002/18-19 dated 11.06.2018. The Respondent has filed its Statement of Objections in the present petition. The Respondent has filed a Pre Institution Mediation Application under Section 12A of the Commercial Court Act, 2015, against the Applicant, with respect to the termination of the above mentioned purchase orders.

2. The Applicant and Respondent after mutual discussions and negotiations have agreed to settle all claims, between them



including the claims raised before this Hon'ble Tribunal, for Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) ('Settlement Amount'), payable by the Respondent to the Applicant Company, as per the terms and conditions as mentioned herein under.

3. The Applicant and the Respondent are desirous of recording the terms and conditions of the settlement arrived between them in writing below:

4. The Respondent shall pay the Settlement Amount to the Applicant in the following phased manner:

Sl.No.	Date of Payment (On or Before)	Amount (Rs)
1.	31/12/2020	20,00,000/-
2.	31/01/2021	9,00,000/-
3.	31/12/2021	6,00,000/-
Total		35,00,000/-

5. It is agreed that upon execution of the consent terms and joint memo of withdrawal, the Applicant will take all necessary steps to expeditiously withdraw CP/150/BB/2020 and no further claims of whatever manner shall be made against the Respondent, with respect to the Purchase Order No. 001/18-19 dated 11/04/2018 and Purchase Order No. 002/18-19 dated 11.06.2018 and all subsequent invoices raised on these Purchase Orders, before any court of law, tribunal, commission, authority, statutory body subject to the payments being realized in the manner afore stated at para 4.

6. Upon the withdrawal of the present petition, the Respondent will expeditiously withdraw the Application for Pre Institution Mediation bearing PIM No. 285/2020 filed before the District Legal Service Authority, City Civil Court Complex, Bengaluru.

7. The above mentioned terms and conditions mentioned herein above supersede all prior contract terms, mutual discussions, .

[Handwritten Signature]

negotiations between the parties and is the full and final settlement of claims and disputes between the parties.

7. The present consent terms and memo for joint withdrawal is being filed without prejudice to the right of the Applicant to approach any court of law or tribunal, including NCLT in the event of the Applicant failing to realize the Settlement Amount as per terms of this joint memo.

5. Since the Company Petition was reserved for orders but was not yet admitted, and since both the Petitioner and the Respondent herein have themselves filed the above joint memo praying for withdrawal of the instant Company Petition, we are inclined to permit the Petitioner to withdraw the instant Company Petition. The Petitioner is also granted liberty to approach any court of law or tribunal, including this Tribunal in the event of the Applicant failing to realize the Settlement Amount as per the terms of the said Memo.
6. In the result, **C.P.(IB)No.150/BB/2020**, is hereby disposed of as withdrawn.
No order as to costs.



ASHUTOSH CHANDRA
MEMBER, TECHNICAL

Amar



ASHOK KUMAR BORAH
MEMBER, JUDICIAL