NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 480 of 2025
& I.A. No. 1823, 1825 of 2025

IN THE MATTER OF:

United Futuristic Trade Impex Pvt. Ltd. **...Appellant**

Versus

Varaha Infra Ltd. **...Respondent**

Present:

For Appellants : Mr. Balaji Harish Iyer, Mr. Utkarsh Joshi, Ms. Kanishka Sharma, Advocates.

For Respondents :

O R D E R
(Hybrid Mode)

21.03.2025: Heard learned counsel for the Appellant. This Appeal has been filed against order dated 22.01.2025 passed by NCLT, Jaipur Bench by which order Section 9 application filed by the Appellant was closed observing that entire amount as mentioned in Part IV has been received by the Appellant. Application was filed under Section 9 by the Appellant claiming an amount of Rs.5,54,29,101/- including interest of Rs.92,59,040/-. In the Section 9 application notices were issued and parties appeared. The Corporate Debtor stated that they have paid the entire Principal Amount and interest part is remaining of which substantial part will be paid by the next month. The order passed by the Court on 29.04.2024 is as follows:

*"**ORDER***

Heard Mr. Balaji Harish lyer, Adv. appearing on behalf of the Petitioner. Mr. Umang Gupta, Adv. appearing on behalf of the Respondent. It is submitted

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by learned counsel for the Respondent that entire principal amount (Rs. 4,61,00,000/-) has been paid. Interest part is remaining of which substantial part will be paid by the next month. List the matter on 05.07.2024."

2. Subsequently, when the matter was heard, the Adjudicating Authority held that the entire Principal Amount has been paid and the Corporate Debtor has paid Rs.6,17,45,142/-, hence, the entire amount having already been paid, Section 9 application need to be dismissed. Aggrieved by which order this appeal has been filed.

3. Learned counsel for the Appellant submits that during pendency of the Section 9 proceeding further Consent Terms were entered between the parties. It is submitted that payment which was made by the Corporate was not in accordance with the Consent Terms, hence, Section 9 application ought not to have been rejected.

4. We have considered the submissions of learned counsel for the Appellant and perused the record.

5. Learned counsel for the Appellant has referred to order dated 09.01.2024, which is as follows:

"***ORDER***

Heard Mr. Balaji Harish Iyer, Adv, appearing on behalf of the Petitioner/Operational Creditor. Mr. Umang Gupta, Adv. appearing on behalf of the Respondent/ Corporate Debtor. Consent terms entered *between the parties have been filed by the Corporate Debtor. Learned counsel for the Corporate Debtor submits that a sum of Rs. 5 Crore has been paid to the Petitioner/ Operational Creditor. However, learned counsel for the Petitioner denies this payment. Learned counsel for the respondent is directed to submit the proof of payment within 15 days. List the matter on 09.02.2024."*

6. Subsequently, Court has passed another order on 09.02.2024, which is as follows:

*"**ORDER***

Heard Mr. Balaji Harish Iyer, Adv. appearing on behalf of the Petitioner/Operational Creditor. Mr. Umang Gupta, Adv. appearing on behalf of the Respondent/ Corporate Debtor. It is submitted that consent terms have been entered between the parties. Learned counsel for the Respondent undertakes to deposit a sum or Rs. 2 crores on or before 28.02.2024. Failing which, the matter will be heard based on the record available before this Bench. List the matter on 18.03.2024."

7. The above orders do not indicate that any Consent Term was accepted by the Court so as to be enforceable in the proceedings under Section 9. The Adjudicating Authority in the impugned order in Paras 18, 19 and 20 made following observations:

"18. Further, it is submitted that the Corporate Debtor has also credited some more amount and as per the bank statements a total sum of Rs. 6,17,45,142/-

(Rupees Six Crore Seventeen Lakh Forty-Five Thousand One Hundred Forty-Two Only) has been paid to the Applicant and the same has been recorded by this Tribunal in order dated 07.01.2025.

19. As per the records, the Operational Debt concerning which the instant Section 9 Application has been filed as per Part IV is Rs. 5,54,29,101.19/-(Rupees Five Crore Fifty-four Lakh Twenty-Nine Thousand One Hundred One and Nineteen paisa Only) including the interest amount of Rs. 92,59,040.19/- (Rupees Ninety-Two Lakh Fifty-Nine Thousand Forty and Nineteen paisa Only). Further, as per the documents enclosed with the Application and the Order of this Adjudicating Authority dated 07.01.2025, it transpires that the Respondent has already paid a sum of Rs. 6,17,45,142/-(Rupees Six Crore Seventeen Lakh Forty-Five Thousand One Hundred Forty-Two Only) to the Applicant. Thus, for the purposes of this Code, the Amount as mentioned in Part IV of the Application has already been paid by the Respondent.

20. In so far as, the contention of the Applicant that the Corporate Debtor has not paid the complete amount as per the Consent Terms is concerned, we are of the view that the Respondent has already paid a sum more than the amount mentioned in the Part IV of the Application. At this juncture, it is pertinent to take not of the settled legal position that the only test to admit an Application under section 9 IBC is whether a debt above the threshold limit is due and whether the Corporate Debtor has defaulted in repayment of amount claimed in the Part IV of the Application. In the instant case, as

> *observed earlier the amount as mentioned in the Part IV of the Application has already been paid. Thus, the instant Application does not survive as the said default no longer subsists."*

8. When Section 9 application was filed for an amount of Rs.5,54,29,101/- which entire amount has been paid by the Corporate Debtor, we do not find any infirmity in the order of the Adjudicating Authority rejecting Section 9 application. The Corporate Debtor was not entitled to be put into insolvency when entire debt was liquidated by the Corporate Debtor. The submission of the Appellant that Consent Terms ought to have been enforced, does not commend us since the Consent Terms dos not got approval of the Court so as to become enforceable.

9. In so far as any further amount payable by the Corporate Debtor is concerned it is always open for the Appellant to take such appropriate remedy as available in accordance with law.

10. With these observations, we dismiss this appeal.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

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