

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 706 of 2018

IN THE MATTER OF:

Mr. Nimish Mansukhlal Vora

...Appellant

Vs.

M/s. S.J. Impex & Ors.

...Respondents

**Present: For Appellant: - Mr. Lalit Bhasin and Mr. Arush Khanna,
Advocates.**

For Respondents:- Mr. Rohit Ghosh, Advocate.

O R D E R

21.12.2018— This appeal has been preferred by 'Mr. Nimish Mansukhlal Vora', Director and Shareholder of 'Kavya Build-Con Private Limited'- ('Corporate Debtor') against the order dated 31st October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) filed by 'M/s. S.J. Impex'- ('Financial Creditor') has been admitted.

2. 'M/s. S.J. Impex'- ('Financial Creditor'), the main contesting Respondent has already appeared and has filed reply affidavit. In view of

the stand taken by the Appellant and as rest of the Respondents are not necessary parties, we have not issued notice to them.

3. Learned counsel appearing on behalf of the Appellant submits that after filing of the application under Section 7 of the 'I&B Code', but before its admission, the parties were negotiating for settlement, to enable the contesting Respondents- 'M/s. S.J. Impex'- ('Financial Creditor') to withdraw the application in terms of Rule 8 of the 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016'. Prayer was made before the Adjudicating Authority to adjourn the Company Petition to enable the parties to file terms of settlement but it was not allowed. He further submits that the parties have already reached settlement and has enclosed the copy of the same. The aforesaid stand has also been accepted by the learned counsel appearing on behalf of 'M/s. S.J. Impex'- ('Financial Creditor') who filed the application under Section 7 of the 'I&B Code'.

4. To satisfy ourselves, we asked the learned counsel for the Appellant to bring on record any document to suggest that the parties were negotiating for settlement prior to the date of admission prior to 31st October, 2018 to find out that the settlement talk has not proceeded after the order of admission was passed by the Adjudicating Authority. To satisfy us, the Appellant has enclosed the copies of e-mail dated 19th

October, 2018 with reply dated 20th October, 2018, relevant portion of which is extracted hereunder: -

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Kavya Group - Nimish Vora

From: Sj Impexmumbai <sjimpexmumbai@gmail.com>
Sent: Saturday, October 20, 2018 2:28 PM
To: 'Kavya Group - Nimish Vora'
Subject: RE: Regarding settlement of dues

Dear Nimish Bhai,

I have discussed with bharatbhai and am on with the proposal and let's proceed and close this at the earliest.

Regards,
 Deven Mehta

From: Kavya Group - Nimish Vora [mailto:nimish@kavyabuildcon.com]
Sent: Saturday, October 20, 2018 10:32 AM
To: 'Sj Impexmumbai'
Subject: RE: Regarding settlement of dues

Dear Deven Bhai,

We have showed all the original deeds and our documents to Bharatbhai. Hope he must have given you detailed feedback. As per your desire now let's complete this settlement and get discharge order from NCLT and complete our formalities.

I have also shared sale agreements draft for Umberkhanda /Khardi apartments, Which we can execute immediately.

Conveyance draft Bharatbhai will send once his lawyer prepares it

Regards,

Nimish

From: Sj Impexmumbai [mailto:sjimpexmumbai@gmail.com]
Sent: Friday, October 19, 2018 3:27 PM
To: 'Kavya Group - Nimish Vora'
Subject: RE: Regarding settlement of dues

Dear Nimish Bhai,

I have spoken to Bharatbhai. He would require to see original documents. In the meanwhile please arrange to transfer Rs. 63 Lac.

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⑥

Looking forward to settle this loan amount amicably

Regards,
Deven Mehta

From: Kavya Group - Nimish Vora [<mailto:nimish@kavyabuildcon.com>]
Sent: Friday, October 19, 2018 12:12 PM
To: sjimpexmumbai@gmail.com
Subject: Regarding settlement of dues

Dear Deven Bhai,

I and Jitendrabhai had a meeting with Bharatbhai and his son Hardik Bhai yesterday at his office at 4.00 pm.. Bharatbhai has agreed to enter into a block deal where he will purchase 22 flats in our Tansa City One Project and open lands at Umberkhanda/Khardi for a total consideration of 7.00 crs. This payment will be paid to you directly by them in your account upon registration of the Agreement and/or conveyance by us in the names of Bharatbhai or his son Hardikbhai. The entire transaction will be completed as soon Bharatbhai is satisfied with our title.

In the mean while I shall arrange to pay approximately 63,00,000/- (Rupees sixty three lakhs only) towards your dues shortly

The above will completely satisfy your dues. Please expedite as the next date of the matter before NCLT is on 22nd Oct.

Regards,

Nimish



I'm protected online with Avast Free Antivirus. [Get it here](#) — It's free forever.

5. Mr. Siddharth Acharya, Advocate submits that he intends to file an Interlocutory Application on behalf of one of the 'Operational Creditors', however as the 'Resolution Professional' has not yet issued any advertisement calling for claim, we are not inclined to hear any other creditor at this stage.

6. From the record, including the correspondence between the parties, we find that the parties were negotiating for settlement and requested the Adjudicating Authority to adjourn the petition to enable the Respondent- 'M/s. S.J. Impex'- ('Financial Creditor') to withdraw the application. From the record we also find that the Respondent- 'M/s. S.J. Impex'- ('Financial Creditor') earlier filed one Company Petition No. 1175 of 2017 which was listed before the Adjudicating Authority, and was dismissed on 9th August, 2017 on the basis of consent terms agreed between the parties. In the earlier terms of settlement, the parties agreed that only in case of consecutive two defaults, the 'Financial Creditor' may move before appropriate forum for relief but the aforesaid facts have not been taken into consideration by the Adjudicating Authority. For the said reasons, we set aside the impugned order dated 31st October, 2018.

7. In effect, order, passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent- 'Financial Creditor' under Section 7 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law

and is allowed to function independently through its Board of Directors from immediate effect.

8. So far as the fee of Mr. Rajendra Karanmal Bhuta- 'Interim Resolution Professional' is concerned, as we find that the 'Interim Resolution Professional' has functioned for approximately one month and three weeks, we allow a sum of Rs. 4 Lacs in favour of the 'Interim Resolution Professional' towards his fee plus and other actual expenses, if any, incurred by him both of which are to be paid by the 'Corporate Debtor'- 'Kavya Build-Con Private Limited'.

9. Mr. Rajendra Karanmal Bhuta- 'Interim Resolution Professional' if incurred any actual expenses, will provide details to the Appellant, Director of the 'Corporate Debtor' who will ensure payment of such amount i.e. the fee and cost if any within three weeks. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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