

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1032 of 2022**

[Arising out of order dated 19.07.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-VI in I.A. No. 4859/2021 in CP No. (IB) - 3079/(ND)/2019]

**IN THE MATTER OF:**

**Intergen Energy Ltd.**

Registered Office: 24/4818, First Floor,  
Prahlad Street, Ansari Road,  
Daryaganj, New Delhi-110002  
E-mail : [info@igenergy.in](mailto:info@igenergy.in), [km@igenergy.in](mailto:km@igenergy.in)

Also at:

Corporate Office: A-1, 6<sup>th</sup> Floor,  
Pavilion Building, 339/1/2,  
Mehrauli Road, Opp. State Bank of India,  
Gurgaon-122001.

**...Appellant**

**Vs.**

**Anil Hada (HUF)**

Through its karta Sh. Anil Hada,  
White House, Hada Farms, 30 Rajokri Road,  
Samalkha, New Delhi 110037.

**...Respondent**

**Present:**

**For Appellant: Mr. Prashant Mehta, Ms. Divita Vyas, Advocates**

**For Respondents: Mr. Aditya Malhotra, Ms. Manpreet Kaur,  
Ms. Aadrisha Malhotra, Advocates**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This appeal has been filed by the Corporate Debtors challenging the order dated 19.07.2022 passed by the Adjudicating Authority in I.A. No. 4859 of 2021 filed by the Appellant praying to allow an application bringing on record

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settlement dated 01.04.2021 and to dismiss Company Petition No. (IB) 3079 (ND)/2019. I.A. No. 4859 of 2021 has been dismissed by the impugned order. Aggrieved by the order this Appeal has been filed. Brief facts of the case are:

- (i) The Financial Creditor, Respondent herein filed a Section 7 application on 26.11.2019 to initiate Corporate Insolvency Resolution Process against the Appellant, the Corporate Debtor, in which notices were issued on 16.12.2019.
- (ii) Pleadings in the application were complete and the matter was at the stage of hearing when the parties entered into Settlement Agreement dated 28.01.2021.
- (iii) The case of the Appellant is that the parties entered into new Settlement Agreement dated 01.04.2021, as per which Agreement only Rs. 60 Lakhs were due on the Corporate Debtor, out of which Rs. 55 Lakhs were paid in the month of April, 2021 and only Rs. 5 Lakhs was balance to be paid, which was refused to be accepted by the Financial Creditor.
- (iv) To bring settlement dated 01.04.2021 on record, I.A. No. 4859 of 2021 was filed by the Appellant. In the I.A. following prayers were made by the Applicant:

**“PRAYER**

*In the premises of the facts and circumstances stated above it is most respectfully prayed that this Hon’ble Tribunal may kindly be pleased to:*

- a. *allow the present application to bring on record the settlement agreement dated 01.04.2021;*
- b. *dispose off/ dismiss the Company Petition no. (IB) 3079(ND)/2019;*
- c. *pass any other order as this Hon'ble Tribunal may deem fit and proper in the interest of justice, equity and good conscience."*

- (v) To the I.A. No. 4859 of 2021, the Financial Creditor filed its reply, to which rejoinder was also filed by the Corporate Debtor.
- (vi) The Adjudicating Authority after hearing the parties rejected the I.A. by the impugned order dated 19.07.2022. This Appeal has been filed challenging the order dated 19.07.2022.

2. Learned counsel for the Appellant challenging the impugned order contends that there being Agreement dated 01.04.2021 entered between the parties which contain statement that total dues as on 01.04.2021 is Rs.60 Lakhs and the Corporate Debtor having paid Rs.55 Lakhs in April, 2021 to the Financial Creditor there was only balance Rs.5 Lakhs to be paid which was being refused to be accepted by the Financial Creditor. It is submitted that earlier Settlement dated 28.01.2021 perished and became null and void upon entering into the Settlement Agreement dated 01.04.2021, hence, could not have been relied by the Financial Creditor for any purpose. The Adjudicating Authority committed error in refusing to accept Agreement dated 01.04.2021 on record. As per Agreement dated 01.04.2021, only Rs.5 Lakhs being still due, which the Corporate Debtor is ready to deposit, there is no

purpose in continuing Section 7 application which ought to have been rejected by the Adjudicating Authority.

3. Learned counsel for the Financial Creditor refuted the submissions of learned counsel for the Appellant submitting that as per Agreement dated 28.01.2021, the Corporate Debtor undertook to pay amount of Rs.1.5 Crore and as per Agreement dated 28.01.2021, the Corporate Debtor did not pay the amount and till February, 2021 Corporate Debtor has made payment of only Rs.40 Lakhs and no payment was made in March, 2021. The Agreement dated 01.04.2021 was proposed by the Corporate Debtor and forwarded to the Financial Creditor for signature, on which agreement Financial Creditor did not put his signature and no agreement dated 01.04.2021 was entered between the parties, hence, the Adjudicating Authority has rightly refused to accept the agreement. The Corporate Debtor has handed over a cheque of Rs.25 Lakhs dated 25.07.2021 which was dishonoured.

4. We have considered the submissions of learned counsel for the parties and perused the record.

5. From the submission of the counsel for the parties, as noticed above, the prayer in the application filed by the Corporate Debtor was to take Agreement dated 01.04.2021 on record. It is not disputed that during the pendency of the application under Section 7, parties have entered into agreement dated 28.01.2021 which agreement witness settlement between the parties and schedule of payment of Rs.1.40 Crore upto March, 2021. As per the Agreement dated 28.01.2021, total amount to be paid was Rs.80

Lakhs by the Corporate Debtor, then a new agreement was contemplated by the parties showing balance of Rs.60 Lakhs. The case of the Appellant in the Application was based on agreement dated 01.04.2021, according to which Agreement, now only Rs.60 Lakhs was due. Copy of the Agreement dated 01.04.2021 has been brought on the record by the Respondent, as was received by it.

6. There is conflict between the parties that whether Agreement dated 01.04.2021 was executed or not. The Appellant relies on the said agreement whereas the case of the Respondent is that the Respondent never signed the Agreement dated 01.04.2021, although the said agreement was forwarded by the Appellant.

7. We may notice the pleadings of the parties before the Adjudicating Authority in the application to take on record Agreement dated 01.04.2021 to find that whether Agreement dated 01.04.2021 can be said to have entered between the parties or not. In I.A. No. 4859 of 2021, the Appellant has relied on the Agreement dated 01.04.2021. Para 1 of the application is as follows:

*“1. That the present Application is being filed by the Applicant/Corporate Debtor i.e. Intergen Energy Ltd. & Ors. (herein after “the Applicant”) seeking to bring on record the settlement agreement dated 01.04.2021. The copy of the settlement agreement dated 01.04.2021 is annexed herewith as **ANNEXURE-1.**”*

8. Copy of the Settlement Agreement which was filed alongwith the I.A. by the Appellant contained the signature of first party and second party.

The Financial Creditor filed a reply to the application and has categorically denied that he has signed Agreement dated 01.04.2021. It was pleaded by the Financial Creditor that copy of the draft agreement dated 01.04.2021 signed by Authorized Representative of the Corporate Debtor was sent to the Financial Creditor, who refused to sign since the payment as per Agreement dated 28.01.2021 was not fulfilled. It is useful to note the pleadings made in Para 9 of the Reply:

*“9. That as per the table mentioned under para no.7 of the present reply, the Corporate debtor made a payment of Rs 40 Lakhs till February 2021 and no payment has been made in the month of March 2021. It is pertinent to mention here that the Corporate debtor prepared the agreement dated 01.04.2021 and sent the original draft signed by the authorized representative, i.e., Mr. Karan Singh and bears the stamp of the Corporate Debtor Company to the Financial creditor. However, the Financial creditor refused to sign the same as the payment of Rs. 80 Lacs till 24th March 2021 under the agreement dated 28.01.2021 was not fulfilled. It is submitted that after repeated follow ups and reminders, the Corporate debtor paid an amount of Rs 35 lakhs via through cheque/RTGS to the Financial creditor's account in the month of April 2021 and thereafter no amount was paid to the Financial creditor by the Corporate debtor. The true copy of the original agreement is annexed herewith as Annexure-3.”*

9. It is relevant to notice that alongwith the Reply, the Financial Creditor has also annexed the photocopy of the agreement which was forwarded by the Corporate Debtor to the Financial Creditor, which contained the signature of the Authorised Representative of the Corporate Debtor only. The Corporate Debtor filed a Rejoinder to the above Reply and in Para 7 of the Rejoinder, para 9 and 10 were replied. Para 7 of the Rejoinder of the Corporate Debtor is as follows:

*“7. That the contents of Para 9 and 10 are wrong and denied. It is absolutely improbable that the Petitioner agreed to enter into agreement dated 01.04.2021 without receiving due payments and therefore on balance of convenience as well as said submission of Petitioner is devoid of any merit. It is denied that Respondent/Applicant made no payments after the month of March 2021. It is further denied that the Respondent promised to make payments of entire outstanding amount during month of August 2021 together with interest of 6% per month compoundable on the amount It is submitted that the said cheques were given to the Petitioner as security cheques and subsequently when the Respondent/Applicant made all the due payments, the Petitioner malafidely withheld the said security cheques and denied to return the same. Hence the Respondent was left with no option but to stop the payments from the said security cheques in view of the payments already made to the Petitioner.”*

10. In Para 9 of the reply filed by the Financial Creditor to the application, it was clearly stated by the Financial Creditor that Agreement dated 01.04.2021, which was forwarded by the Corporate Debtor was not signed by the Financial Creditor and he refused to accept the agreement. When we look into Para 7 of the Rejoinder, there is no denial to the said statement. The rejoinder is evasive, it does not state when the Financial Creditor signed the agreement whereas in the reply the Financial Creditor has categorically stated that he has not signed Agreement dated 01.04.2021 since he has not received the payment as per earlier settlement dated 28.01.2021. From the above it is clear that very execution of Agreement dated 01.04.2021 is denied.

11. We are of the view that the Adjudicating Authority did not commit any error in rejecting I.A. No. 4859 of 2021 to take agreement dated 01.04.2021 on record. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**23<sup>rd</sup> May, 2023**

*Archana*