

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Company Appeal (AT) (Ins) No. 363 of 2022

&

I.A. No. 963, 964, 965 & 1338 of 2022

IN THE MATTER OF:

Zexus Air Service Pvt. Ltd. & Anr.

...Appellants

Versus

Capt. Samuel Tarig Omer Ahmed

...Respondent

Present:

**For Appellants : Mr. Arvind Nayar, Sr. Adv. with Mr. Aman Vachher,
Mr. Ashutosh Dubey, Adv.**

**For Respondent : Mr. Arun Kumar, Adv. for I.A. No. 1338 of 2022
Mr. Sohaib Alam, Adv.**

O R D E R

22.03.2023 This appeal is directed against the order dated 25.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi) by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by Respondent No. 2 has been admitted and the CIRP has been initiated.

2. At the time of preliminary hearing held on 05.04.2022, the following order was passed by this Tribunal:-

“I.A. No. 992 of 2022: By this Application, the Applicant has prayed for amendment the Memo of Appeal. Learned counsel for the Appellant prays that the Appellant to be substituted as stated in para 3 of the present Application. Application is allowed. Let the amended memo be taken on record.

2. Issue notice. Shri Shoaib Alam, Learned Counsel accepts notice on behalf of Respondent No.1. Ms. Akanksha Mathur, Learned Counsel accepts notice on behalf of IRP. No further notice need be issued. Respondents may file Reply within two weeks. Rejoinder, if any, may be filed within two weeks thereafter.

3. Learned Counsel for the Appellants submits that Appellants are ready to deposit the principal amount of Rs. 40,17,600/- without prejudice to their rights and contentions.

4. Let the aforesaid amount be deposited before the Adjudicating Authority within a week from today.

5. List the Appeal on 06.05.2022. Looking to the nature of the issue, the Appeal itself may be disposed of on the next date.

6. In the meantime, the impugned order passed by the Adjudicating Authority shall remain stayed.”

3. It is submitted that pursuant to the aforesaid order, the Appellant had deposited an amount of Rs. 40,17,600/- by way of demand draft no. 671143 dated 11.04.2022 drawn on the State Bank Of India, defence colony branch, new delhi – 110024 with the Registrar, NCLT, New Delhi.

4. At present, Counsel for both the parties have jointly made a statement that the matter has been settled between them out of court and the Respondent herein has decided to accept Rs. 40,17,600/-, already deposited by the Appellant laying with the NCLT, New Delhi towards full and final settlement in order to withdraw his application filed before the NCLT, New Delhi or for allowing the present appeal to set aside the impugned order.

5. It is pertinent to mention that during the pendency of this appeal, an application i.e. I.A. No. 1338 of 2022 came to be filed at the instance of Ramesh Dugar S/o Ganesh Lal Dugar, Director of M/s Samriddhi Mega Structure Ltd. under Rule 11 of NCLAT Rules, 2016 for appropriate orders in regard to settlement of his claim. It is averred in the application that the Applicant has also to recover Rs. 2,63,08,618/- alongwith interest @ 24% and has submitted his claim to the IRP on 30.03.2022.

6. We have heard counsel for the parties and after examining the records are of the considered opinion that since the matter has been settled between the parties (Appellant and Respondent) at the amount of Rs. 40,17,600/-, therefore, the present appeal deserves to be allowed and the impugned order deserves to be set aside subject to the condition that the amount of Rs. 40,17,600/- laying in the NCLT, New Delhi, deposited by the Appellant by way

of demand draft, is released to Respondent or his authorised representative (to whom the Respondent shall authorise in writing).

7. Thus, the appeal is allowed. Impugned order is set aside in view of the aforesaid settlement. The NCLT, New Delhi where the amount of Rs. 40,17,600/- is deposited in terms of order dated 05.04.2022 is directed to release to the Respondent or his authorised representative the amount of Rs. 40,17,600/- within a period of 15 days from the date of receipt of the certified copy of this order.

8. Before parting, the Applicant in I.A. No. 1338 of 2022 prays for withdrawal of this application in order to pursue his remedy in accordance with law. Liberty is granted.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Kanthi Narahari]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

Sheetal/RR