

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, SPECIAL BENCH, COURT No. - II.**

*** **

**IA No. 1030 of 2020 in
[CP (IB) No. 3775/MB/2019]**

In the matter of J. J. Plastalloy Private Limited

Vs.

Pasupati Flexipack Private Limited

and

**In the matter of an Application under Section 9 of the Insolvency and
Bankruptcy Code, 2016**

Pasupati Flexipack Private Limited

[CIN: U74999MH2016PTC281836]

Flat No. 101, 1st Floor, Sai Anand Plaza,

Opp. Golden Nest, Mira- Bhayandar Road,

Mira Road(E), Thane – 401107.

... Applicant/Corporate Debtor

Vs.

J. J. Plastalloy Private Limited

[CIN: U24139UP1995PTC017711]

A-2, Badshah Bagh Colony, Maldahiya,

Varanasi – 221002.

... Respondent/Operational Creditor

In the matter of

J. J. Plastalloy Private Limited

...Operational Creditor

Vs.

Pasupati Flexipack Private Limited

...Corporate Debtor

Date of Order: 01.10.2020

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Hon'ble Ravikumar Duraisamy, Member Technical

Appearance:

For the Applicant:

Mr. Pradeep M. Bagaria, Authorised
Representative of the Applicant.

For the Respondent:

Mr. Viraj Parikh and Mr. Saurabh Pandya,
Advocates.

Per: Janab Mohammed Ajmal (Member Judicial)

ORDER

This is an Application by the Corporate Debtor seeking the payment of the claim and withdrawal of the Company Petition.

2. Facts leading to the Application are that the Respondent J. J. Plastalloy Private Limited (hereinafter refer to as the Operational Creditor) filed CP (IB) No. 3775 of 2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code for short) praying to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor alleging default in payment of an operational debt to the tune of Rs. 2,82,244/- (Rupees Two lakhs eighty two thousand two hundred and forty four). The Corporate Debtor did not appear in the proceedings nor contested the matter. This Authority by an order dated 28th April, 2020 admitted the Company Petition initiating CIRP against the Corporate Debtor (Applicant). It appointed Mr. Hazari Lal Saini as the IRP.
3. It is submitted in the present Application that the Corporate Debtor had no knowledge of the Company Petition nor was it ever served with the copy thereof. It came to be aware of the CIRP when it received the order dated 28th April, 2020 from the Resolution Professional under the email dated 11th June, 2020. Since then the Corporate Debtor has been ready and willing to settle the matter, it accordingly sent an email on 16th June, 2020 to the IRP expressing its willingness to settle the matter with the Petitioner/ Operational Creditor. Since it did not receive any response thereto, it came up with the present Application seeking a direction to settle the matter and acceptance of the claim amount of Rs. 2,82,244/- (Two lakhs eighty-two thousand two hundred and forty four) towards full and final settlement of the claim and direct the withdrawal of the Company Petition on such settlement.
4. The IRP appeared on behalf of the Corporate Debtor and submitted that the CIRP costs also needs to be borne by the Applicant and there upon the matter can be settled. He has filed an abstract of costs to the following effect.

**Details of CIRP Cost of Pasupati Flexipack Private Limited
as on 30.06.2020**

S.No	Expenses		Amount in INR	Paid	TDS@7.5 %	Unpaid	Remark
1.	Professional Fees	Hajari Lal Saini, IRP	250000	231250	18750	0	Order received on 15.05.2020 and payment received on 26.05.2020 from applicant therefore fees is considered for IRP Period 26.05.2020 to 30.06.2020
2.	Advertisement Cost	Riyo Advertisement	26355	26355	0	0	Public announcement was published in Financial express and Navakal Mumbai/Thane edition and Silvassa Mirror and Jandesh in Valsad edition on 28.05.2020, Amount paid on 27.05.2020 by H.L. Saini
3.	Legal Fees	Rishibh Dhanuka	15000	12000		3000	For Application filed in NCLT under Section 19 read Section 70 of the IBC, Amount paid on 22.06.2020
4.	Factory Possession Advisor	JDV Recovery Agency Limited	40000	0	0	40000	Five person came at Valsad for possession of factory on 23.06.2020
5.	Travelling Expenses	JDV Recovery Agency Limited	8000	0	0	8000	Visited Factory Premises on 23.06.2020 to take the possession from Ahmadabad
6.	Travelling Expenses	IRP	4000	0	0	0	Visited Factory Premises on 23.06.2020 to take the possession
7.	Security Guard	JDV Recovery Agency Limited	0	0	0	0	It was conditional appointment letter and if not need and not executed and therefore it has been considered cancel Rs. 15000/- P.M. per person

Total Expenses : ₹. 3,43,355

Less: Paid by the OC (excluding TDS) : ₹. 2,31,250

Less: TDS Deducted : ₹. 18,750

Amount to be paid : ₹. 93,355

5. The expenses shown in the abstract indicates that an amount of Rs. 93,355/- (Ninety three thousand three hundred and fifty five) still remains to be paid. The initial amount of ₹. 2,50,000 ordered by this Authority to be paid by the

Operational Creditor to the IRP was for meeting the initial expenses of the CIRP as specified in the order. It appears this amount has been wrongly considered to be the monthly fee payable only to the IRP. We make it clear that the initial amount to be deposited with IRP was for various preliminary activities relating to CIRP and not towards the fee of the IRP.

6. We stipulate ₹. 80,000/- as the total remuneration of the IRP (from 26.05.2020 to 30.06.2020). We do not approve the expenses towards the engagement of a recovery agency. The amount spent on that score needs to be excluded. The total expense thus comes to ₹. 1,44,105. The Applicant is required to bear the expenses. The balance (₹. 1,05,895) needs to be refunded by the IRP. The Applicant shall refund the amount to the Operational Creditor and the IRP in turn shall refund it to the Applicant (CD).
7. Considering the prayer made in the Application and the abstract of expenses submitted by the RP it will accordingly be appropriate to direct the Applicant to bear the CIRP costs as indicated in the previous para and settle the matter. Hence ordered.

ORDER

The Application be and the same is allowed. The Applicant (CD) shall pay the settlement amount of ₹. 2,82,244/- (Rupees Two lakhs eighty-two thousand two hundred and forty-four) and ₹. 2,50,000/- (Rupees Two lakhs fifty thousand) to the Respondent (OC) within a period of 15 (fifteen) days hence. On the payment being made the CP (IB) No. 3775 of 2019 shall be deemed to have been withdrawn. Failing which this Application shall stand dismissed without further reference to the Bench.

The IRP is directed to refund ₹. 1,05,895/- (Rupees One lakh five thousand eight hundred and ninety-five only) to the Applicant within the above period. Failing which the Applicant may take appropriate recourse to law for realization of the same.

Sd/-

**(MOHAMMED AJMAL)
MEMBER JUDICIAL**

Sd/-

**(RAVIKUMAR DURAISAMY)
MEMBER TECHNICAL**

Ankit