

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
APPELLATE JURISDICTION**

Company Appeal (AT) (INS) No. 703 of 2022

In the matter of :

ICICI Prudential Venture Capital Fund

Real Estate Scheme I

Represented by its Investment Manager

ICICI Prudential Asset Management

Company Limited

..... Appellant

V

Anand Divine Developers Private Limited

..... Respondent

Present:

**For Appellant : Mr. Rohan Rajadhyaksha, Mr. Angad Varma,
Mr. Toyesh Tewari and Mr. Nikhil Mendiratta,
Advocates.**

For Respondent : Mr. Kartik Nayar and Mr. Krish Kalra, Advocates

JUDGMENT

(Virtual Mode)

Justice M. Venugopal, Member (Judicial) :

Background:

The Appellant has filed the instant Company Appeal AT (INS) No. 703 of 2022 as an 'Aggrieved Person', in respect of the 'impugned order' dated 25.05.2022, passed by the 'Adjudicating Authority', 'National Company Law

Tribunal' (‘NCLT’), Principal Bench, New Delhi, in I.A. No. 2391 / 2022 in C.P. IB No. 1101/PB/2020.

2. The ‘Adjudicating Authority’ (NCLT), Principal Bench, New Delhi, while passing the ‘impugned order’ dated 25.05.2022 in I.A. No. 2391 / 2022 in C.P. IB No. 1101/PB/2020, had observed the following:

“This is an application filed by the IRP Mr. Harish Taneja under Section 12A of the IBC r/w Regulation 30A of the IBBI (CIRP) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 for withdrawal of the CIRP proceedings initiated against the M/s. Anand Divine Developers Private Limited by the Financial Creditor i.e., ICICI Prudential Venture.

The applicant has submitted that the Financial Creditor and the Corporate Debtor have entered into settlement, even before the formation of the CoC and he has filed an application enclosing Form-FA, in terms of Regulation 30A of the IBBI (CIRP), Regulations, 2016 on behalf of the Financial Creditor to withdraw the application admitted u/s 7 of the IBC.”

and ultimately allowed I.A. No. 2391 / 2022 and dismissed the ‘Corporate Insolvency Resolution Process’ proceedings against the Corporate Debtor.

Appellant’s Submissions:

3. Challenging the ‘impugned order’ dated 25.05.2022 in I.A. No. 2391 / 2022 in C.P. IB No. 1101/PB/2020, passed by the ‘Adjudicating Authority’ (NCLT), Principal Bench, New Delhi, the Learned Counsel for the Appellant contends that the ‘Adjudicating Authority’ had permitted the ‘Appellant’ to withdraw the ‘Application’ filed by the ‘Applicant/Appellant/Petitioner’ under

Section 7 of the I & B Code, 2016, for initiation of 'Corporate Insolvency and Resolution Process' against the 'Respondent/Corporate Debtor' (M/s. Anand Divine Developers Private Limited) in lieu of the terms of the 'Settlement' dated 21.04.2022 that was entered into between the 'Appellant' and the 'Corporate Debtor' group (as defined under the 'Terms of Settlement' and which includes Mr. Getamber Anand, the promoter and super majority shareholder of Respondent and ATS Infrastructure Limited, a shareholder of the Respondent, holding an aggregate of 98% of the shareholding of the Respondent.

4. According to the Learned Counsel for the 'Appellant' while permitting the 'withdrawal of the Application' as mentioned above, the 'Adjudicating Authority' had noted in the 'impugned order' dated 25.05.2022 that the Appellant and the Respondent had entered into a 'Settlement', but failed to expressly take on record, the 'Terms of Settlement' and make the same a part and parcel of the 'impugned order', as was specifically sought and prayed for.

5. The grievance of the Learned Counsel for the Appellant is that the 'Adjudicating Authority' had failed to grant 'liberty' to the 'Appellant' to 'Restore / Revive' the C.P. IB No. 1101/PB/2020 from the stage of 'Admission of 'Corporate Insolvency and Resolution Process' of the Respondent and 'pre-constitution of Committee of Creditors', in case of failure by the Respondent to fulfil its obligations under the 'Settlement Terms'.

6. The Learned Counsel for the Appellant advances an argument that the 'Adjudicating Authority' had omitted to take note of the categorical stipulations mentioned in the 'Settlement Terms' Viz. 'Revival / Restoration of the CIRP' against the Respondent. In this connection, the Learned Counsel for the 'Appellant' points out that because of the 'CIRP' proceedings against the 'Respondent' was dismissed, as per the 'impugned order', as on date, there is no 'Interim Resolution Professional' in-charge of the affairs of the Respondent.

7. Expatiating his contention, the Learned Counsel for the Appellant takes an emphatic stand that the 'impugned order' in I.A No. 2391 / 2022 in C.P. IB No. 1101/PB/2020, passed by the 'Adjudicating Authority' is required to be modified by the 'Adjudicating Authority' to the extent of including the submissions projected by the 'Appellant' vis-a-vis the 'Settlement Terms' and granting 'liberty' to the Appellant to restore/revive the 'CIRP' proceedings against the Corporate Debtor.

8. The Learned Counsel for the Appellant refers to the 'Order' of this 'Tribunal' in I.A. No. 1346 of 2022 in Company Appeal (AT) (INS) No. 400 of 2022 between M/s. Anand Divine Developers Private Limited V ICICI Prudential Venture Capital Fund Real Estate Scheme, wherein at paragraphs 3 and 4, it is observed as under:

3. An Application I.A. No.1346 of 2022 has been filed by the parties bringing on record a Settlement dated 21.04.2022. The Settlement

contemplates that both the parties shall withdraw respectfully the Appeal being Company Appeal (AT) (Ins.) No. 400 of 2022 as well as the Application under Section 7 filed by the Financial Creditor.

4. Considering the aforesaid, we allow the I.A. No. 1346 of 2022, take the Settlement on record and permit the Appellant to withdraw the Company Appeal (AT) (Ins.) No. 400 of 2022 to enable the parties to approach the Adjudicating Authority by filing an Application for withdrawal of Section 7 Application. With regard to expenses etc., it shall be open for the parties to request the Adjudicating Authority to pass appropriate order.”

and resultantly permitted the `Appeal` to be withdrawn, etc.

Respondent’s Contentions:

9. The Learned Counsel for the Respondent submits that the `impugned order` dated 25.05.2022 in I.A. No. 2391 of 2022 in C.P. IB No. 1101/PB/2020 requires no modification as sought for, by the `Appellant` in the instant Comp. App (AT) (INS) No. 703 of 2022, to make the `Terms of Settlement` dated 21.04.2022 as part and parcel of the `impugned order`.

10. The Learned Counsel for the Respondent comes out with a plea that the `Appellant` is not to be granted the `relief` of `Revival/Restoration` of main C.P. IB No. 1101/PB/2020 by virtue of `Terms of Settlement` dated 21.04.2022. Also, no liberty is to be given to the `Appellant` to initiate `contempt` or `any other appropriate legal proceedings` in terms of the `Settlement` in issue.

Discussions:

11. At the outset, this `Tribunal' points out that the `Appellant/Applicant' filed C.P.IB/1101(PB)/2020 on the file of the `Adjudicating Authority' (National Company Law Tribunal), Principal Bench, New Delhi (under Section 7 of the I & B Code, 2016 r/w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against the Respondent/Corporate Debtor (Anand Divine Developers Private Limited) and that, in the `Admission Order of the Petition' dated 25.03.2022, the `Adjudicating Authority' at paragraph 26 had observed as under:

26. `It is to be noted that the Corporate Debtor is liable to pay to the Financial Creditor, a total outstanding sum of INR 25,46,33,221/- (Rupees Twenty-Five Crore Forty-Six Lacs Thirty-Three Thousand Two Hundred Twenty-One Only) as on 20.11.2020, which includes the Default IRR. The Default IRR shall continue to add up till the date of realization of the payment from the Corporate Debtor. `

12. Moreover, in the `Order of Admission' dated 25.03.2022, the `Adjudicating Authority' at paragraph 28 had observed that "in the present case the `Corporate Debtor' has not filed any `Reply and Written Submissions till now. However, in view of the `debt' and `default' clearly mentioned in Part IV of the Application under Section 7", and was inclined to admit the `Petition' and appointed the `Interim Resolution Professional' Mr. Harish Taneja and declared moratorium, etc.

13. The plea of the Appellant is that the 'Adjudicating Authority' has committed an 'error' in passing a simpliciter order of withdrawal observing that the 'Appellant' and the 'Respondent' had entered into a 'Settlement', but failed to take on record the 'Terms of Settlement' and to make it as 'part and parcel' of the 'impugned order' dated 25.05.2022 in I.A No. 2391 / 2022 in C.P. IB No. 1101/PB/2020.

14. The forceful contention advanced on behalf of the Appellant is that no hardship and prejudice would be caused to the Respondent in the event of 'Terms of Settlement' was taken on record and 'liberty' being granted to the 'Appellant', to revive the main C.P. IB No. 1101/PB/2020, on the file of the 'Adjudicating Authority'.

15. It is represented on behalf of the Appellant that the Respondent (acting through its Promoters and Shareholders owing to the Respondent at the concerned time having been admitted into 'CIRP') had unconditionally agreed in the 'Terms of Settlement' that the 'Appellant' would be at 'liberty' to 'Restore/Revive' the Section 7 Application in the 'event of default' committed by the Respondent in abiding the 'Settlement Terms'. In fact, both the 'Parties' were in complete agreement and that the 'Adjudicating Authority' had ignored this aspect and passed a 'simpliciter order of withdrawal' without expressly recording the 'Settlement Terms'.

16. According to the Learned Counsel for the Appellant although the Appellant had prayed for the grant of liberty for 'Revival of CIRP', the 'Tribunal' without assigning any reasons for its refusal, failed to grant the 'Reliefs', as prayed for, thereby causing 'prejudice and injustice' to the 'Appellant'. Besides this, the 'Adjudicating Authority' had failed to take into consideration of the fact that the 'Settlement Terms' requires the 'Respondent' to have continuing obligations, even after the 'conditional withdrawal of C.P. IB No. 1101/PB/2020.

17. The Learned Counsel for the Appellant refers to the Judgment of this 'Tribunal' in CA (AT) (CH) (INS.) No. 06 of 2021 between Sree Bhadra Parks and Resorts Limited, Thrissur, Kerala - 680020 V Sri Ramani Resorts and Hotels Pvt. Ltd., Chennai – 600018, to support his plea that the 'Creditor' was permitted to 'withdraw the application' with liberty to revive the same, in case of default by the 'Corporate Debtor'. Besides this, the Learned Counsel for the Appellant falls back upon the Judgments of this 'Tribunal' in (i) Krishna Karg and Another V Pioneer Fabricators Private Limited (vide Company Appeal (AT) (INS.) No. 92 of 2021) and (ii) G. Sreevidhya V Karismaa Foundations Private Limited (vide C.P. IB. 769 of 2018).

18. The Learned Counsel for the Appellant adverts to the Judgment of this Tribunal in ICICI Bank Limited V Opto Circuits (India) Limited & Ors. (Vide Company Appeal (AT) (CH) (INS) No. 146 of 2021, wherein at paragraphs 23 and 24, it is observed as under:

23. *“This Tribunal comes to a resultant conclusion that the Adjudicating Authority in the impugned order dated 17.08.2020 in I.A. No. 273 of 2020 in CP 199 of 2018 with regard to sub para 4 of para 9 of the impugned order regarding the observation/liberty to file a fresh Company Petition by the Appellant Bank is erroneous and without application of mind and without following the Principles of Natural Justice and not adhering to the decision of this Tribunal being the Appellate Authority, is hereby quashed and set aside. We make it clear that the entire sub para 4 of para 9 is hereby set aside by passing the following directions.*

24. *Accordingly, this Tribunal pass the following order to be read in sub para 4 of para 9 of the impugned order dated 17.08.2020 as under:*

“It is made clear that in the event of default not adhering to the terms of ‘settlement agreement’ as regards the payment of the outstanding instalments, the ‘Financial Creditor’ shall be at liberty to seek revival/restoration of the ‘Corporate Insolvency Resolution Process’ proceedings before the Adjudicating Authority in CP No.199 of 2018.”

19. The Learned Counsel for the Appellant refers to the Judgment of this Tribunal in Krishna Garg and Anr. V Pioneer Fabricators Pvt. Ltd. (Vide Company Appeal (AT) (INS) No. 92 of 2021, wherein at paragraphs 2 and 3, it is observed as under:

2. *“..... The Adjudicating Authority banking upon the judgment of the Hon’ble Apex Court in “Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & Ors.- 2019 SCC OnLine SC 73” allowed the Appellants - Financial Creditors to withdraw the application and terminated the CIRP. It further emerges from the order that neither the settlement terms were filed nor the same were brought on record and incorporated in the order of the Adjudicating Authority with liberty to revive/ restore the CIRP in the event of the Corporate Debtor not adhering to the terms of the settlement or post dated cheques issued to Appellants being dishonoured.*

3. *In view of this position, it cannot be said that the Settlement Terms not incorporated in the order of the Adjudicating Authority assumed the*

character of the decree of the Court, breach whereof would entitle the Appellants - Financial Creditors to come back and seek restoration/ revival of CIRP.’

20. The Learned Counsel for the Appellant points out the Judgment of this ‘Tribunal’ in Himadri Foods Ltd. V Credit Suisse Funds AG (Vide Company Appeal (AT) (INS) No. 1060 of 2020), wherein it is observed as under:

‘It appears that the Terms of Settlement providing a repayment schedule was incorporated in the order thereby making it an order / decree of the Court and once this was the position, giving liberty to the Financial Creditor to come back can be interpreted on no hypothesis other than that the revival of CIRP would be sought for non-compliance with the Terms of Settlement. Therefore, even on merit, we find no substance in the instant appeal.’

21. In short, the ‘Appellant’ in the instant ‘Appeal’ before this ‘Appellate Tribunal’ has prayed for ‘modifying the impugned order dated 25.05.2022 in I.A. No. 2391 / 2022 in C.P. IB No. 1101/PB/2020 to the effect that the ‘Settlement Terms’ as contained in the ‘Terms of Settlement’ dated 21.04.2022, shall be expressly made part of the ‘impugned order’ and also as prayed for recording that the ‘Appellant’ shall be permitted to seek ‘Restoration / Revival’ of the main C.P. IB No.1101/PB/2020 in accordance with the ‘Settlement Terms’ dated 21.04.2022.

22. A mere running of the eye of the ‘Terms of Settlement’ dated 21.04.2022 between the Appellant and the ATS Infrastructure Limited and Others,

collectively referred to as 'Corporate Debtor Group', VCF / Financial Creditor, Individual Promoter, Kaanha, Umriha, Wonderworld, ATS Township, ATS Housing, referred to as 'Confirming Parties', Clause 9 to 11, reads as under:

9. `` *The Corporate Debtor Group hereby confirms and acknowledges that the amounts due and payable by ADDPL to the Financial Creditor / VCF towards full and final settlement and redemption of the Outstanding SOCDs as on April 18, 2022 is INR 36,84,44,669 (Indian Rupees Thirty Six Crore Eighty Four Lacs Forty Four Thousand Six Hundred Sixty Nine Only).*

10. *Subsequent to the admission of the said Section 7 Application, the Corporate Debtor Group has offered to make payment of an amount of INR 7,18,78,600 (Indian Rupees Seven Crore Eighteen Lacs Seventy Eight Thousand Six Hundred Only) ('Settlement Amount') to the Financial Creditor towards the Outstanding SOCDs, in a time bound manner as stated hereinafter.*

11. *Based on the assurances, undertaking and covenants of the Corporate Debtor Group to make payment of the Settlement Amount strictly in the manner stated herein, the Financial Creditor has agreed to accept the settlement Amount towards the Outstanding SOCDs subject only to the same being strictly paid on the dates as mentioned herein and accordingly, the Parties are entering into these Terms of Settlement to record (i) the manner in which ADDPL and Individual Promoter shall pay the Settlement Amount to the VCF/Financial Creditor; (ii) consequences of failure on the part of ADDPL and Individual Promoter to make payment of the Settlement Amount to the VCF/Financial Creditor in accordance with these Terms of Settlement; and (iii) the withdrawal of Section 7 Application, on the terms and conditions set out herein and as per the applicable provisions of the Insolvency Code and other relevant regulations, while reserving and without prejudice to all rights, remedies, recourse and benefits available to the Financial Creditor under the Investment Agreement or any Definitive Agreements, the Insolvency Code and / or any other applicable laws, upon the occurrence of any breach / default / failure on the part of the Corporate Debtor Group in making payments as mentioned in these*

Terms of Settlement or otherwise complying with any provision hereunder and / or upon occurrence of any other default / breach / Event of Default under the Investment Agreement and other Definitive Agreements and / or upon admission of any Insolvency or proceedings of similar nature initiated by any creditor against the Corporate Debtor Group (or any one or more of them) and ADDPL.”

23. Apart from the above, the `Settlement Terms` reads as under:

1. `The Corporate Debtor Group hereby unconditionally and irrevocably, agree, confirm and undertake to make payment of the Settlement Amount i.e., an aggregate amount of INR 7,18,78,600/- (Indian Rupees Seven Crore Eighteen Lacs Seventy Eight Thousand Six Hundred only) to the Financial Creditor in 8 (Eight) tranches in the following manner, towards repayment of the dues of the VCF/Financial Creditor:

<i>Date of Payment</i>	<i>Tranche</i>	<i>Amount</i>
<i>Within 7 (seven) calendar days from the date of signing of these Terms of Settlement</i>	<i>First Tranche</i>	<i>INR 70,70,000/- (Indian Rupees Seventy Lacs Seventy Thousand Only)</i>
<i>On or before June 30, 2022</i>	<i>Second Tranche</i>	<i>INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)</i>
<i>On or before July 31, 2022</i>	<i>Third Tranche</i>	<i>INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)</i>
<i>On or before August 31, 2022</i>	<i>Fourth Tranche</i>	<i>INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)</i>
<i>On or before September 30, 2022</i>	<i>Fifth Tranche</i>	<i>INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)</i>
<i>On or before October 31, 2022</i>	<i>Sixth Tranche</i>	<i>INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)</i>
<i>On or before November 30, 2022</i>	<i>Seventh Tranche</i>	<i>INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)</i>

<i>On or before December 15, 2022* ('Last Tranche Payment Date')</i>	<i>Eighth Tranche / Last Tranche</i>	<i>INR 3,65,28,500/- (Indian Rupees Three Crore Sixty Five Lacs Twenty Eight Thousand Five Hundred Only)</i>
<i>Total</i>		<i>INR 7,18,78,600/- (Indian Rupees Seven Crore Eighteen Lacs Seventy Eight Thousand Six Hundred Only)</i>

2. *In furtherance of the aforesaid payment obligation of the Corporate Debtor Group towards the Settlement Amount, the Corporate Debtor Group has provided demand drafts / postdated cheques to the VCF/Financial Creditor for an amount of INR 6,48,08,600/- (Indian Rupees Six Crore Forty Eight Lac Eight Thousand Six Hundred Only) being the amount equivalent to the Second Tranche to Eight Tranche of the Settlement Amount, the receipt of which is hereby acknowledged by the VCF/Financial Creditor. Details of such demand drafts / postdated cheques handed over by the Individual Promoter to the Financial Creditor is set out in Annexure-2 hereto.*

3. *The Corporate Debtor Group hereby unconditionally and irrevocably, agree, acknowledge and undertake that in addition to the default / breach / Event of Default as contemplated under the Investment Agreement and other Definitive Agreements, the occurrence of any breach / default / failure by the Corporate Debtor Group to comply with any of the terms, conditions, covenants and / or undertakings of the Corporate Debtor Group under these Terms of Settlement and any other documents / deeds / undertakings / writings pursuant hereto, including without limitation, any default in making payment of any amounts in the manner as mentioned in these Terms of Settlement and any other documents / deeds / undertakings / writings pursuant hereto or aforementioned post-dated cheques towards Settlement Amount not being honoured shall also be deemed and construed as an 'Event of Default' under the Investment Agreement and other Definitive Agreements and under these Terms of Settlement, with the intended costs and consequences as those stated in the Investment*

Agreement and other Definitive Agreements as well as those set out herein and under applicable laws.

4. (a) Subject to sub-clause (c) of this Clause 4, the Parties hereby further agree that if any default / breach / Event of Default has occurred or if an application for insolvency of ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more of them) filed by any other creditor under the Insolvency Code has been admitted or a similar proceeding is initiated against ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more of them) or before the Last Tranche Payment Date, then unless the entire Settlement Amount has already been received by the VCF/Financial Creditor before such default / breach / Event of Default / admission of such insolvency proceedings against ADDPL or the Corporate Debtor Group (or any one or more of them) or the Continuing Parties (or any one or more of them) or initiation of similar proceedings, as the case may be, the VCF/Financial Creditor may, without prejudice to any other rights or remedies that it may have under these Terms of Settlement and / or the Investment Agreement and / or the Definitive Agreements and / or any applicable laws, declare that the original terms of the SOCDs as set out under the Investment Agreement read with the Definitive Agreements shall become applicable with immediate effect and thereupon the Financial Creditor shall be entitled to declare all amounts due and payable in accordance with the terms of the Investment Agreement to be paid forthwith and in such an event, ADDPL and the Corporate Debtor Group shall forthwith and in any case, within 2 (two) days of such event repay all such amounts due in terms of the Investment Agreement, in full, without any protest or demur.

(b) Subject to sub-clause (c) of the Clause 4, the Corporate Debtor Group hereby unconditionally and irrevocably agree, undertake and acknowledge that upon occurrence of default / breach / Event of Default or if an application for insolvency of ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more of them) filed by any other creditor under the Insolvency Code has been admitted on or before the Last Tranche Payment Date or a similar proceeding is initiated against ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more

of them, then unless the entire Settlement Amount has already been paid by the Corporate Debtor Group to the VCF/Financial Creditor before such default / breach / Event of Default / admission of insolvency against ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more of them or initiation of similar proceedings, as the case may be, the repayment of the outstanding SOCDs shall be governed solely by the terms and conditions of the Investment Agreement and the Definitive Agreements and in such an event, the Corporate Debtor Group further unconditionally and irrevocably agrees, undertakes and acknowledges that the outstanding dues in respect of the Outstanding SOCDs (in accordance with the terms of the Investment Agreement being the amounts due to the Financial Creditor as of November 20, 2020 as stated in the Section 7 Application), together with further default IRR of 30% on such amounts calculated till the date of actual payment, shall be forthwith due and payable by ADDPL and the Individual Promoter to the Financial Creditor, after taking into consideration any amounts received by the Financial Creditor from the Corporate Debtor Group under these Terms of Settlement.

(c) In case any insolvency petition against the Confirming Parties (or any one or all of them) is admitted, then the Corporate Debtor Group shall within 10 (ten) calendar days of such admission order, furnish (including creation and perfection) to the VCF/Financial Creditor an alternate security which is acceptable to the VCF/Financial Creditor, failing which the VCF/Financial Creditor shall have the liberty to file its claim with the resolution professional of the Confirming Parties against which the insolvency proceedings has been admitted.

5. The Corporate Debtor Group hereby unconditionally and irrevocably, agree that till the entire Settlement Amount is paid to the VCF / Financial Creditor in accordance with these Terms of Settlement or the entire dues are paid to the VCF/Financial Creditor in accordance with Clause 4 of these Terms of Settlement, as the case may be, the VCF / Financial Creditor shall reserve all rights, recourse, remedies and benefits available to the VCF / Financial Creditor under the Investment Agreement, any other Definitive Agreements, the Insolvency Code and other applicable laws. It is hereby clarified that upon receipt of the entire Settlement Amount by the VCF/Financial Creditor in a time bound manner and as contemplated in

these Terms of Settlement, the VCF / Financial Creditor shall not be entitled to claim any further amounts towards the outstanding SOCDs under the Investment Agreement or any other Definitive Agreements.

6. The Corporate Debtor Group hereby unconditionally and irrevocably, agree to create additional security which is acceptable to the VCF / Financial Creditors and having a minimum value equivalent to the Settlement Amount, in favour of the Debenture Trustee (as defined in the Investment Agreement) for the benefit of the VCF / Financial Creditor latest by July 31, 2022 in order to secure the outstanding amounts payable by ADDPL and the Corporate Debtor Group to the VCF / Financial Creditor in accordance with the Investment Agreement, Definitive Agreements and these Terms of Settlement.

7. The Corporate Debtor Group hereby agree and confirm that upon occurrence of a default / breach / Event of Default, including a breach / default / failure by the Corporate Debtor Group in making payments as per these Terms of Settlement, the VCF, without prejudice to any other rights, remedies, recourse or action that it may have, reserves its right to revive / file an application or re-initiate proceedings before the Hon'ble NCLT (at its discretion) under the Insolvency Code and / or initiate any other proceedings which it can initiate in terms of the Investment Agreement / other Definitive Agreements or under any applicable laws, at its discretion and upon such default / breach / Event of Default, the Corporate Debtor shall become liable to make payments of the amounts due and payable to the VCF in terms of the Investment Agreement and Definitive Agreements, and such obligation shall not be affected in any manner (including the amounts payable) by virtue of these Terms of Settlement.

8. That based on the aforesaid promises, undertakings and covenants of the Corporate Debtor Group and the Confirming Parties, and only upon receipt by the VCF / Financial Creditor of the First Tranche of Settlement Amount into its bank account, the VCF / Financial Creditor has agreed to conditionally (subject to and with full rights to revive / re-initiate at the discretion of Financial Creditor) withdraw the Section 7 Application as per the applicable provisions of the Insolvency Code and other relevant regulations, while reserving all rights, remedies, recourse and benefits available to the Financial Creditor under the Investment Agreement or any

Definitive Agreements, the Insolvency Code and other applicable laws in case of failure / default on the part of the Corporate Debtor Group to make any payments in terms of these Terms of Settlement or on occurrence of default / breach / Event of Default or initiation of similar proceedings or admission of any insolvency proceedings by any creditor against ADDPL or the Corporate Debtor Group (or any one or more of them) or the Confirming Parties (or any one or more of them). Provided however that the withdrawal of Section 7 Application shall not be initiated by the Financial Creditor till such time the Corporate Debtor Group and Confirming Parties have, unconditionally and irrevocably, withdrawn all proceedings, suits, actions, notices, applications and claims (of whatsoever nature) filed / initiated / issued by them against or to Financial Creditor (including without limitation, the Company Appeal (AT) (Insolvency) bearing No. 400 of 2022 pending before NCLAT), whether or not the same is within the knowledge of Financial Creditor. The Corporate Debtor Group and the Confirming Parties hereby agree and acknowledge that withdrawal of all such proceedings, suits, actions, notices, applications and claims shall be a precondition to withdrawal of Section 7 Application and the Financial Creditor shall not be obligated to withdraw Section 7 Application until the same are withdrawn to its satisfaction, with a written confirmation being provided to the Financial Creditor in that regard.

9. The Corporate Debtor Group hereby unconditionally and irrevocably agrees and undertakes that the Corporate Debtor Group shall procure and ensure compliance of these Terms of Settlement by ADDPL including by way of signing a deed of adherence in the format acceptable to the VCF / Financial Creditor. The Corporate Debtor Group hereby further agrees and undertakes that immediately and in any event no later than 1 (one) day of the VCF / Financial Creditor conditionally withdrawing the Section 7 Application, the Corporate Debtor Group shall ensure and cause ADDPL to enter into the deed of adherence for acknowledging to be bound by the terms and conditions of these Terms of Settlement. Further, the Corporate Debtor Group hereby agrees that upon execution of such deed of adherence, the term 'Corporate Debtor Group' under these Terms of Settlement shall include 'ADDPL'. Notwithstanding anything to the contrary, the obligation of ADDPL and the Corporate Debtor Group shall

be joint and several in respect of all the outstanding amounts payable under these Terms of Settlement.’’

24. Resting on the ‘Settlement Terms’ dated 21.04.2022, the ‘Appellant’ on 17.05.2022 in respect of ‘Withdrawal Application’ in C.P. IB No. 1101/PB/2020 admitted for ‘CIRP’ of ‘Respondent/Corporate Debtor (Anand Divine Developers Private Limited) had addressed a letter to Mr. Harish Taneja, IRP of Anand Divine Developers Private Limited stating under the head the Settlement Amount Clause 1 and Clause 2 of the ‘Terms of Settlement’ as under :

1. “The Corporate Debtor Group hereby unconditionally and irrevocably, agree, confirm and undertake to make payment of the Settlement Amount i.e., an aggregate amount of INR 7,18,78,600/- (Indian Rupees Seven Crore Eighteen Lacs Seventy Eight Thousand Six Hundred only) to the Financial Creditor in 8 (Eight) tranches in the following manner, towards repayment of the dues of the VCF/Financial Creditor:

<i>Date of Payment</i>	<i>Tranche</i>	<i>Amount</i>
<i><u>Within 7 (seven) calendar days from the date of signing of these Terms of Settlement</u></i>	<i>First Tranche</i>	<i>INR 70,70,000/- (Indian Rupees Seventy Lacs Seventy Thousand Only)</i>
<i><u>On or before June 30, 2022</u></i>	<i>Second Tranche</i>	<i>INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)</i>
<i><u>On or before July 31, 2022</u></i>	<i>Third Tranche</i>	<i>INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)</i>
<i><u>On or before August 31, 2022</u></i>	<i>Fourth Tranche</i>	<i>INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)</i>

<u>On or before September 30, 2022</u>	Fifth Tranche	INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)
<u>On or before October 31, 2022</u>	Sixth Tranche	INR 47,13,400/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Four Hundred Only)
<u>On or before November 30, 2022</u>	Seventh Tranche	INR 47,13,300/- (Indian Rupees Forty Seven Lacs Thirteen Thousand Three Hundred Only)
<u>On or before December 15, 2022* (‘‘Last Tranche Payment Date’’)</u>	Eighth Tranche / Last Tranche	INR 3,65,28,500/- (Indian Rupees Three Crore Sixty Five Lacs Twenty Eight Thousand Five Hundred Only)
<u>Total</u>		INR 7,18,78,600/- (Indian Rupees Seven Crore Eighteen Lacs Seventy Eight Thousand Six Hundred Only)

2. In furtherance of the aforesaid payment obligation of the Corporate Debtor Group towards the Settlement Amount, **the Corporate Debtor Group has provided demand drafts/postdated cheques to the VCF/Financial Creditor for an amount of INR 6,48,08,600 (Indian Rupees Six Crore Forty Eight Lac Eight Thousand Six Hundred Only) being the amount equivalent to the Second Tranche to Eighth Tranche of the Settlement Amount**, the receipt of which is hereby acknowledged by the VCF/Financial Creditor. Details of such demand drafts/posted dated cheques handed over by the Individual Promoter to the Financial Creditor is set out in Annexure-2 hereto.”

25. Added further, Clause 13 of the ‘Terms of Settlement’ reads as under:

13. “Notwithstanding anything contained herein or elsewhere, the Investment Agreement and other Definitive Agreements shall continue to be valid, binding and subsisting until the Last Tranche Payment Date and in case of occurrence of default / breach / Event of Default till such time that the Outstanding SOCDs are repaid in full in accordance with the Investment Agreement and Definitive Agreements.”

(F) Annexure-2 of the Terms of Settlement:

**``Annexure-2
(Refer Clause 2)
Details of demand drafts/post-dated cheques**

Sr. No.	Demand Draft / Cheque No.	Cheque Dated	Cheque Amount	Drawn on Bank	Drawn by
1	001861	30-Jun-22	47,13,400	Kotak Mahindra Bank	Getamber Anand
2	001860	31-Jul-22	47,13,300	Kotak Mahindra Bank	Getamber Anand
3	001864	31-Aug-22	47,13,400	Kotak Mahindra Bank	Getamber Anand
4	001862	30-Sep-22	47,13,300	Kotak Mahindra Bank	Getamber Anand
5	001865	31-Oct-22	47,13,400	Kotak Mahindra Bank	Getamber Anand
6	001863	30-Nov-22	47,13,300	Kotak Mahindra Bank	Getamber Anand
7	001866	15-Dec-22	3,65,28,500	Kotak Mahindra Bank	Getamber Anand

26. By virtue above settlement, the Appellant had wished to conditionally withdraw the Section 7 Petition filed against the Corporate Debtor, subject to the Corporate Debtor, Corporate Debtor group and the Confirming Parties (as defined in the `Terms of Settlement`) unconditionally complying with all the covenants contained in the `Terms of Settlement` and hence requested the `Interim Resolution Professional` to file appropriate application before the `Adjudicating Authority` (Principal Bench of NCLT, under Section 12A of the I

& B Code read with Regulation 30A (1) (a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, for conditional withdrawal of the Section 7 Petition against the Corporate Debtor, in this regard.

27. The Appellant had requested the 'Interim Resolution Professional' to include the undermentioned additional prayers in the proposed 'Application' for 'conditional withdrawal':

(a) "Grant liberty to the Financial Creditor to approach the Hon'ble NCLT again to revive and restore the proceedings under Company Petition No. IB 1101 (PB)/2020 if the Corporate Debtor or Corporate Debtor Group (as defined under the Terms of Settlement) fails to abide by the terms of the Terms of Settlement dated 21 April 2022 including in respect of the Settlement Amount (as defined under the Terms of Settlement);

(b) Grant liberty to the Financial Creditor to initiate contempt proceedings or such other suitable proceedings against the Corporate Debtor and Corporate Debtor Group in case of any default / breach / failure on the part of the Corporate Debtor or Corporate Debtor Group to comply with any of the terms, conditions, covenants and / or undertakings of the Corporate Debtor Group under the Terms of Settlement and any other documents / deeds / undertakings / writings pursuant thereto, including without limitation, any default in making payment of any amounts in the manner as mentioned in the Terms of Settlement."

28. It may not be out of place for this 'Tribunal' to refer to the Judgment of this 'Tribunal' (Three Member Bench) in the matter of Ruchita Modi V Kanchan

Ostwal in Comp. App (AT) (INS) No. 1000 of 2019 dated 04.11.2019, wherein at Paragraph 7, it is observed and held as under:

7. ``Both parties state that they will be bound by this settlement. In exercise of inherent powers under Rule 11 of the NCLAT Rules, 2016, we allow the Company Appeal (AT) (Ins) No.1000 of 2019 settlement and set aside the Impugned Order dated 18th September, 2019 passed by Adjudicating Authority (NCLT) Jaipur (Court No.1). Company Petition No.(IB)-93/9/JPR/2018 filed by Mrs. Kanchan Ostwal against MEC Shot Blasting Equipment Private Limited is disposed of as withdrawn. The Appellant as well as shareholders, Directors of the Corporate Debtor will be bound by the terms of settlement. In case there is default in the payment in terms of the settlement, it will be open for the Operational Creditor to move this Appellate Tribunal for recall of this Order and to revive the CIRP process against the Corporate Debtor. The Operational Creditor may also file Application for initiation of the contempt proceedings against the defaulting Appellant, Directors/Director and shareholders.``

29. Also, this `Tribunal`, adverts to the Judgment dated 25.01.2019 of the Hon`ble Supreme Court in the matter of Swiss Ribbons Pvt. Ltd. V Union of India whereby and whereunder at Paragraph 52, it is observed as under:

52. ``It is clear that once the Code gets triggered by admission of a creditors petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers

under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.’’

30. In this connection, this ‘Tribunal’ refers to the Order of this ‘Appellate Tribunal’ dated 17.07.2019, in the matter of NUI Pulp & Paper Industries Private Limited V M/s. Roxcel Trading GMBH (vide Comp. App (AT) (INS) No. 664 of 2019, wherein at Paragraphs 8 to 10, it is observed as under:

8. ‘Rule 11 of the National Company Law Tribunal Rules, 2016 deals with ‘inherent powers’ of the National Company Law Tribunal and reads as follows:

11. Inherent Powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

9. From the aforesaid Rule 11, it is clear that the Tribunal (Adjudicating Authority herein) can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

10. From the aforesaid provisions, it is clear that once an application under Sections 7 or 9 is filed by the Adjudicating Authority, it is not necessary for the Adjudicating Authority to await hearing of the parties for passing order of ‘Moratorium’ under Section 14 of the ‘I&B Code’. To ensure that one or other party may not abuse the process of the Tribunal or for meeting the ends of justice, it is always open to the Tribunal to pass appropriate interim order.’’

31. In fact, the Hon’ble Supreme Court of India had dismissed the Civil Appeal No. 6697 of 2019 through its Order dated 11.09.2019, preferred by the Appellant

(NUI Pulp and Paper Industries Private Limited) against the Respondent (M/s. Roxcel Trading GMBH) thereby affirming the 'Order' dated 17.07.2019, passed by the 'National Company Law Appellate Tribunal', Principal Bench, New Delhi, in Comp. App (AT) (INS) No. 664 of 2019.

Invocation of an 'Inherent Power':

32. To be noted, that an 'Inherent Power', is to be pressed into service by a 'Tribunal' / 'an Appellate Tribunal' based on the well settled proposition of 'Law' that an 'Act of Tribunal' / 'Court of Law', shall cause any 'prejudice', hardship, inconvenience to an 'Homo-sapien' in the considered opinion of this 'Tribunal'. In aid of delivering justice to the Stakeholders, an 'Inherent Power' can be exercised by a 'Tribunal'. An inherent powers' breadth is co-extensive with the necessity.

33. It transpires that the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, on 25.05.2022, had allowed I.A. No. 2391 of 2022 filed by the 'Appellant/Petitioner/Financial Creditor' (under Section 12A of the I & B Code read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, for 'withdrawal of the Corporate Insolvency Resolution Process) initiated against the

Respondent/Corporate Debtor, based on the 'Settlement' entered into between the 'Parties', prior to the formation of the 'Committee of Creditors'.

34. In reality, the 'Appellant/Petitioner/Financial Creditor' had preferred an 'Application' together with 'Form FA' (under Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, to withdraw the 'Application' in C.P. IB No. 1101 (PB) / 2020 (filed under Section 7 of the I & B Code, 2016).

35. Based on the above, the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, on 25.05.2022, had allowed the I.A. No. 2391 of 2022 filed by the 'Appellant/Petitioner' and dismissed the 'CIRP' proceedings initiated against the 'Corporate Debtor' by the 'Appellant/Petitioner/Financial Creditor', by virtue of the 'Order' passed on 25.03.2022.

36. In reality, as per the 'Terms of Settlement' read in terms of the 'Deed of Adherence', the Respondent in unambiguous and unequivocal terms had consented and agreed for Revival/Restoration of 'Corporate Insolvency and Resolution Process' against the 'Respondent/Corporate Debtor' in the event of any 'default', being committed thereto.

37. For a better and fuller appreciation of the subject matter in issue, it is relevant to mention Clause 7 of the 'Settlement Terms' dated 21.04.2022, which proceeds to the following effect:

7. *“The Corporate Debtor Group hereby agree and confirm that upon occurrence of a default / breach / Event of Default, including a breach / default / failure by the Corporate Debtor Group in making payments as per these Terms of Settlement, the VCF, without prejudice to any other rights, remedies, recourse or action that it may have, reserves its right to revive / file an application or re-initiate proceedings before the Hon’ble NCLT (at its discretion) under the Insolvency Code and / or initiate any other proceedings which it can initiate in terms of the Investment Agreement / other Definitive Agreements or under any applicable laws, at its discretion and upon such default / breach / Event of Default, the Corporate Debtor shall become liable to make payments of the amounts due and payable to the VCF in terms of the Investment Agreement and Definitive Agreements, and such obligation shall not be affected in any manner (including the amounts payable) by virtue of these Terms of Settlement.”*

38. In this connection, this ‘Tribunal’ pertinently points out that in the ‘Terms of Settlement’ dated 21.04.2022, in Clause 12, it was mentioned that because of the ‘Settlement’, the ‘Appellant/Petitioner’ wished to conditionally withdraw the Section 7 Petition filed against the ‘Corporate Debtor’, subject to the Corporate Debtor, Corporate Debtor Group and Confirming Parties (as defined in the Terms of Settlement) unconditionally complying with all covenants contained in the ‘Terms of Settlement’.

39. Apart from the above, in Clause 13 (a) of the ‘Terms of Settlement’ dated 21.04.2022, an additional prayer was sought to be included before the ‘Interim Resolution Professional Mr. Harish Taneja’, of the Respondent/Corporate Debtor on 17.05.2022, Viz. granting of liberty to the ‘Appellant/Petitioner/Financial Creditor’ to approach the ‘National Company Law Tribunal’ again to revive and

restore the proceedings of the C.P. No. 1101 (PB) / 2020 if the Respondent/Corporate Debtor or Corporate Debtor Group (as defined under the 'Terms of Settlement') fails to abide by the 'Terms of Settlement' dated 21.04.2022 including in respect of the 'Settlement' (as defined under the 'Terms of Settlement').

40. Besides the above, in Clause 13 (b) of the 'Settlement Terms' dated 21.04.2022, another 'relief' was sought for before the 'Interim Resolution Professional' of the Respondent/Corporate Debtor by the 'Appellant/Petitioner/Financial Creditor' in granting liberty to it to initiate contempt proceedings or such other proceedings against the 'Corporate Debtor' and 'Corporate Debtor Group', in case of any default / breach / failure on the part of the 'Corporate Debtor' or 'Corporate Debtor Group' to comply with any of the terms, conditions, covenants and / or undertakings of the 'Corporate Debtor Group' under the 'Terms of Settlement', etc.

41. At this juncture, this 'Tribunal' significantly points out that in the 'impugned order' dated 25.05.2022 in I.A. No. 2391 of 2022 in C.P. IB No. 1101 (PB) /2020, the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, had not granted 'liberty' to the 'Appellant/Petitioner/Financial Creditor' to approach it to 'revive' / 'restore' the main C.P. IB No. 1101 (PB) /2020 in the event of the Corporate Debtor or Corporate Debtor Group fails to perform its obligations by adhering to 'Terms of Settlement' dated 21.04.2022 including in

respect of the `Settlement Amount` (as defined under the `Terms of Settlement`), even though, such a prayer was sought for by the `Appellant/Petitioner/Financial Creditor` in this regard.

42. Likewise, the `Adjudicating Authority` (NCLT), Principal Bench, New Delhi, in the `impugned order` dated 25.05.2022 in I.A. No. 2391 of 2022 in C.P. IB No. 1101 (PB) /2020 had not granted `liberty` to the `Appellant/Petitioner/Financial Creditor` to initiate `contempt proceedings` or `such other suitable proceedings` against the `Corporate Debtor` and the `Corporate Debtor Group` in case of default / breach / failure on their part to comply with `any of the terms, conditions, covenants and / or undertakings of the Corporate Debtor Group` under the `Terms of Settlement` and any other documents / deeds / undertakings / writings pursuant thereto.

43. In the instant `Appeal`, the `Appellant` is an `individual` whose right is infringed upon by an act complained of, having substantial and tangible, reasonable, grouse and a genuine grievance and as such, the instant `Appeal` preferred by the `Appellant` is perfectly maintainable in `Law`, as opined by this Tribunal.

44. In the light of foregoing discussions, this `Tribunal` taking note of the contentions advanced on behalf of either side in the instant `Appeal` and taking into account of the attendant facts and circumstances of the case, especially in the teeth of the express covenants mentioned in the `Terms of Settlement` dated

21.04.2022, which was agreed to by the respective 'Parties' (which cannot be brushed aside so lightly) to meet the ends of justice, hereby orders / directs;

- (a) The modification of the 'impugned order' dated 25.05.2022 in I.A. No. 2391 of 2022 in C.P. IB No. 1101 (PB)/2020, passed by the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, to the effect that the 'Terms of Settlement' dated 21.04.2022 shall form part and parcel of the 'impugned order';
- (b) Accords permission to the 'Appellant/Petitioner/Financial Creditor' to seek 'restoration / revival' of main C.P. IB No. 1101 (PB) / 2020 as per 'Terms of Settlement Terms' dated 21.04.2022;
- (c) To initiate contempt proceedings or any other permissible proceedings, based on 'Terms of Settlement' dated 21.04.2022, in the happening of contingency of the Respondent/Corporate Debtor in committing 'Breach' of the 'Terms of Settlement' dated 21.04.2022 and the 'impugned order' dated 25.05.2022 passed by the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, I.A. No. 2391 of 2022 in C.P. IB No. 1101 (PB)/2020.

Result:

45. With the above said observations and directions, the 'impugned order' dated 25.05.2022, passed by the 'Adjudicating Authority' (NCLT), Principal Bench, New Delhi, in I.A. No. 2391 of 2022 in C.P. IB No. 1101 (PB)/2020, stands 'modified' by this 'Tribunal' and the instant Company Appeal (AT) (INS) No. 703 of 2022 is disposed of. No costs.

I.A. No. 1929 of 2022 (seeking exemption to file the Certified Copy) of the
'impugned order' dated 25.05.2022, is Closed.

[Justice M. Venugopal]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

06/07/2022
SR / KAM