

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

8. C.P.(IB)725(MB)/2021

CORAM:

SMT. ANURADHA SANJAY BHATIA,
MEMBER (T)

SMT. SUCHITRA KANUPARTHI,
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **04.04.2022**.

NAME OF THE PARTIES: Narayan Mangal
V/s

VATSALYA BUILDERS AND DEVELOPERS PRIVATE LIMITED

SECTION : Sec 7 of IBC 2016

ORDER

1. Ms. Ankita Sehgal, counsel for the Petitioner and Mr. Dhananjay Dhondarkar, counsel for the Corporate Debtor are present. This is a Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 for an amount of Rs. 78,65,000/-.
2. Heard the counsels from both sides. This Bench notes that the C.P. 3701/2019 was filed and the matter was dismissed as withdrawn on 13.12.2019 vide an order of the Bench wherein the Consent terms have been taken on record.
3. Consent terms/ Settlement Agreement categorically stated that the parties have entered in to the consent terms on 12th December, 2019 and have sought to settle the entire claim of Rs. 71,00,000/-. The Settlement Agreement/ Consent terms dated 12th December, 2019 is reproduced as below;



महाराष्ट्र MAHARASHTRA

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NAGPUR TREASURY
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09 DEC 2019

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AGREEMENT FOR SETTLEMENT WITH FINANCIAL CREDITOR

महाराष्ट्र राज्य न्यायालय, इंदूर

THIS AGREEMENT FOR SETTLEMENT is executed on 12th December, 2019 at Indore by and between:

1. Shri Narayan Mangal S/o Shri Harvilashji Mangal Aged About 65 Years resident of Sanskrati Pam, Palda- Mundia Road, Indore (M.P.) 452001 (Hereinafter called "Financial Creditor" or "Shri Mangal") which includes his legal heirs, assignees and successors;

And

2. Vatsalya Builders And Developers Private Limited having a company registered under Companies Act, 1956 by CIN:U45200MH2000PTC128402 and Registered Office at 201-202, Ganesh Chambers, 2nd Floor, Nehadia Square, Opp. Yashwani Stadium, Dhantoli, Nagpur (MH) (Hereinafter called "Vatsalya" or "Corporate Debtor") which includes its legal heirs and assignees and
Vatsalya Builders & Developers Pvt. Ltd.

Director

successors, acting through Shri Prafulla Purshottamrao Gadge (DIN 00186116), Director, duly authorized by the Board of Directors of the Company by the Board Resolution dated 09.12.2019

(hereinafter each shall be referred to as a "Party" and collectively referred to as the "Parties").

WHEREAS Vatsalya is a private limited company and is engaged in the business of Real Estate and Developers and Shri Mangal has provided an unsecured loans to Vatsalya from time to time since the year 2012 for the business requirements of Vatsalya.

WHEREAS Vatsalya has committed default in repayment of the principal loan amount together with the monthly interest payable @ 1.50% per month till 30th July, 2019, aggregating to Rs.61,75,388/- (Rs. Sixty One Lakhs Seventy Five Thousand Three Hundred Eighty Eight only) admitted by issuance of the Promissory Note for an equivalent amount executed by its Director on 30th March, 2019.

AND WHEREAS Vatsalya issued a cheque nos. 512805 dated 30th July, 2019 amounting to Rs.38,03,888/- and another cheque No. 512806 dated 30th July, 2019 amounting to Rs.23,71,500/- drawn on drawn on Allahabad Bank, Branch Bhanwarkua Branch Indore (M.P.), aggregating to sum of Rs. 61,75,388/- (Rs. Sixty One Lakhs Seventy Five Thousand Three Hundred Eighty Eight only).

AND WHEREAS Vatsalya has also issued another cheque no. 601999 dated 27th July, 2019 amounting to Rs. 45,000/-, cheque no. 602000 dated 12th August, 2019 amounting to Rs. 50,000/- and cheque no. 618178 dated 26th August, 2019 amounting to Rs. 50,000/-, aggregating to a sum of Rs. 1,45,000/- (Rs. One Lakh Forty Five Thousand only) for the payment of interest amount @ 1.50% p.m. payable for the period from 31st July, 2019 to 15th September, 2019, respectively drawn and payable on Nirmal Urban Co-operative Bank Ltd., Mehadia Chowk Branch, Dhantoli, Nagpur (MH) 440012.

AND WHEREAS Shri Mangal being the Financial Creditor has deposited all the aforesaid 5 (Five) cheques for total amount of Rs. 63,20,388/- (Rs. Sixty Three Lakhs Twenty Thousand Three Hundred Eighty Eight Only) in its bank account with Axis Bank Account No. 915010072753490 Sapna Sangeeta Branch, Indore (M.P.) on 19th Sept., 2019 for realisation and the Bank vide its Bank memo dated 20th September, 2019 has returned all the aforesaid 5 (Five) Cheques for total amount of Rs. 63,20,388/- (Rs. Sixty Three Lakhs Twenty Thousand Three Hundred Eighty Eight Only) with the remarks, "Insufficient Fund".

Director

AND WHEREAS for recovery of an outstanding amount of Rs. 63,20,388/- (Rs. Sixty Three Lakhs Twenty Thousand Three Hundred Eighty Eight Only) plus interest @ 1.50% p.m. thereon till the actual date of payment, Shri Mangal, the Financial Creditor has filed a petition in Form I under the provisions of section 7 of the Insolvency And Bankruptcy Code, 2016 (IBC) initiating Corporate Insolvency Resolution Process (CIRP) against Vatsalya being the Corporate Debtor before the Hon'ble Adjudicating Authority (NCLT, Court No. 3 of Mumbai) which got registered by Company Petition CP(IB) 3701(MB)/2019 and is pending for adjudication, listed for hearing on 13th December, 2019.

AND WHEREAS during the pendency of the petition, Vatsalya has approached and requested to Shri Mangal to arrive at full and final settlement of indebted claim in all and every respect without involving in the CIRP under the IBC and Shri Mangal has accepted the request of Vatsalya.

AND WHEREAS both the parties have agreed to settle their amount amicably between themselves at Rs.71,00,000/- Exclusive Income Tax TDS as applicable and net amount shall be payable by Cheques/Draft Rs. 71,00,000/- (Rs. Seventy One Lakhs Only).

AND WHEREAS both the parties hereto have agreed for recording the terms and conditions of the settlement of the outstanding claims as under:

IN WITNESS THEREOF IT HAS BEEN MUTUALLY AGREED THAT:

1. That Vatsalya admit and accept the outstanding payable to Shri Mangal, a sum of Rs. 63,20,388/- (Rs. Sixty Three Lakhs Twenty Thousand Three Hundred Eighty Eight Only) plus interest @ 1.50% p.m. thereon till the actual date of payment.
2. That after all discussions, deliberations and after giving effect to all costs, charges, interest etc. both parties come to a consolidate full and final settlement amount for Rs.71,00,000/- Exclusive Income Tax TDS as applicable and net amount shall be payable by Cheques/Draft Rs. 71,00,000/- (Rs. Seventy One Lakhs Only) Rs.71,00,000/- payable by Vatsalya to Shri Mangal and the Settlement amount shall be payable in the following 14 (Fourteen) monthly installments in a time bound manner:

S.No.	Particulars	Amount	Mode of Payment
1	Upfront Settlement Amount (1 st Installment)	6,00,000	Paid by Demand Draft No. 018050 dated 12.12.19 of AXIS Bank.
2	2 nd Installment	5,00,000	By Post dated Cheque No. 616051 dated 25.01.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
3	3 rd Installment	5,00,000	By Post dated Cheque No. 616052 dated


Vatsalya Builders & Developers

			25.02.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
4	4 th Installment	5,00,000	By Post dated Cheque No. 616053 dated 25.03.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
5	5 th Installment	5,00,000	By Post dated Cheque No. 616054 dated 25.04.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
6	6 th Installment	5,00,000	By Post dated Cheque No. 616055 dated 25.05.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
7	7 th Installment	5,00,000	By Post dated Cheque No. 616056 dated 25.06.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
8	8 th Installment	5,00,000	By Post dated Cheque No. 616057 dated 25.07.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
9	9 th Installment	5,00,000	By Post dated Cheque No. 616058 dated 25.08.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
10	10 th Installment	5,00,000	By Post dated Cheque No. 616059 dated 25.09.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
11	11 th Installment	5,00,000	By Post dated Cheque No. 616060 dated 25.10.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
12	12 th Installment	5,00,000	By Post dated Cheque No. 616061 dated 25.11.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
13	13 th Installment	5,00,000	By Post dated Cheque No. 616062 dated 25.12.20 of Nirmal Urban Co-operative Bank Ltd. Nagpur
14	Last (Full and final) Installment	5,00,000	By Post dated Cheque No. 616063 dated 25.01.21 of Nirmal Urban Co-operative Bank Ltd. Nagpur
	Total	71,00,000	(Rs. Seventy One Lakhs only)

3. The Shri Mangal will be having every right to present the above said cheques as agreed above within time in discharge of above mention legally enforceable debt. It is further clarified that the issuance of the abovementioned cheques are in discharge of honoring of commitments against a legally valid existing debt by Vatsalya in favor of Shri Mangal.
4. That Vatsalya has agreed and committed that it shall maintain adequate balance in its bank account before the due dates of the postdated cheques issued by it and Shri Mangal shall not require to seek any confirmation before presentation of any of the cheques to its Banker for encashment and realization of the due amount.
5. That it is clearly understood between the parties that if the aforesaid net amount of Rs.71,00,000/- (Rs. Seventy One Lakhs) is paid as per schedule as stated above, the entire claim of Shri Mangal shall stand satisfied. and he will withdraw the complaint, if any, filed after receipt of the last installments within 15 days.

Vatsalya Builders & Developers Pvt. Ltd.

6. That Shri Mangal shall submit the Settlement Agreement alongwith the Board Resolution of Vatsalya dated 09.12.2019 Annexed herewith as **Schedule I** before the National Company Law Tribunal, Court No. 3 of Mumbai vide No. CP(IB) 3701(MB) 2019 by submission of request for withdrawal of the said petition filed for initiating the CIRP.
7. That Shri Mangal on execution of this Settlement Agreement and within a period of 14 days agrees and undertakes to withdraw all the five Criminal Complaints filed against Vatsalya U/s 138 of the Negotiable Instrument Act, 1882 or any proceedings against the five cheques as mentioned in paragraph No.10 herein under.
8. That Shri Mangal on execution of this Settlement Agreement and within a period of 14 days agrees and undertakes to return all five original cheques i.e cheques bearing No. 512805 dated 30th March, 2019 for a sum of Rs. 38,03,888/- of Allahabad Bank , Cheque bearing No. 512806 dated 30th March, 2019 for a sum of Rs. 23,71,500 of Allahabad Bank, Cheque bearing Nos. 601999 dated 27th July, 2019 for a sum of Rs. 45000/-, Cheque No. 602000 dated 12th August, 2019 for a sum of Rs. 50,000/- and Cheque No. 618178 dated 26th August, 2019 for a sum of Rs. 50,000/- , which was issued by Vatsalya as a security towards the unsecured loans availed by them.
9. That Shri Mangal on execution of this Settlement Agreement and within a period of 14 days agrees and undertakes to return the original hundies/ promissory notes which were executed by Vatsalya during the process of commercial transaction.
10. That Shri Mangal on execution of this Settlement Agreement agrees and declares that, from hereon there are no debts and liabilities which are due and payable by Vatsalya to Shri Mangal, except for whatever is mentioned in this Settlement Agreement.
11. All the parties hereby agrees and declares that all the prior debts and liabilities are settled between them and there are no pending debts and liabilities except for whatever is stated in this Settlement Agreement. The parties undertake not to initiate any legal proceedings against each other for claiming any prior debts except for whatever is stated in this Settlement Agreement.

 Vatsalya Builders & Developers Pvt. Ltd.

12. In case of any default committed in payment of the aforesaid settlement amount by Vatsalya, Shri Mangal shall be free from all the obligation of this settlement agreement and shall be entitled to claim from Vatsalya on entire unpaid outstanding with further interest @ 1.50% p.m. on the unpaid amount as the case may be till the date of actual payment made by Vatsalya to Shri Mangal, and Shri Mangal and shall be entitled and eligible to initiate fresh legal proceedings against Vatsalya under section 7 of the IBC and/or under the Negotiable Instrument Act, on the basis of the Original amount of Rs. unsecured loans Rs. 61,75,388/- (Rs. Sixty One Lakhs Seventy Five Thousand Three Hundred Eighty Eight only) and the discount/settlement in the interest amount shall be revert back and added for the unpaid amount as may be required.

All the communication shall be made by the parties

(a) To Vatsalya by Registered Speed Post at:

Vatsalya Builders And Developers Private Limited
Through Shri Prafulla Purshottamrao Gadge, Director
201-202, Ganesh Chambers, 2nd Floor,
Nehadia Square, Opp. Yashwanil Stadium
Dhantoli, Nagpur (MH) 440012
Email: vatsalyanagpur@gmail.com

(b) To Shri Mangal by Registered Speed Post at:

Narayan Mangal
R/o 74, Sanskrati Pam, Palda- Mumda Road,
Indore (M.P.) 452001

Any communication by email received after 5.00 P.M. shall be deemed to be served on the next date at 10.30 A.M. and in case of communication by the Speed Post, the date and time of delivery of document shall be taken as duly served. However, no SMS or Whatsapp message shall be treated communication and shall not be binding to other party.

13. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives.

14. A Party's rights under this Agreement shall not be assigned without the express written consent of the other Party.

15. This Agreement shall be governed by Laws of India and shall be subject to the exclusive jurisdiction of the competent Court at Indore (M.P.)

Vatsalya Builders & Developers Private Ltd.

Director

16. This Agreement is signed by both the Parties by their free will and without any coercion or undue influence being exerted upon them and with the clear mind set to implement with the time line and avoid dispute and facilitate to both the Parties to carry on their business activities smoothly. This Agreement constitutes the entire agreement between the parties concerning the aforesaid settlement.

17. If any portions of this Settlement Agreement are held invalid and unenforceable, all remaining portions shall nevertheless remain valid and enforceable, to the extent they can be given effect without the invalid portions.

18. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Each person signing this Settlement Agreement hereby represents and warrants that he or she has the authority to bind the entity on behalf of which he or she has signed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date written above.

In witness whereof the Parties hereto have hereunto set and subscribe their respective hands to the day and year first hereinabove written.

For and on behalf of
VATSALYA BUILDERS AND DEVELOPERS PVT. LTD.

PRAFULLA PURSHOTTAMRAO GADGE
(DIN 00186146)
DIRECTOR

Common Seal of the Company Affixed in presence of
Shri Prafulla Purshottamrao Gadge


NARAYAN MANGAL
FINANCIAL CREDITOR

Place:

Witness:

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1. Mahanagar Patil Ganesh Chambers, Dhankot
Nagpur, Maharashtra

Place:

Witness:

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4. As per clause 2 of the Settlement Agreement/ Consent terms, the Corporate Debtor has paid upfront an amount of Rs. 6,00,000/-. The Corporate Debtor had in fact handed over 13

cheques towards the repayment of balance outstanding dues. However, the Petitioner pointed out that all of these 13 cheques have been bounced and an action under section 138 of the Negotiable Instruments Act, 1881 have been initiated.

5. Further, during the course of hearing, the counsel for the Corporate Debtor has denied the execution of the said Settlement Agreement between the parties, however, from the facts it is clear that there was a breach of consent terms by the Corporate Debtor and the same is established by the fact that the post-dated cheques were bounced and there is a default in terms of payment of debt. Hence, the Petition is admitted.
6. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
7. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves 'Admission'.
8. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any

disciplinary action is pending against the said proposed Interim Resolution Professional.

9. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, Mr. Navin Khandelwal, having registration IBBI/IPA-001/IP-P00703/2017-2018/11301, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
10. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
11. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
12. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

13. In view of the above, the Bench "Allows" the Company Petition No. 725 of 2021 u/s.7 initiating CIRP against the Corporate Debtor i.e. Vatsalya Builders and Developers Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
14. Ordered Accordingly.

Sd/-

ANURADHA SANJAY BHATIA
Member(Technical)

Sd/-

SUCHITRA KANUPARTHI
Member(Judicial)

/P/