

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

I.A. No. 1356 of 2021

in

Company Appeal (AT) (Insolvency) No. 951 of 2019

&

I.A. No. 1719, 2557 of 2020

IN THE MATTER OF:

Edwell Infrastructure Hazira Ltd.

Essar House, 11 K.K. Marg,
Mahalaxmi, Mumbai - 400034

**...Appellant/
Petitioner.**

Versus

1. Siddhi Vinayak Logistics Ltd.

Plot No. 14,15, Bhatpore, GIDC ONGC,
ONGC Plant Hazira, Surat,
Gujarat – 394510

...Respondent No.1.

2. Arkay Logistics Limited

Having its registered address at:
Unit 261, Level 2,
Upper Level, Kamala House,
Senapati Bapat Marg,
Kamala City, Lower Parel,
Mumbai – 400013

... Respondent No. 2

**For Appellant: Shri Ramji Srinivasan, Sr. Advocate with
Shri Abhijeet Sinha, Shri Himanshu Satija and
Shri Rohan Talwar and Mr. Ajitesh Soni,
Advocates.**

**For Respondent: Ms. Veena Sivaramakrishnan,
Mr. Siddhant Kant, Mr. Sumant Prashant,
Ms. Moulshree Shukla and Apeksha,
Advocates for R-1.
Ms. Purti Gupta, Advocate for R-2.
Ms. Annanya Ghosh, Ms. Ragini Gupta,
Respondents in IA 2557/2020.**

**ORDER
(Virtual Mode)**

22.07.2021 Perused Interlocutory Application No. 1356 of 2021 in
Company Appeal (AT) (Ins.) No. 951 of 2019.

2. This Appeal has been filed by Shareholder of Corporate Debtor-Arkay Logistics Limited- Respondent No. 2 against Impugned Order dated 29th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) in CP(IB) – 3249/I&BP/MB/2018 whereby the Application under Section 9 filed by Respondent No. 1-Operational Creditor was admitted. The Original Petitioner is Siddhi Vinayak Logistics Limited – Respondent No. 1 who filed the Application through Liquidator as Respondent No. 1 itself was undergoing CIRP (now it is in Liquidation).

3. This Application has been filed by the Appellant under Rule 11 of NCLAT Rules, 2016. It is stated that the Appellant and the Corporate Debtor have settled the dispute. In this matter when Appeal was filed Publication itself was stayed vide Orders dated 13th September, 2019 read with 20th September, 2019. The Learned Sr. Counsel for the Appellant refers to the Settlement Agreement entered into between the Appellant on behalf of the Corporate Debtor – Arkay Logistics Ltd. and the Respondent NO. 1- Original Petitioner – Siddhi Vinayak Logistics Ltd. copy of which has been filed with the Application at Annexure C. The contents of which read as under:

“SETTLEMENT AGREEMENT

Settlement Agreement between Edwell Infrastructure Hazira Limited (Shareholder of M/s Arkay Logistics Limited, Corporate Debtor)

AND

Siddhi Vinayak Logistic Limited (Corporate Debtor Undergoing Liquidation proceedings)

THIS SETTLEMENT AGREEMENT (“Agreement”) is being made in Duplicate sets and executed at Mumbai on this 19th day of July, 2021 amongst:

BETWEEN

*Edwell Infrastructure Hazira Limited, incorporated under the Companies Act, 1956, having its Registered Office at: Essar House, 11, K.K. Marg, Mahalaxmi, Mumbai – 400034 represented through its Director, Mr. Manish Kedia, hereinafter referred to as “**First Party**” which expression unless repugnant to*

its meaning or context otherwise shall include its legal heirs, successors, executors, administrators, directors, promoters, assigns and legal representative of the First Party;

AND

Siddhi Vinayak Logistic Limited, having its Registered Office at: Plot No.14-15, Bhatpore G.I.D.C., ONGC Plant, Hazira, Surat – 394 510, represented by its Liquidator (appointed under Section 34(1) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) vide order dated 19.11.2018 Hon`ble National Company Law Tribunal (“**Hon`ble NCLT**”) Ahmedabad) Mr. Dushyant Dave, hereinafter referred to as “**Second Party**” which expression unless repugnant to its meaning or context otherwise including its legal heirs, liquidator, successors, executors, administrators, assigns and legal representatives of the Second Party;

Hereinafter collectively referred to as the **Parties**

WHEREAS

The Second Party M/s. Siddhi Vinayak Logistic Limited has filed an application under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against M/s. Arkay Logistics Limited.

AND WHEREAS

M/s. Siddhi Vinayak Logistic Limited, has sought initiation of CIRP under Section 9 of IBC against M/s. Arkay Logistics Limited on the ground, that M/s. Arkay Logistics Limited committed default in payment for services availed from M/s. Siddhi Vinayak Logistic Limited to the extent of Rs. 26,70,55,042.96/-.

AND WHEREAS M/s. Siddhi Vinayak Logistic Limited has filed an Application CP (IB) 3249/1&BP/MB/2018 for initiation of CIRP against M/s Arkay Logistics Limited and the NCLT, Mumbai passed order of admission on 29.08.2019.

AND WHEREAS the first party M/s. Edwell Infrastructure Hazira Limited, is a Company incorporated under the provisions of the Companies Act, 1956 and 51% Shareholder of M/s Arkay Logistics Limited, which is currently undergoing CIRP.

AND WHEREAS Edwell Infrastructure Hazira Limited, First Party, being the shareholder of M/s Arkay Logistics Limited and being Aggrieved by the order of admission, had challenged the order of initiation of CIRP against M/s Arkay Logistics Limited by filing Company Appeal No. 951 of 2019 before the Hon`ble NCLAT, which issued notice and interim order on the appeal of the First Party herein on 13.09.2019 and directed that the Resolution Professional not to issue any advertisements inviting claims from creditors.

AND WHEREAS the First Party made its first proposal of settlement vide letter dated 15.01.2020, and later on upward revised the offers on 01.09.2020 and 23.10.2020.

AND WHEREAS the Second Party gave counter offer vide letter dt. 12.07.2021 to First Party towards the full and final satisfaction of dues of M/s. Arkay Logistics Limited for resolving matter expeditiously.

AND IN CONSIDERATION OF THESE PRESENTS, THIS AGREEMENT WITNESSETH AS UNDER:

That both First Party and Second Party have mutually agreed and arrived at an amicable settlement of the subject matter of Section- 9 petition under IBC which was filed by the Second Party against M/s Arkay Logistics Limited, which subsequently got admitted by Hon'ble NCLT, Mumbai vide order dated 29.08.2019. It is made clear that First Party has agreed and arrived at settlement in his capacity as a shareholder of M/s Arkay Logistics Limited, which is currently undergoing CIRP.

TERMS OF SETTLEMENT

1. That both the Parties have agreed that in terms of the settlement, the First Party would pay an aggregate amount of Rs.6.50 Crores towards full and final settlement of the alleged outstanding dues which is the subject matter, on which the admission order dated 29.08.2019 was passed by Hon'ble NCLT, Mumbai.
2. The settlement amounts were required to be transferred as per terms to the account designated by Liquidator i.e.

Beneficiary Name: PUNJAB NATIONAL BANK

Account Name: SIDDHI VINAYAK LOGISTIC LIMITED IN LIQUIDATION

Beneficiary Account No: 1232002100047318;

IFSC: PUNB0123200

3. The First Party has transferred the settlement amounts to the Second party vide RTGS/NEFT to the aforesaid account designated by Liquidator towards the full and final satisfaction of dues/claim under the subject matter, on which the admission order was passed by Hon'ble NCLT, Mumbai as per the following schedule:

SN	Date	UTR Ref. No.	Amount
1	16-07-2021	SBINR12021071633133374	1,00,00,000
2	17-07-2021	SBINR12021071733261754	5,50,00,000
		Total	6,50,00,000

4. That, it is mutually agreed between the parties that the present Agreement shall be binding on both the Parties and the Agreement shall be immediately effective and implemented.

5. That the Parties agree that in the event the terms of this Agreement and settlement between the Parties thereto, are construed and/or treated as a preferential transaction or determined as an avoidable transaction under the IBC, the Second Party shall refund all amounts paid by the First Party under this Agreement and the rights of the Second Party to recover all dues owed by M/s Arkay Logistics Limited under the IBC or under any other law in force, shall be restored, as if the present settlement between the parties did not take place.
6. That both the Parties have mutually agreed that the withdrawal of petition admitted under Section 9 of the IBC shall not cause prejudice to the rights of the respective parties in relation to other transactions/disputes in future after the settlement.
7. That both the Parties have mutually agreed to make a joint statement/affidavit in Company Appeal No. 951 of 2019 pending before Hon'ble National Company Law Appellate Tribunal, New Delhi ("**Hon'ble NCLAT**") on or before 22nd July 2021, immediately pursuant to the execution of this Agreement and further both the Parties mutually agree to cause the Hon'ble NCLAT appeal to be disposed-off in terms of this Agreement and also disposal and also cause the withdrawal of Section 9 petition under IBC, pending at Hon'ble NCLT, Mumbai.
8. That it is agreed between the Parties that the First Party shall bear the CIRP cost and fee of the IRP ('Interim Resolution Professional') of the M/s Arkay Logistics Limited.
9. This Agreement confirms that the cases filed by Second Party under IBC/ Civil law/ Criminal Law or any other law enforce as on date pending against the First Party and / or the Corporate Debtor shall be withdrawn and the Second Party shall ensure that no further legal proceedings would be pursued by the Second Party against M/s Arkay Logistics Limited include its legal heirs, successors, executors, administrators, directors, promoters, assigns and legal representative and certify no dues, and all claims and Notices shall stand withdrawn, and the parties will not have any pending claim whatsoever and this agreement will be binding upon the respective heirs, executors, administrators, successors, directors, promoters and permitted assigns of both the parties and the corporate debtor hereto.
10. That the Parties represent and warrant to each other that they are having requisite power and/or authorization to enter into this Agreement and the Second Party further acknowledges that the settlement amount is accepted pursuant to the decision / direction / recommendation / guidance of the Monitoring Agency / Committee of Creditors / stake holders consultation Committee / approval of the Stake holders and such settlement amount

shall constitute part of liquidation estate which shall be utilized as per the provisions of the IBC.

- 11. The Parties mutually agree and confirm that no changes, alterations or modifications to the Agreement shall be effective unless such changes, alterations or modifications are made in writing and signed by the duly authorized representatives of both the Parties.*
- 12. The Parties mutually agree and confirm that the settlement recorded herein is lawfully binding upon the Parties and is in the best interest of the Parties. These terms of settlement are final and binding upon the Parties hereto. The Parties confirm that the understanding and settlement arrived at by way of this Agreement is a result of their free will and volition and is in the absence of any coercion, whatsoever. All the provisions of this Agreement are legally binding on the Parties, unless otherwise provided specifically and this Agreement shall supersede all previous agreements, understandings, and communications, oral or in writing, and this Settlement Agreement shall remain in full force and effect and shall bind the Parties.*
- 13. The Parties confirm that if any provision of this Agreement is determined to be illegal, invalid, void or voidable, if possible, the offending provision will be modified to the slightest degree necessary to make it enforceable. If such modification is not possible, then said provision of this Agreement shall be determined to be illegal, invalid, void or voidable and the legality or validity of the remaining provisions of this Agreement shall be unaffected, and such provisions shall continue with full force and effect.*
- 14. The Parties mutually agree and confirm that this Agreement shall be signed on each page by the Parties and shall be executed in two (2) counterparts, each of which shall be retained by the First Party and the Second Party respectively. Each counterpart of this Agreement shall be deemed to be an original and all of which together shall constitute one and the same instrument.*
- 15. In the event of any dispute or difference arising between the Parties in relation to this Agreement, the same shall be referred to arbitration before a sole arbitrator appointed by the Parties by mutual consent in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996. The seat of arbitration shall be Mumbai and the language for the proceedings shall be English. The Courts at Mumbai shall have exclusive jurisdiction to try and entertain any dispute arising out of or in connection to this Agreement.*
- 16. The validity, performance, construction and effect of this Agreement shall be governed by the laws of the India.*

IN WITNESS WHEREOF, the parties here unto have set their hands on this 19th day of July, 2021 at Mumbai.

FIRST PARTY

For Edwell Infrastructure Hazira Limited

Mr. Manish Kedia
Director

SECOND PARTY

For Siddhi Vinayak Logistic Limited

Mr. Dushyant Dave
Liquidator”

4. The Learned Sr. Counsel submits that after entering into the said Agreement the Original Petitioner has already received the amounts in dispute which the Respondent No. 1 has acknowledged. It is stated that in Paragraph 8 of the Agreement the Appellant and the Original Petitioner agreed that the Appellant will bear the CIRP Costs and the Fees of the IRP of the Corporate Debtor. It is stated that even those fees have been paid and the IRP/RP of Corporate Debtor Mahesh Kumar Gupta has issued No Dues Certificate as can be seen at Annexure D Page 22 of the Application. Learned Sr. Counsel thus submits that the Impugned Order needs to be quashed and the Original Application filed by Respondent No. 1 should be disposed treating the same as withdrawn.

5. The Learned Counsel for the Interim Resolution Professional of the Corporate Debtor submits that the Interim Resolution Professional has received the CIRP Costs and the Legal Fees for which Annexure D Page 22 of the Application has been issued. The Learned Counsel for Respondent No. 1 – the Original Petitioner has now expressed some doubts with regard to the amount paid to the Interim Resolution Professional towards the CIRP Costs

and the Fees. Learned Counsel for the Original Applicant is now expressing that the amount paid of Rs. 76,47,490/- as mentioned in Paragraph 7 of the Application is appearing to be on the higher side. It is stated that the Interim Resolution Professional may be asked to give particulars. The Learned Counsel for the Interim Resolution Professional of Corporate Debtor submits that Annexure D of the Application itself gives the particulars as to how the Interim Resolution Professional manage Corporate Debtor since 29.08.2019 and had to defend the Corporate Debtor in the litigation which went upto the Hon'ble Supreme Court of India and the Interim Resolution Professional was required to avail professional help for the litigation and thus it is stated that the doubts expressed by the Learned Counsel for the Original Petitioner have no substance.

6. Having gone through the matter and having heard learned counsel for both-sides, when the Original Petitioner has admittedly already entered into settlement as referred above it is inappropriate for the learned counsel for the Original Petitioner – Operational Creditor to now turn around and create doubts with regard to the amounts paid to the Resolution Professional. The Learned Counsel for the Original Petitioner is submitting that the Application was filed in capacity of Liquidator and as it is Liquidator it is answerable to stakeholders. According to us, when willful execution of the settlement agreement dated 19th July, 2021 is not questioned and the documents itself show that the Appellant would be making necessary payments of the CIRP Costs and the Fees of Resolution Professional, the Original Applicant who is not making the payment can not now be seen as turning around to question the quantum of the CIRP expenses and Fees.

7. Considering the submissions made and the contents of Annexure D we do not accept the submissions that the Learned Counsel for the Original Applicant is making out a case to look into the question of sufficiency or otherwise of the CIRP Costs and the Fees.

8. For the above reasons, we dispose the Appeal as settled. The Impugned Order is quashed and set aside. The Original Application filed before the Adjudicating Authority shall be treated as withdrawn.

In effect, order(s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the IRP, are set aside. The Application preferred by Respondent No. 1 under Section 9 of the IBC is disposed as withdrawn. Ld. Adjudicating Authority will now close the proceedings. The Respondent No. 2-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. The IRP will handover charge.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Dr. Alok Srivastava]
Member (Technical)

Basant B./gc.