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

**Company Appeal (AT)(Insolvency) No. 1002 of 2022**

**[Arising out of order dated 18.02.2022 passed by the Adjudicating Authority, National Company Law Tribunal, Bench-IV, New Delhi in CP(IB) No. 3113(ND)/2019]**

**IN THE MATTER OF:**

**Laxman Singh (Ex-Director) of**
**Divineseair Logistics Pvt. Ltd.**
**17, Sanjay Complex, Gharoli,**
**Mayur Vihar, Phase-3, Delhi – 110 096** **...Appellant**

**Versus**

**Kerry Indev Logistics Pvt. Ltd.**
**Second Floor, A Block, Enkay Centre,**
**Vamjya Nikunj, Udyog Vihar,**
**Phase-V, NH-08, Gurgaon,**
**Haryana - 122016** **...Respondent No.1**

**Mr. Anil Kumar Mittal (IRP)**
**Divineseair Logistics Pvt. Ltd.** **...Respondent No.2**

**Present:**

**For Appellant:** **Mr. Anurag Ojha, Mr. Deepak Somani, Advocates**

**For Respondent:** **Mr. R.V. Prabhat, Mr. Abhinav M. Goel, Advocates for R-1.**

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

**[Per: Barun Mitra, Member (Technical)]**

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 ("**IBC**" in short) by the Appellant arises out of the Order dated 18.02.2022 (hereinafter referred to as "**Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, Bench -IV, New Delhi) in CP(IB) No. 3113 (ND)/2019. By the impugned order, the Adjudicating Authority has admitted the petition under Section 9 of the IBC and allowed the initiation of Corporate Insolvency Resolution Process ("**CIRP**" in short) of the Corporate Debtor. Aggrieved by this impugned order, the present appeal has been preferred by the ex-Director of the Corporate Debtor.

2. Coming to the brief facts of the case, Divineseair Logistics Pvt. Ltd - Corporate Debtor, who is the present Appellant had engaged into a business relationship with Kerry Indev Logistics Pvt. Ltd.- Operational Creditor, present Respondent No.1 providing their freight forwarding services since June 2018. Respondent No. 1 has claimed that having performed certain export services for the Appellant, certain dues remained outstanding for services rendered. The Respondent No. 1 sent a demand notice on 01.10.2019 under Section 8 of IBC claiming an amount of Rs.9,26,970/- and interest amount of Rs.1,38,055/- to the Corporate Debtor. No reply was received from the Corporate Debtor to the Section 8 notice following which the Respondent No.1 filed Section 9 application before the Adjudicating Authority. The Adjudicating Authority after hearing both parties admitted the Section 9 application which order has now been assailed by the Appellant.

3. Making his submissions, the Learned Counsel for the Appellant has stated that there was no contractual agreement between the Appellant and the Respondent No.1. The Appellant submitted that it provided clients to Respondent No.1 for transporting their goods and in return received commission from the Respondent No.1 out of the freight charges collected. In the absence of any agreement between them, the Appellant cannot be fastened with any liability to pay by the Respondent No.1 being neither the consignee nor the beneficiary of any services. Moreover, for the delivery of goods, the payments were to be made to the Respondent No.1 by the consignees and not by the Appellant. Hence, raising any demand against the Appellant is untenable.

4. It is further contended that the Adjudicating Authority did not correctly appreciate the nature and terms of business between the Appellant and the Respondent No.1. It was stated that the freight charges for consignment delivery was to be collected by Respondent No.1 and a part thereof was to be paid as commission to the Appellant in return for having provided these clients. Further the cheques issued by them, which have been claimed by the Respondent No. 1 to be towards payment of consignment delivery charges, is misleading. These were actually security cheques against commission for providing customers which were given in advance. Given this nature of business relationship, it was claimed that it is the Appellant who is the Operational Creditor and thus the Respondent No. 1 was not entitled to file the Section 9 application.

5. Besides denying that any debt was owed by the Appellant to the Respondent No.1, it was stated that there were delays in the shipments on the part of Respondent No. 1 and hence consignees had not been clearing their payments.

The recipient companies had made complaints to the Appellant regarding late delivery of goods and deficiency in the services of the Respondent No. 1 which in turn has affected their own reputation and caused financial losses. It was vehemently contended that the Adjudicating Authority by ignoring these pre-existing disputes had erroneously admitted the Section 9 application.

6. Refuting the contentions raised by the Appellant, the Learned Counsel for the Respondent No. 1 submitted that it had completed the export services assigned to it by the Corporate Debtor and submitted the relevant Bills of Lading. They had raised invoices for which some payments had also been made by the Corporate Debtor. Since certain dues continued to remain unpaid and the cheques issued by the Corporate Debtor were dishonoured by the bank, they were constrained to send a demand notice. The Corporate Debtor had acknowledged their debt and confirmed that payment would be made in their emails dated 16.11.2018 and 05.03.2019. The Corporate Debtor kept on assuring the Operational Creditor that he would pay the balance amount in instalments which were all false. It was also asserted that the Corporate Debtor failed to produce any proof or evidence to substantiate their empty allegations of deficiency of service. The Corporate Debtor had not raised these disputes either before issue of demand notice or in their reply to the demand notice and were raised belatedly only to wriggle out of their liability to pay their dues.

7. However, the Learned Counsel for the Respondent No.1 had submitted that this Tribunal was apprised during the hearing on 10.05.2023 that it would not like to press the CIRP and that steps were being taken for withdrawal of CIRP. Further it was submitted that there were issues relating to the excessive fees

demanded by the Resolution Professional/Respondent No.2 because of which the withdrawal application could not be filed.

8. We have duly considered the arguments advanced by both the parties and perused the records carefully.

9. Before going into the facts of the present case, a look at the statutory construct of IBC would be helpful. Section 8 of the IBC requires the Operational Creditor, on occurrence of a default by the Corporate Debtor, to deliver a Demand Notice in respect of the outstanding Operational Debt. Section 8(2) lays down that the Corporate Debtor within a period of 10 days of the receipt of the Demand Notice would have to bring to the notice of the Operational Creditor, the existence of dispute, if any. Section 8 of the IBC is as follows:

> *"**8. <u>Insolvency resolution by operational creditor</u>**- (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*
>
> *(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*
>
> *(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*
>
> *(b) the payment of unpaid operational debt—*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred."*

10. This now brings us to the next stage post issue of demand notice by the Operational Creditor as contemplated in Section 9 of IBC. Under Section 9(1), if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2), he may file an Application under Section 9(1) of the Code.

11. For convenience, we reproduce Section 9(1) of IBC which is to the following effect:

*"**9. <u>Application for initiation of corporate insolvency resolution process by operational creditor</u>**.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the*

*Adjudicating Authority for initiating a corporate insolvency resolution process."*

Section 9(5)(ii) is as follows:

*"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—*

*(i).....*

*(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*

*(a) the application made under sub-section (2) is incomplete;*

*(b) there has been payment of the unpaid operational debt;*

*(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;*

*(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;*

*or*

*(e) any disciplinary proceeding is pending against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority."*

12. From a plain reading of the above provisions, the existence of dispute and its communication to the Operational Creditor is statutorily provided for in Section 8. In the present case, it is an undisputed fact that demand notice was

issued by the Operational Creditor on 01.10.2019 claiming an amount of Rs.9,26,970/- and interest amount of Rs.1,38,055/- from the Corporate Debtor. However, no notice of dispute was raised by the Corporate Debtor. It is also an undisputed fact in the present matter that the Operational Creditor did not receive any payment from the Corporate Debtor and therefore proceeded to file an application under Section 9 of IBC.

13. It is the case of the Appellant that there are no purchase orders issued by the Appellant or proof of service receipts. The Respondent No. 1 by merely appending invoices without existence of any work order cannot stake claims for payment. Moreover, when the Corporate Debtor did not confirm the acceptance of invoices, no claim can be preferred against the Corporate Debtor. The amount claimed by the Respondent No. 1 was never admitted by the Appellant at any stage. Moreover, it was the obligation of the Respondent No.1 to collect freight from customers and for failure on his part to collect freight payment from the consignee, the Appellant cannot be held responsible. It is further the plea of the Appellant that Respondent No.1 was supposed to give commission out of the freight charges collected to the Appellant for having provided these customers to Respondent No.1. Thus, given the nature of business relationship between them, it is the Appellant who is the Operational Creditor and not the Respondent No. 1 and hence was not entitled to invoke Section 9 application.

14. Countering the Appellant, it has been submitted by the Learned Counsel for Respondent No.1 that the debt owed by the Corporate Debtor is established by the fact three cheques had been issued by them in lieu of the outstanding amount of Rs.2 lakh each dated 31.05.2019, 05.06.2019 and 08.06.2019. Further the

debt remained payable since these three cheques got returned dishonoured on presentation to the bank with the endorsement of 'Stop Payment'.

15. The Appellant has however explained that the cheques issued by the Corporate Debtor were not for payment towards services rendered but for security towards commission received in advance from the Operational Creditor and hence cannot be treated as legally enforceable debt. Further these cheques were dishonoured as the Operational Creditor had presented them to the bank without knowledge of the Corporate Debtor. In the absence of any contractual agreement, we do not wish to comment on the nature of business relationship between the two parties except for stating that it is a well settled legal proposition that the operative requirement of operational debt is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be supplier or receiver.

16. We find that in the context of operational debt, the Adjudicating Authority after due consideration of facts and circumstances is satisfied that this was a case of operational debt rightly claimed by the Respondent No.1. It has held in Para 13 of the impugned order that:

> *"The corporate debtor has also issued cheques for the payment of invoices to the operational creditor. In view of the facts and circumstances, admittedly the operational creditor has supplied goods to the corporate debtor and raised invoices accordingly."*

17. We have also noticed the contention of the Respondent No. 1 that on having completed their assigned scope of work, they had raised invoices from time to time. Payment of four invoices since August 2018 were not cleared. These invoice

details were also provided in Part -IV of Form 5 by the Respondent No. 1. When the dues were not getting cleared, reminder emails were sent to the Corporate Debtor. The Corporate Debtor in reply to these emails had acknowledged the debt and assured that payments would be made. The Respondent No. 1 has placed on record the emails dated 16.11.2018, 05.03.2019 and 13.03.2019 to substantiate their assertion. It was therefore contended by the Learned Counsel of Respondent No. 1 that there was no ambiguity that the amount in default fell squarely in the category of operational debt and the claim of the Appellant that no dues were payable is false and lacks basis.

18. At this stage we may, prima-facie, determine whether there was any admitted debt on the part of the Appellant by perusing the emails exchanged with Respondent No. 1. Emails which have been placed on record by the Respondent No. 1 are reproduced below:

> From: Finance Dipl <finance@dipt.co.h>
> Sent: **16 November 2018** 12:13
> To: viveksingh; Vikassharma
> CC: laxman
> Subject: RE: **OUTSTANDINGS PAYMENT REQUEST DIVINESEAIR** //DTD 28.10.2018
>
> Dear Mr. Vivek,
>
> ***Sorry for your payment delay due to changes of our company one of Director & banking so this is our last humble request & assured that your payment we'll transfer committed by next Thursday on dated 22/11/2018.***
>
> Best Regards
> Pankaj Singh
> Director Finance
> +91-8168317534
> Divine Seair Logistics Pvt. Ltd.
>
> ---

From: Laxman [mailto:laxman@dlpl.co.in]
Sent: **05 March 2019** 16:57
To: 'Kanwal Soin Om Prakash Soin [IN]
Cc: 'Yogi Gupta: [IN]; 'Sankaran Nagarajan'; 'Xavier Chettiar [IN]'; 'VIVEK SINGH [IN]; finance@dlpl.co.in
Subject: RE: **Settlement of Overdues** // S-DIVINESEAIR LOGISTICS

Dear Mr. Kanwal,

Sorry for late reply due to week end and Shivratri holiday. As discussed, in our meeting in your office I already clarified you everything about ***payment delay*** so. ***We are seriously trying to allocate funds so that can clear your payment and assured that same will transfer before 20th March.***

Best Regards/Laxman
Director
DivineSeair Logistics Pvt. Ltd.

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From: Yogi Gupta [IN] <yogi.gupta@kerryindev.com>
Sent: **13 March 2019** 18:44
To: Laxman; VIVEK SINGH [IN]; Kanwal Soin Om Prakash Soin [IN]
Cc: Sankaran Nagarajan; Xavier Chettiar [IN]; finance@dipl.co.in
Subject: Re: Settlement of Overdues // S-DIVINESEAIR LOGISTICS

Well Laxman ji,

You also confirmed during face to face meeting, for the first cheque to be presented on 27/02 but same was not done...
Second cheque by 07/03 - again same was not done
Third cheque by 15/03-No comments for the same.
Now you are giving 20/03...***I am sorry we can't wait for so long as you have taken already 150 days of credit against agreed of 30 days***...
We have presented the cheques in the bank, please ensure same is cleared.

Rgds///Yogi

Yogi Gupta, Vice President - Global Accounts
Freight & Integrated Logistics

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From: Laxman <laxman@dipl.co.in>
Date: Wednesday, **13 March 2019** at 11:42 AM

To: "VIVEK SINGH [IN]" <vivek.singh@kerryindev.com>, "Kanwal Soin Om Prakash Soin [IN]"
<kanwal.soin@kerryindev.com>
Cc: "Yogi Gupta [IN]" <yogi.gupta@kerryindev.com>, Sankaran Nagarajan <sankaran.nagarajan@kerryindev.com>, "Xavier Chettiar [IN]" <xavier.chettiar@kerryindev.com>,
"finance@dipl.co.in" <finance@dipl.co.in>

Subject: RE: Settlement of Overdues //S-DIVINESEAIR LOGISTICS.

Dear Vivek ji,

Kindly note already replied & confirmed to you on my previous mail for ***arrange funds by 20th March.***

Regds/Laxman

**(Emphasis supplied)**

19. The above emails are a clear admission of operational debt being due and payable. These emails have to be seen in the backdrop that no material has been placed on record by the Appellant controverting the content of these emails. We are, therefore, of the prima-facie view that the contention of the Corporate Debtor that there is no admitted debt is specious and lacks substance.

20. Having come to the conclusion that there was a legally enforceable debt, we now turn our attention to the issue of pre-existing disputes raised by the Appellant. We notice that in their reply affidavit to the Section 9 application, it is the contention of the Appellant that in respect of the goods delivered to Matak Tobacco Manufacturing Company ("**Matak**" in short) through the Operational Creditor, the latter had complained about late delivery of goods. Because of delay in delivery by Respondent No.1, it has affected the reputation of the Appellant and caused financial loss.

21. It is the contention of the Respondent No. 1 that the Corporate Debtor has failed to produce any proof or evidence to substantiate the allegations of deficiency of service and that these grounds have been raised to wriggle out of their liability to pay the dues. On the issue of complaint of delay in services, the Respondent No. 1 in their rejoinder reply before the Adjudicating Authority had submitted that the cargo had been received by Matak on time. Similarly, alleged delay in the shipment in respect of M/s Elegance Home Fashion was not caused on account of the Operational Creditor but due to failure on the part of M/s Elegance Home Fashion to provide PoA which was required mandatorily for custom clearance before shipment.

22. On the subject matter of pre-existing disputes, we find that the Adjudicating Authority at paras 12 and 14 of the impugned order has returned the following finding:

> *"12. We have considered the objections raised by the corporate debtor regarding deficiency in services/delay in delivering goods to the parties. However,* ***there is nothing on record to show that any complaint regarding delay in delivery was raised by any party. The Corporate Debtor has also failed to issue notice of dispute in reply to the section 8 notice****, Form-3 and Form-4, denying the claim of the operational creditor."*
>
> *"14.****The applicant has placed sufficient documents to show that the debt is payable by the corporate debtor and there is no dispute pending between the parties.****"*

23. We are also satisfied with the findings of the Adjudicating Authority that there is nothing on record to suggest that the Appellant raised any such dispute before receipt of invoices or at any period prior to the issue of demand notice. There is no exchange of correspondence raising any dispute prior to issue of demand notice. Even the complaint of delay purportedly received by the Appellant from its customers does not seem to have been shared with the Operational Creditor prior to Section 9 application. Thus, we find that there is nothing credible to substantiate the pre-existence of dispute. This puts a serious question mark on the bona-fide of pre-existing disputes raised by the Corporate Debtor and to our mind, therefore, deserves to be disregarded being in the nature of a moonshine defence and an after-thought.

24. We have no hesitation in observing that in the present case, all the requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled with operational debt having been acknowledged and a default having been committed thereto; demand notice served but remained un-replied; and there being no real pre-existing dispute discernible from the given facts. Given this backdrop, we are of the considered view that the Adjudicating Authority has not committed any error in admitting the Section 9 Application for initiation of CIRP of the Corporate Debtor.

25. At this juncture, we now proceed to take cognizance of the fact that the Respondent No.1/Operational Creditor, who is the sole CoC member with 100% vote share, during the course of previous hearing held on 23.01.2023 had apprised this Tribunal that he is desirous of taking steps for withdrawal of CIRP under Section 12A of the IBC. In the interim orders, this Tribunal had granted

four weeks' time to the Respondent No.1 to do the needful and directed the Respondent No.2/Resolution Professional to continue the CIRP proceedings without taking up the resolution plan for consideration. It is pertinent to add that during the last hearing before this Tribunal on 25.07.2023, the Learned Counsel for Respondent No.1 reiterated that no purpose would be served by continuing on with the CIRP since the Corporate Debtor does not have assets sufficient for realization of the operational debts and no resolution was in the horizon for revival of the Corporate Debtor. It was also emphatically submitted that the excessive fees/expenses claimed by the Resolution Professional was preventing them from filing the withdrawal application before the Adjudicating Authority.

26. This Tribunal after concluding the hearing on 25.07.2023 reserved the matter for orders and allowed the parties to file short notes. The Respondent No.2/Resolution Professional in their short notes have stated that in the last more than one year of CIRP, numerous activities have been undertaken for smooth conduct of CIRP process. Further, to prove their bonafide, it is submitted that the sole CoC member had approved fees of the IRP of Rs.2,00,000/- per month which the Resolution Professional reduced on his own to Rs.1 lakh per month being the minimum fees in consonance with the IBBI Regulation. Submitting details of fees/expenses, the Resolution Professional has submitted that the total CIRP cost so far is Rs.19,99,544/- of which the fees of Resolution Professional is Rs.18,00,000/- from 02.03.2022 to 31.07.2023. It has also been stated that an amount of Rs.8 lakhs has been received so far from Respondent No.1, being the sole CoC member and the balance to be received is Rs.11,99,544/-. It is also submitted that the Resolution Professional had explained to the Respondent No.1 the procedure which is required to be followed for filing the CIRP withdrawal

application but the same was yet to be complied with. We notice that the Resolution Professional has advised Respondent No.1 to file Form A and submit bank draft/bank guarantee in respect of CIRP expenses. The total fees/expenses claimed is Rs. 19,99,544/- of which balance payable has been claimed to be Rs. 11,99,544/-.

27. Since the quantum of fees/expenses claimed by the Resolution Professional has been found to be excessive by Respondent No.1, we may look into the reasonability of the fees/expenses claimed to ascertain whether the Respondent No.1 was justified in making the assertion that such exorbitant fees/expenses was coming in the way of their filing the withdrawal application.

28. In the present facts of the case, it is an admitted fact that CIRP commenced on 18.02.2022. The CoC was constituted with a single member which was Respondent No. 1/Operational Creditor. 180 days of CIRP expired on 16.08.2022. The extension of CIRP period by 90 days up to 26.11.2022 was approved on 06.10.2022. During the active CIRP period, we may quickly glance through the major tasks undertaken by the Resolution Professional. Altogether 3 CoC meetings were held on 31.03.2022, 09.08.2022 and 07.12.2022 which shows long periods of intervening gaps. Four valuers were appointed on 07.04.2022 and their reports received on 28.07.2022. Form G could be published on 12.08.2022 just a few days before expiry of 180 days of CIRP period. Only 1 EoI was received with EMD on 26.08.2022. From the above, we do not find much substantial progress to have been accomplished in insolvency resolution by the Resolution Professional despite lapse of sufficient time. It has also been admitted by the Resolution

Professional that since no resolution plan was forthcoming, the sole CoC member had decided not to proceed with CIRP.

29. On 24.01.2023, Respondent No. 1 chose to withdraw from CIRP and on 25.01.2023, the Resolution Professional inter alia submitted cumulative CIRP expenses to the tune of Rs. 19.79 lakh for payment by the Respondent No. 1 being sole member of CoC. Coming to the issue of fees/expenses claimed by the Resolution Professional, we note that aggrieved with the hefty fees of the Resolution Professional, a complaint was also sent by the Respondent No. 1 to IBBI. It is common knowledge that Para 25 to 27 of the Code of Conduct in the First Schedule of IBBI (Insolvency Professionals) Regulations, 2016 provides that the Resolution Professional is expected to charge his fees in a transparent manner which should be a reasonable reflection of the works undertaken rather than maximizing their own personal benefits. In the present case, though the sole CoC member had admittedly approved the fees of the Resolution Professional that cannot become a cover to keep on claiming the fees and end up burdening the sole CoC member with a disproportionately heavy amount as fees/expenses. It was incumbent upon the Resolution Professional to keep in mind that the entire claim amount collated was only about Rs.10 lakhs. Moreover, there was no complexity in the CIRP proceedings which warranted any exceptional responsibility to be discharged by him.

30. Hence, to our mind, integrity and fairness demanded that the Resolution Professional ought to have facilitated the withdrawal of the CIRP application as was desired by the sole CoC member/Respondent No.1 without unduly prolonging the proceedings. It is commonsensical that for recovery of a claim of about Rs.10

lakhs, incurring an expenditure of Rs.19 lakhs by way of fees/expenses of the Resolution Professional would be outlandish and that too when there seems to be no possibility of revival of the Corporate Debtor. Without casting any aspersion on the conduct of the Resolution Professional, we cannot hold back from observing that the Resolution Professional could have exercised a modicum of restraint while projecting his fees/expenses. Keeping in mind the yardstick of reasonability, the fees of the Resolution Professional should be determined on the basis of work required to be performed or actually performed. Given the slow and lackadaisical progress of the present CIRP proceedings, we would like to refrain from showing any indulgence to the Resolution Professional in claiming any additional amount of fees/expenses beyond the amount of Rs.8 lakhs which has already been paid.

31. Further we notice that 270 days of CIRP has already expired on 26.11.2022 with no resolution plan and the sole CoC member in spite of wanting to withdraw the CIRP is unable to do so. This being the case, we are of the considered view that instead of allowing the CIRP proceedings to drag on mechanically with insolvency resolution not in near sight, prudence demands that the ongoing stalemate should be put to an end by allowing the closure of CIRP in the ends of justice. We are of the considered view that given the peculiar circumstances surrounding the present case, this is a fit case to invoke Rule 11 of NCLAT Rules, 2016 which provides that the inherent power of the Appellate Tribunal can be exercised to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.

32. In fine, to put an end to the impasse being faced by the sole CoC member from filing the CIRP withdrawal application, this Tribunal in exercise of its inherent powers under Rule 11 orders the closure of CIRP proceedings in the interests of justice. The Corporate debtor is released from the rigors of CIRP. The Resolution Professional will now close the CIRP proceedings. For reasons cited in preceding paragraphs, the Resolution Professional is not entitled to claim any fees/expenses beyond the sum of Rs.8 lakh which has already been received. With the closure of CIRP, the appeal has become infructuous and stands disposed of on the above terms. No costs.

**[Justice Ashok Bhushan]**
**Chairperson**

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

**Place: New Delhi**

**Date: 10.08.2023**

PKM