

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P(IB) No.51/BB/2019
U/s 7 of the I&B Code, 2016
R/w Rule 4 of the I&B(AAA) Rules, 2016

In the matter of:

Mr.Xerxes Adi Shahiwalla

M4 Cuffe Castle, Cuffe Parade
Opp.Taj President, Colaba,
Mumbai – 400 005

- Petitioner/Financial Creditor

Versus

M/s.Bharath Hi-Tech Builders Pvt. Ltd.,

304 & 306, 3rd Floor,
Gold Tower, No.50,
Residency Road,
Bangalore- 560 025

- Respondent/Corporate Debtor

Date of Order: 30th September,2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

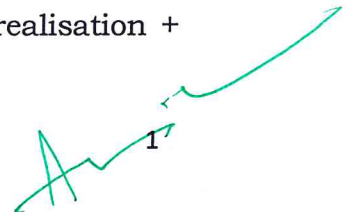
Parties/Counsels Present:

For the Petitioner : Shri George Philip
For the Respondent : Shri Amit Mandgi

O R D E R

Per: Dr.Ashok Kumar Mishra, Member(T)

1. C.P(IB) No.51/BB/2019 is filed by Mr.Xerxes Adi Shahiwalla (Financial Creditor), U/s 7 of the I&BC, 2016, R/w Rule 4 of the I&B(AAA) Rules, 2016, by inter alia seeking to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Bharath Hi-Tech Builders Pvt. Ltd (Corporate Debtor), on the ground that the Corporate Debtor has committed a default of Rs.49,27,806/- consisting of (i) Principal (ii) Interest and (iii) Penal interest as on 31st May, 2018 (Outstanding Amount) along with further interest @ 20% p.a compounded annually on principal from 27th August, 2015 till payment and/or realisation +



penal interest @1% per month on the defaulted amounts from 22nd November, 2016 till payment and/or realisation.

2. The case is listed for admission on various dates viz. 03.01.2019, 09.01.2019, 28.01.2019, 27.02.2019, 08.03.2019, 14.03.2019, 16.04.2019, 30.04.2019, 10.06.2019, 20.06.2019, 10.07.2019, 16.07.2019, 26.07.2019, 22.08.2019, 11.09.2019, 18.09.2019, 27.09.2019 & 30.09.2019, and it was adjourned on these dates at the request of parties on one ground and the other.
3. Heard Shri George Philip, Learned Counsel for Petitioner, Shri Amit Mandgi, Learned Counsel for Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the law and Code on the issue.
4. The Learned Counsel for the petitioner prayed the Tribunal to permit the petitioner to withdraw the petition with a liberty to file fresh Company Petition in accordance with law, if so aggrieved by the action of Respondents.

He has also placed a copy of Consent Terms dated 30.09.2019, by inter alia stating that the issue was settled between the parties and thus wanted to withdraw petition. Accordingly, they have enclosed a copy of Consent Terms (which is taken on record), which reads as under:

"1. The Financial Creditor has filed the present Company Petition against the Corporate Debtor on account of non-payment of the sum of INR 49,27,806/- as on 31st May, 2018 as per the particulars mentioned in Part IV of the Petition read with the Affidavit in Support of the Petitioner, together with further interest at the rate of 20% p.a on the principal amount of deposit/loan of INR 30,00,000/- from 27th August, 2015 till date of payment/realization along with Penal interest at the rate of 1% per month on the defaulted amounts from 22nd November, 2016 till date of payment/realization.

2. The Corporate Debtor approached the Financial Creditor for settlement of the matter and requested for time to make payment of the outstanding dues as agreed upon between the parties. The Financial Creditor has agreed to settle the matter upon receipt of the sum of INR 34,00,000 from the Corporate Debtor comprising Rs.30,00,000/- towards return of principal amount of deposit/loan and Rs.4,00,000/- towards interest. The Corporate Debtor has assured the Financial Creditor to make payment of the sum of INR 34,00,000 in Five equal instalments by way of Post-dated cheques and based upon the Corporate Debtor's assurance to make payment as agreed herein, the Financial Creditor has agreed to accept the same as full and final settlement and has further agreed to forego the amounts of interest and legal fees which would have otherwise been due and payable to the Financial Creditor.

3. The Financial Creditor and Corporate Debtor have arrived at an amicable settlement of the entire dispute between them on the following terms:

- i. The Corporate Debtor agrees and undertakes to pay and the Financial Creditor agrees to accept a sum of INR 34,00,000 (hereinafter referred to as the "Settlement Amount") in full and final settlement of the outstanding sum due, referred in the above Company Petition.
- ii. The Corporate Debtor has till date paid a sum of INR 80,479/- to the Financial Creditor towards interest, the receipt of which is accepted by the Financial Creditor. The aforementioned amount will be deducted from the interest amount of Rs.4,00,000/-. The balance amount of INR 33,19,521/- being Rs.30,00,000/- towards principal and Rs.3,19,521/- towards interest will be paid by Post Dated Cheques to the Financial Creditor in 5(Five) instalments mentioned hereunder after deduction of TDS of Rs. 31,952/- on the interest of Rs. 31,952/-

SL No.	Date of Payment	Amount(INR)
1.	31 st October, 2019	6,63,905/-
2.	30 th November, 2019	6,63,904/-
3.	31 st December, 2019	6,63,904/-
4.	31 st January, 2020	6,63,904/-
5.	28 th February, 2020	6,63,904/-

iii. *The Corporate Debtor agrees and undertakes to this Hon'ble Court that they will issue the TDS Certificate of Rs.31,952/- to the Corporate Debtor as statutorily required failing which the said sum of Rs. 31,952/- will become due and payable by the Corporate Debtor to the Financial Creditor.*

4. *The Corporate Debtor agrees and undertakes to this Tribunal not to commit any default in paying the instalments at any given time and to comply with Clause 3 iii hereinabove. If at all the Corporate Debtor fails to pay all or any part of the Settlement Amount on the due dates or to issue the TDS Certificate the Financial Creditor will be at liberty to institute proceedings against the Corporate Debtor under the provisions of the IBC, 2016 or any other law for time being in force.*

5. *The Financial Creditor agrees that the Settlement Amount is in full and final settlement of all its dues as mentioned in the Company Petition provided the same is paid on the due dates as mentioned herein along with issue of TDS Certificate, time being of the essence. The Financial Creditor agrees that in such an event no further claim survives with respect to the outstanding dues and interest thereon as claimed by the Financial Creditor in the Company Petition with respect to the Financial Debt more particularly mentioned in the said CP read with the Affidavit in support of the Petition.*

6. *it is hereby agreed by the parties hereto that all disputes between the parties, earlier correspondence, writing or*


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agreements, if any, claiming any dues, costs, damages against each other which are the subject matter of this Petition shall stand withdrawn, revoked and waived, provided the payment of the Settlement amount along with TDS Certificate is made by the Corporate Debtor to the Financial Creditor on the due dates and as statutorily required as mentioned hereinabove, time being of the essence.

7. On realisation of the Settlement Amount as aforesaid on the due dates stated herein along with issue of TDS Certificates, the Financial Creditor agrees and undertakes that it shall not make any claim or initiate any proceedings against the Corporate Debtor with respect to the claim and disputes mentioned by it in the CP.

8. The Financial Creditor also undertakes to provide to the Corporate Debtor, a No claim Certificate/letter with respect to the claim raised by the Financial Creditor in the CP.”

5. Since the Company Petition is not yet admitted, we are inclined to permit the Petitioner to withdraw the instant Company Petition subject to compliance of the Consent Terms dated 30.09.2019.
6. Hence, C.P(IB) No.51/BB/2019 is disposed of as withdrawn by directing the Respondent to strictly adhere to the terms and conditions contained in Consent Terms dated 30.09.2019, without fail, failing which, the Petitioner is at liberty to file fresh Company petition in accordance with law.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan