

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1783 of 2024

(Arising out of Order dated 06.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court - II) in CP (IB) No. 116 of 2023)

IN THE MATTER OF:

Mr. Pankaj Kalra
(Suspended director of Essar Oil &
Gas Exploration & Production Limited)
resident of Flat No 7103,
B wing Trump Tower, Lodha Park,
Pandurang Bahadur Marg Worli,
Mumbai-400013.

.... Appellant

Vs

1. Greeka Greens Solution (India) Limited
Formerly known as Greka Drilling (India) Ltd.
Having its Registered office at:
W-89A, Flat No. 101, Greater Kailash Part II,
New Delhi 110048

2. Essar Oil & Gas Exploration
& Production Limited
Through its Interim Resolution Professional
Having its registered office at:
F 20, Balaji Shopping Wide Angle Highway
Nagarpur, Mahesana,
Gujarat -384002, India

.... Respondents

Present:

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr.
Mahesh Agarwal and Mr. Abhinav Garg,
Advocates.

For Respondents:

Mr. Mrinal Bharat Ram, Mr. Aditya Laroyia
and Mr. Ananya Bhardwaj, Advocates for R-1.

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J U D G M E N T

ASHOK BHUSHAN, J.

This appeal by the Suspended Director of the Corporate Debtor – “Essar Oil & Gas Exploration & Production Limited” has been filed challenging order dated 06.09.2024 passed by Adjudicating Authority (National Company Law Tribunal), Ahmedabad (Court - II) admitting Section 9 application filed by the Respondent – “Greeka Greens Solution (India) Limited”. The appeal was heard by this Tribunal on 10.09.2024 and following interim order was passed on 10.09.2024:

“In the meantime, the Impugned Order dated 06.09.2024 is suspended.”

2. Although notices were issued on 10.09.2024 but no reply was filed by the Respondent. On 06.11.2024, three weeks’ time was allowed, as last opportunity, to file reply. No reply has yet been filed. The matter was heard on 04.03.2025. On the date when matter was heard, learned counsel appearing for the Respondent submits that entire debt of Respondent No.1 has been liquidated. Brief facts of the case necessary to be noticed for deciding this appeal are:

- (i) The Corporate Debtor entered into a contract on 02.12.2013 and 31.12.2015, for purpose of hiring of drilling rig services from the Respondent No.1.

- (ii) Respondent No.1 issued demand notice on 05.03.2018 to the Corporate Debtor that amount of Rs.12,78,73,257/- due and payable by the Company.
- (iii) Company replied the notice and a settlement agreement was entered on 24.06.2019 which was further revised on 03.07.2020 where parties have revised the payment schedule and settlement terms and arrived at computation of full and final settlement amount of Rs.8,30,31,244/- equivalent to \$1,110,489 in 21 instalments starting from the date of settlement till March, 2022.
- (iv) In furtherance of the settlement, the Corporate Debtor from 03.07.2020 to 01.06.2022 has made payment of 20 instalments for a total amount of Rs.7,40,00,090/-. The last instalment could not be paid due to certain calculation dispute pertaining to final instalment between the parties.
- (v) The Operational Creditor issued another Demand Notice on 17.10.2022 claiming an amount of Rs.24,38,26,881/- including interest.
- (vi) After giving demand notice, Section 9 application was filed by the Operational Creditor on 23.12.2022.

- (vii) During course of the pendency of the Section 9 application, the balance payment of USD 125,833/- was made on 26.06.2024.
- (viii) The Adjudicating Authority after hearing the parties by the impugned order has admitted Section 9 application, which is challenged in the present Appeal.

3. Learned counsel for the Appellant submits that present was a case where Section 9 application deserve to be rejected. When Demand Notice was given in the year 2018 by the Operational Creditor, parties have entered into settlement under which entire payment was to be made in 21 instalments. 20 instalments were paid and last instalment amounting to USD 125,833/- could not be paid because of calculation issue between the parties. Present was not a case for initiation of any Section 9 proceeding since the Corporate Debtor has discharged its liability and last instalment could not be paid due to some calculation issues, which amount was also paid during pendency of the Section 9 application. The Adjudicating Authority without taking into consideration the payments made, has admitted Section 9 application. It is submitted that Section 9 proceeding cannot be resorted to as recovery mechanism by the Operational Creditor. When parties had already entered into settlement much before issuance of demand notice which gave rise to the Section 9 application, ignoring the payments of 20 instalments, the Operational Creditor could not have filed Section 9 application on the basis of initial agreement.

4. Learned counsel for the Respondent during submission has submitted that entire debt of the Operational Creditor stands discharged. It is to be noted that no reply to the appeal has been filed inspite of opportunities to the Operational Creditor.

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

6. We have already noticed that when earlier demand notice was issued on 05.03.2018, parties have entered into settlement dated 24.06.2019 revised on 03.07.2020 for final settlement of Rs.8,30,31,244/- equivalent to \$1,110,489 in 21 instalments last instalment to be paid by March, 2022. 20 instalments were paid and it was only due to some calculation issues last instalment was not paid, however, during the pendency of Section 9 proceeding said instalment was paid.

7. Learned counsel for the Respondent fairly admitted that entire debt has been discharged. In facts of the present case, present is not a case for initiation of Section 9 proceeding against the Corporate Debtor who after receipt of the demand notice has entered into settlement and paid 20 instalments out of 21 instalments and non-payment of 21st instalment was due to calculation issues regarding amount of last instalment. Hence, present was not a case for initiation of any insolvency proceeding against the Corporate Debtor.

8. We by interim order had already suspended the order dated 06.09.2024. No reply has been filed by the Respondent, as noticed above. Learned counsel for the Respondent has also fairly submitted that entire debt has been discharged. We are of the view that in facts of the present case initiation of CIRP process under Section 9 against the Corporate Debtor was uncalled for. Sufficient ground has been made out to allow this appeal and set aside order dated 06.09.2024. Appeal is allowed. Impugned order is set aside. Section 9 application filed by the Respondent is rejected.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

19th March, 2025

Archana