

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 242 of 2020

IN THE MATTER OF:

LC Core Opportunities Fund

...Appellant

Vs.

Cerestra Advisors Pvt. Ltd. & Anr.

...Respondents

Company Appeal (AT) (Insolvency) No. 243 of 2020

IN THE MATTER OF:

LC Core Opportunities Fund

...Appellant

Vs.

Cerestra Advisors Pvt. Ltd. & Anr.

...Respondents

Present: For Appellant: - Present but not marked appearance.

For Respondents: - Present but not marked appearance.

O R D E R

12.03.2020— ‘M/s. Cerestra Advisors Private Limited’- (‘Operational Creditor’) moved two separate applications under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) one against ‘M/s. MN Bio-Technology Private Limited’ (‘Corporate Debtor’) and another against ‘M/s. MN Takshila Industries Private Limited’ (another ‘Corporate Debtor’).

Contd/-.....

2. Both the applications under Section 9 were admitted by two separate orders both dated 4th February, 2020 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, Hyderabad.

3. Initially, when the matter was taken up, learned counsel for the Appellant in both the appeals took plea that 'M/s. Cerestra Advisors Private Limited' does not come within the meaning of 'Operational Creditor' in absence of any 'operational debt' as defined under Section 5(21) of the 'I&B Code'. Both the agreements were relied on to show that 'M/s. Cerestra Advisors Private Limited' is 'Operational Creditor' of a third party which is a foreign entity with whom there has been an 'existence of dispute' and now the application under Section 9 has been triggered against the Indian entities.

However, an alternative submission has been made that the Appellant who is the shareholder of both the 'Corporate Debtor(s)' intends to settle the matter with 'M/s. Cerestra Advisors Private Limited'.

4. Learned counsel appearing on behalf of 'M/s. Cerestra Advisors Private Limited' accepted that the 'Committee of Creditors' have not been constituted.

5. In spite of service of notice, the 'Interim Resolution Professional' has not appeared nor disputed the aforesaid fact.

6. There is nothing on the record to suggest that the 'Committee of Creditors' have been constituted till date.

7. Learned counsel appearing on behalf of 'M/s. Cerestra Advisors Private Limited' produced a letter dated 12th March, 2020 to suggest that the parties have settled with regard to the invoices, in question, as extracted below:

12
Dated: ___ March 2020



To MN Takshila Industries Private Limited Building-450, Genome Valley, Turkapally (V), Shamirpet Mandal, Hyderabad, Rangareddi TG 500078 IN	To MN Bio-Technology Private Limited Building-450, Genome Valley, Turkapally (V), Shamirpet Mandal, Hyderabad, Rangareddi TG 500078 IN
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Dear Sir

Sub: Settlement of dues against invoices (specified herein)

Ref:

- 1) Order passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench on 04.02.2020 in the matter of Company Petition C.P. (IB) No. 241/9/ HDB/2019;
- 2) Order passed by the Hon'ble National Company Law Tribunal, Hyderabad Bench on 04.02.2020 in the matter of Company Petition C.P. (IB) No. 243/9/ HDB/2019;

With reference to the above, we hereby confirm that we are in receipt of DD No 000453 for INR 4,17,13,343/- and DD No 001000 for INR 51,84,133/-, both drawn on HDFC Bank. In this regard, we hereby confirm that (subject to realization of the said DDs) our claims pertaining to the below mentioned invoices have been settled in full:

S No	Invoice Details	Net Amount Receivable	Company
1	0023/MNTIPL/2017-18	16,380,000	MN Takshila Industries Pvt Ltd
2	0005/MNTIPL/2018-19	4,165,200	MN Takshila Industries Pvt Ltd
3	0006/MNTIPL/2018-19	5,231,731	MN Takshila Industries Pvt Ltd
4	0010/MNTIPL/2018-19	9,934,607	MN Takshila Industries Pvt Ltd
5	0013/MNTIPL/2018-19	9,934,607	MN Takshila Industries Pvt Ltd
6	0015/MNTIPL/2018-19	1,067,198	MN Takshila Industries Pvt Ltd
7	0024/MNBTP/2017-18	5,184,133	MN Bio-Technology Pvt Ltd
Total		51,897,476	
Less: part payment received on 26.02.2019		(5,000,000)	
Total Amount Receivable		46,897,476	

We confirm that once the aforementioned DDs are realized in our accounts, we will initiate the process of withdrawal of Company petition number C.P. (IB) No. 241/9/ HDB/2019 and Company petition number C.P. (IB) No. 243/9/ HDB/2019. This letter is issued without prejudice to our rights and contentions in respect of any other matter.

Thanking You

For Cerestra Advisors Private Limited

Authorized Signatory



Agreed, confirmed and acknowledged by

For MN Takshila Industries Private Limited

Authorized Signatory

For MN Bio-Technology Private Limited

Authorized Signatory

Cerestra Advisors Private Limited (CIN: U65923DL2007PTC159330)
(Formerly Cerestra Advisors Limited)

Registered Office: N-226, Lower Ground Floor, Greater Kailash-I, New Delhi-110048
Corporate Office: Suit 9009, Trident, Hitech City, Madhapur, Hyderabad 500081, Telangana, India

8. Copies of the Demand Draft have been handed over, as extracted hereunder:

HDFC BANK DEMAND DRAFT
VALID FOR 3 MONTHS ONLY
ISSUED AT PACHET AL. PROCEEDS OF PACHET BANK LTD.

ON DEMAND PAY CERESTRA ADVISORS PRIVATE LIMITED
Rupees FOUR CRORE SEVENTEEN LAKH THIRTEEN THOUSAND THREE HUNDRED FORTY THREE ONLY
₹ 4,17,13,343A

FC FOR VALUE RECEIVED
MUM LIFE SCIENCE CENTRE PACHINAPUR
GENOME VALLEY BIOTECH PARK TURKAPALLE
REF NO - 42311300110

DRIVER BRANCH ISSUING BRANCH
FOR HDFC BANK LTD.
AUTHORISED SIGNATURES

#000453# 500240090# 999990# 16

HDFC BANK MANAGER'S CHEQUE
VALID FOR 3 MONTHS ONLY

Pay CERESTRA ADVISORS PRIVATE LIMITED
Rupees Fifty one Lakh Eighty Four Thousand One hundred & Thirty three only.
₹ 51,84,133/-

FC - HDFC BANK LTD.
MUM LIFE SCIENCE CENTRE PACHINAPUR PVT LTD
GENOME VALLEY BIOTECH PARK TURKAPALLE
REF NO - 423113001009

DRIVER BRANCH
FOR HDFC BANK LTD.
AUTHORISED SIGNATURES

#001000# 500240090# 999990# 16

Received
12.03.2020
12:15 pm

9. In view of the fact that the parties have settled the matter and the 'Committee of Creditors' in both the 'Corporate Insolvency Resolution Processes' has not been constituted, it will not be desirable to proceed with the 'Corporate Insolvency Resolution Processes' against two of the 'Corporate Debtors' for default of certain amount in favour of the 'Operational Creditor', which stands settled, and without going into the merits of the case, we in exercise of powers conferred under Rule 11 of the NCLAT Rules, 2016 accept the settlement and set aside the impugned order dated 4th February, 2020 passed in CP (IB) No. 241/9/HDB/2019 and the order dated 4th February, 2020 passed in CP (IB) No.

243/9/HDB/2019 and dispose of both the applications under Section 9 filed by of 'M/s. Cerestra Advisors Private Limited' as withdrawn. Both the cases are remitted to the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, to decide the cost of 'Corporate Insolvency Resolution Processes' incurred by the 'Interim Resolution Professional'.

10. Taking into consideration the fact that the 'Corporate Insolvency Resolution Processes' were initiated about a month back i.e. on 4th February, 2020, we assess the fees of the 'Interim Resolution Professional' at Rupees One Lakh per month for each of the 'Corporate Insolvency Resolution Processes'. The 'Interim Resolution Professional' will show as to what is the exact amount incurred towards the 'Corporate Insolvency Resolution Processes' costs and place the same before the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench. Both the parties are directed to bear the fees of 'Interim Resolution Professional' and cost of 'Corporate Insolvency Resolution Processes' and pay it within three weeks from the date of decision by the Adjudicating Authority. The 'Corporate Debtor' is released from the rigours of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover the records and assets of the 'Corporate Debtor' to the Promoters.

Both the Appeals are allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Shreesha Merla)
Member(Technical)

Ar/G