

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 3557

VAMSI M. NALLAPATI and NVM
HOLDINGS, INC.,

Plaintiffs/Counterclaim
Defendants,

v.

CGM GROUP, LLC and CGM
HOLDINGS, LLC,

Defendants,

HARI HARA PRASAD NALLAPATY
and JUSTH HOLDINGS, LLC,

Intervenor-Defendants /
Counterclaim Plaintiffs,

COSMOS GRANITE (CENTRAL),
LLC and NSC HOLDINGS, INC.,

Intervenor-Defendants,

ABTV RECEIVERSHIP SERVICES,
LLC,

Nominal-Defendant.

**ORDER ON RECEIVER'S MOTION
FOR APPROVAL OF COMPROMISE
AND SETTLEMENT**

THIS MATTER comes before the Court on the Receiver's Motion for Approval of Compromise and Settlement. ("Motion for Approval," ECF No. 299.) In the Motion, the Receiver seeks an order from this Court approving a settlement of certain disputes between certain parties to this lawsuit, and between the parties and other individuals and entities with an interest in the disputes. The settlement

agreement is attached to the Motion. (“April 3, 2020 Agreement,” ECF No. 299, attachment.)

Intervenor-Defendant NSC Holdings, Inc. (“NSC”) did not join in the settlement and filed an opposition to the settlement. (“NSC’s Opposition,” ECF No. 307.) Nominal Defendant ABTV Receivership Services, LLC also filed an opposition to the settlement. (“ABTV’s Opposition,” ECF No. 308.)

The Receiver subsequently filed a Reply in support of the Motion. (Reply Supp. Motion, ECF No. 310.)

On July 10, 2020, the Court held a hearing on the Motion, and the Motion is now ripe for disposition.

THE COURT, having considered the Motion for Approval, the oppositions to the Motion for Approval and the reply in support of the Motion for Approval, the Settlement Agreement, the applicable law, and other appropriate matters of record, CONCLUDES, in its discretion, that the Motion for Approval should be DENIED, for the reasons stated below.

I. BACKGROUND FACTS

1. Plaintiff Vamsi M. Nallapati (“Vamsi”) owns 100% of the outstanding shares of Plaintiff NVM Holdings, Inc. (“NVM Holdings”).

2. Intervenor-Defendant Hari Hara Prasad Nallapaty (“Prasad”) and his immediate family own 100% of the membership interests of Intervenor-Defendant Justh Holdings, LLC (“Justh”). Prasad is the sole manager of Justh.

3. NSC is 100% owned by Srinivas Nallapati (“Sri”).

4. Vamsi, Prasad, and Sri are first cousins.

5. Defendant CGM Holdings, LLC (“Holdings”) was formed on December 23, 2014. As of January 1, 2015, Justh owned a 73.02% interest in Holdings and Vamsi owned an 8.75% interest in Holdings. The rest of Holdings was owned by three other individuals who are not parties to this lawsuit: Venkateswararao Are (“Venkat”) - 9.04%; Srinivasa Challapalli (“Srini”) - 5.63%; and Sreekanth Manam (“Sreekanth”) - 3.57% (collectively Venkat, Srini, and Sreekanth are the “Non-Party Owners”).

6. Defendant CGM Group, LLC (“Group”) was formed on December 16, 2014. At all times relevant to this action, Group was owned as follows: Holdings - 68.6%; NVM Holdings - 25%; NSC - 6.4%.

7. Group, in turn, owned a 100% membership interest in the following wholly owned subsidiaries involved in granite distribution business: Cosmos Granite (East), LLC (“East”), Cosmos Granite (DC), LLC (“DC”), Cosmos Granite (South East), LLC (“South East”), Cosmos Granite (Central), LLC (“Central”), Cosmos Granite (West), LLC (“West”), and CGM East Logistics, LLC (“East Logistics”) (collectively the “Subsidiaries”).

8. The lawsuit underlying this matter was filed on March 20, 2018 (“Verified Complaint,” ECF No. 3), and arose from bitter disputes between Vamsi, Prasad, and other parties over the management and operations of Holdings and Group. In the Verified Complaint, Plaintiffs named only Holdings and Group as defendants, and sought dissolution of Holdings and Group pursuant to N.C.G.S. §

57D-6-03, and appointment of a receiver to manage Holdings and Group through dissolution pursuant to N.C.G.S. § 57D-6-04.

9. On April 16, 2018, the Court entered an order granting Prasad and Justh's unopposed motion to intervene as defendants in this action. (ECF No. 25.)

10. On July 2, 2018, Plaintiffs filed an Amended Verified Complaint. (ECF No. 74.) The Amended Verified Complaint added claims against Justh for breach of the Holdings Operating Agreement and for declaratory judgment. (*Id.*)

11. The parties engaged in discovery but did not file motions for summary judgment.

12. This matter came before the Court for a bench trial beginning on January 22, 2019, and trial continued through January 24, 2019. On the morning of January 25, 2019, after three days of trial, the parties requested that the trial be recessed until January 28, 2019, to permit them to explore a potential settlement.

13. On January 26, 2019, the members and subsidiary entities of Group and Holdings, except for the Non-Party Owners, entered into a Settlement Agreement. ("Settlement Agreement," ECF No. 238.2 [SEALED].) On January 28, 2019, the parties reported the settlement to the Court and the Court entered an Order recessing and continuing the trial of the case for ninety (90) days to give the parties time to implement the terms of the Settlement Agreement. ("Recess Order," ECF No. 107.) The Recess Order provides that the Court would retain jurisdiction over the matter including for purposes of interpreting and enforcing the Settlement Agreement. (*Id.*)

14. The Settlement Agreement required, *inter alia*, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The [REDACTED]

[REDACTED] was to be completed within eighty (80) days of the execution of the Settlement Agreement and was to determine [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.* at p. 3.) [REDACTED]

[REDACTED]

[REDACTED].

15. [REDACTED]

[REDACTED]

[REDACTED] On April 23, 2019,

they issued the final [REDACTED]. (ECF No. 283.3 [SEALED].) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (*Id.*)

16. Shortly after the [REDACTED] was issued, Sri notified the other parties that he would not a be able to pay Central's true up obligations as

determined by the [REDACTED]. (C. Morse Aff., ECF No. 121 [SEALED] and ECF No. 126 [PUBLIC].)

17. On April 29, 2019, Prasad and Justh filed a motion seeking expedited appointment of a receiver over Group and Holdings “for the purpose of selling [Central] as a going concern” and “use the proceeds to satisfy Central’s debt with Group’s primary creditor, Bank of America, and to satisfy the true ups due to the members of Group and Holdings under the [S]ettlement [A]greement and the [Joint Auditors’ Report].” (ECF No. 113, at pp. 1–2, and 3 [SEALED] and ECF No. 123 [PUBLIC].)

18. On May 8, 2019, the Court granted NSC and Central’s motion to intervene as defendants in the lawsuit. (ECF No. 147.) NSC and Central also sought an order from the Court permitting them the opportunity [REDACTED] [REDACTED] (ECF No. 141.)

The Court denied the motion. (ECF No. 148.)

19. On May 9, 2019, the Court entered an Order on Motion for Appointment of Receiver, appointing John Northen as Receiver (“Receiver”) for Group and Holdings. (ECF No. 149.) Subsequent to his appointment, the Receiver appointed himself as liquidating trustee for Central, and the Court issued an Order, consented to by all parties, authorizing the Receiver to retain Nominal Defendant ABTV Receivership Services, LLC (“ABTV”) as Manager of Central. (ECF No. 157.)

20. On June 21, 2019, the Receiver filed a motion seeking authority to sell the assets of Central and establish a sales procedure. (“Motion for Sale of Central,” ECF No. 163.)

21. On July 12, 2019, following consideration of objections thereto by the parties, the Court entered an Order granting Motion for Sale of Central. (“Sales Procedure Order,” ECF No. 175.) The Sales Procedure Order approved a set of sales procedures and authorized the Receiver to conduct an auction (the “Auction”) of Central’s assets on August 13, 2019. (*Id.* at p. 3.)

22. On August 15, 2019, the Receiver filed an Amended Report of Auction reporting Anjani Ventures, a third-party to the Settlement Parties, as the Prevailing Bidder, and Justh Holdings as the Back-Up Bidder. (ECF No. 199.) On the same date, the Court issued a Sale Approval Order subject to the applicable upset bid requirements of N.C.G.S. § 1-339.36. (ECF No. 200.)

23. On August 19, 2019, Justh filed a Notice of Upset Bid increasing the value of its offer to purchase Central’s assets. (ECF No. 203.) On August 30, 2019, Justh assigned its upset bid to Cosmos Central Corp. (“Cosmos Corp.”), a newly created Illinois corporation. (ECF No. 207.)

24. On September 4, 2019, the Court entered an Amended Final Sale Approval Order (“Approval Order”) approving Cosmos Corp. as the prevailing bidder. (ECF No. 209.) The Court attached to the Approval Order the asset purchase agreement executed between Central and Cosmos Corp. (“Cosmos Corp. – Central APA,” *Id.* at Ex. A.) In the Approval Order, the Court retained jurisdiction

to, among other things, interpret, enforce and implement the terms and provisions of, and adjudicate disputes related to, the Approval Order and the Cosmos Corp. – Central APA.

25. As set forth in the Cosmos Corp. – Central APA, Cosmos Corp. agreed to purchase certain assets from Central identified in Central’s balance sheet as of June 30, 2019 (the “Sale Assets”), including but not limited to: (i) \$2,721,464 of accounts receivable, #10200 (“Accounts Receivable”); (ii) \$4,680,449 of slabs, parts, and sink inventory, #10301 and #10302 (“Inventory”); and (iii) \$109,929 of tool inventory (“Tools”).

26. In consideration for the Sale Assets and as set forth in the Cosmos Corp. – Central APA, Cosmos Corp. agreed to (i) pay Central the sum of \$3,450,546.85 in cash, and (ii) assume and hold Central harmless from certain obligations of Central as of the Closing Date, including without limitation, (i) all obligations arising out of the Real Estate Leases and (ii) certain specified accounts payable, accrued expenses, sales tax payables, credit card liabilities, payroll liabilities, long-term liabilities and certain other intercompany liabilities (“Assumed Liabilities”). Pursuant to Central’s June 30, 2019 balance sheet (“Balance Sheet”), the Assumed Liabilities totaled \$2,516,443.68.

27. In addition, as set forth in guarantee the Cosmos Corp. – Central APA, West, a subsidiary of Justh, agreed to obligations of Central under the Real Estate Leases and to indemnify and hold Central harmless from such obligations.

28. The asset sale between Central and Cosmos Corp. closed on September 4, 2019 (“Sale Transaction”). (“Notice of Closing,” ECF No. 216.) The closing was subject to a Side Letter Agreement between Central and Cosmos Corp. (“Side Letter Agreement,” ECF No. 228, at Ex. A.) The Side Letter Agreement provided a process for Cosmos Corp. to make “written objection to [Central]’s calculation of the Closing Balance Sheet,” and for the parties to attempt to resolve any such objections. (*Id.* at Ex. A, pp. 1–2.) The parties agreed that if they were unable to resolve any objections, the dispute would be submitted to this Court for resolution. (*Id.* at Ex. A, p. 2.)

29. Almost immediately after the Sale Transaction, Cosmos Corp. began to dispute certain information contained in the Balance Sheet and made demands for adjustments under the Side Letter Agreement. (Receiver’s Motion to File Bankruptcy Petition for Central, ECF No. 228, at pp. 6–11.) The disputes and demands remain mostly unresolved as of this date. Neither party submitted the disputes to this Court.

30. On November 1, 2019, Cosmos Corp. filed a lawsuit against Central, ABTV, John Joseph Fioretti (“Fioretti”), Sri, Patrick D. Leonard (“Pat”), and certain creditors of Central (collectively, the “Creditor Defendants”) in this Court, styled as *Cosmos Central Corp. v. ABTV et al.*, Case No. 19 CVS 14948 (the “ABTV Action”), alleging that ABTV and Fioretti conspired with Central’s prior manager and chief financial officer to defraud Cosmos Corp. by misrepresenting the value of Central’s assets in the Sale Transaction. Creditor Defendants Vivid Cosmos Granite, LLC

(NC) and Vivid Cosmos Granite, LLC (TX) (collectively, “Vivid”) filed a counterclaim against Cosmos Corp. and a third party complaint against Justh in the ABTV Action. That action remains pending.

31. On November 11, 2019, the Receiver filed a Motion for Authority to File Chapter 7 Bankruptcy Petition for Central. (ECF No. 228.) On December 17, 2019, the Court denied the motion, without prejudice, concluding that

The Receiver’s request for authority to file a petition for bankruptcy on behalf of Central is premature. Central and Cosmos Central Corp. have unequivocally agreed to this Court’s jurisdiction to resolve post-closing disputes, including the disputed objections to Central’s calculation of the Closing Balance Sheet. However, neither party has yet pursued resolution of those disputes in this Court, and Central’s inability to meet its liabilities is not yet clear. Accordingly, the parties must first seek resolution of any disputes in this Court

(ECF No. 263.) Again, the parties did not seek resolution of their disputes in this Court.

32. On February 10, 2020, the Receiver filed a Motion (I) for Entry of an Initial Order Authorizing Mediation, and (II) for Authority to File Chapter 7 Bankruptcy Petitions for Group and/or Holdings. (ECF No. 283.) On February 19, 2020, the Court issued an order granting the motion and authorizing the parties to participate in mediation and granting authority for the Receiver to file bankruptcy petitions for Group and Holdings. (ECF No. 292.)

33. The parties¹ subsequently participated in a two-day face-to-face mediation, followed by several weeks of additional mediation via telephone and

¹ ABTV was not notified of and did not participate in the mediation.

email. On April 3, 2020, Group, Holdings, NVM, Justh, Central, DC, East, West, South East, East Logistics, LLC, Central Logistics, LLC, Nallapati Properties, LLC, UTS Holdings, LLC, Cosmos, Prasad, and Vamsi executed a Settlement Agreement (“April 3, 2020 Agreement”) (the above parties are the “April 3, 2020 Agreement Parties”). NSC and the Non-Party Owners did not execute the April 3, 2020 Agreement.

34. On April 6, 2020, the Receiver filed the Motion for Approval. The Motion for Approval provides the following information regarding the settlement and the terms of the April 3, 2020 Agreement:

- The Receiver has depleted all of Group and Holdings’ funds and does not have funds to pay the claims of Group and Holdings’ creditors or to hire a professional to prepare the 2017, 2018, and 2019 tax returns, which are past due. Group and Holdings do not have any funds to pursue and complete the dissolution and liquidation of such entities.
- As of the date of the filing of this Motion, the Receiver was holding in his trust account the balance of funds transferred from Central’s bank accounts and the net proceeds derived from the Sale Transaction in the aggregate amount of approximately \$490,000.00 (the “Central Funds”).² The Central Funds are subject to claims asserted by creditors of Central, some of which were to be assumed by Cosmos Corp. as the purchaser of Central’s assets, but many of which Cosmos now disputes. The Central Funds also are subject to claims asserted by Cosmos Corp. arising out of the Sale Transaction. The Central Funds are woefully inadequate to satisfy all of the claims against Central.
- The April 3, 2020 Agreement does not resolve all outstanding disputes between the parties, nor does it resolve all matters now pending before this Court. However, it does resolve, or establish procedures to resolve, disputes directly related to Group, Holdings, and Central (the “Receivership Entities”), including the claims of third-party creditors. Under the proposed procedure,

² The Central Funds have been reduced since the date the Motion for Approval was filed. As of June 30, 2020, the Receiver reported that he held \$444,644.37 in Central Funds. (Receiver’s Second Inventory of Assets and Liabilities, ECF No. 320.)

the Court would resolve those disputes and claims would be resolved by this Court.

- The “Vamsi Parties” and the “Prasad Parties” (as defined in the April 3, 2020 Agreement) have agreed to pay all allowed administrative expenses of Group and Holdings, certain allowed known claims of Group and Holdings subject to a cap of \$140,000 (the “Group/Holdings Claim Cap”), and certain income taxes due from Group or Holdings as a result of the income tax returns to be filed for the tax years 2017, 2018, 2019, and 2020 (the “Undetermined Tax Claims”). The Vamsi Parties and the Prasad Parties have also agreed to deposit sums with the Receiver in the aggregate amount of \$250,000 (the “Group Claims Deposit”) to assure payment of the referenced claims. The Receiver estimates the amount of the administrative expenses and tax payments at \$249,130.59.
- Prior to the approval of the settlement or 21 days after the execution of the Settlement Agreement, whichever is later, the Prasad Parties shall (i) pay in full all amounts owed to Toyota Financial, and (ii) provide to the Receiver a full and complete release of Central from any claims by the Illinois landlord against Central arising out of the Illinois lease.
- The Vamsi Parties and the Prasad Parties have not agreed to fund payment of all other allowed claims that exceed the Group/Holdings Claim Cap, including any potential claims that NSC, Srini, Venkat, Sreekanth, and/or Deepa Pathuri (collectively, the “Non-Settling Alleged Owners”) might have against Group and/or Holdings.
- After all allowed administrative expenses and allowed claims are paid in full or otherwise resolved, Group and Holdings will be dissolved, and the Dissolution Action dismissed without prejudice to any claims (whether direct or derivative in nature) that any Non-Settling Alleged Owner might have against the Prasad Parties or the Vamsi Parties, including without limitation, (i) any claim arising under the operating agreements of Group and/or Holdings or (ii) any claim arising out of or relating to the spinout transactions of the Subsidiaries.
- The claims procedure for Central’s creditors would require the Receiver to provide notice by mail to all taxing authorities, known potential creditors, and equity interest holders, and by publication to unknown creditors. The procedure would set a deadline for submitting claims to the Receiver, using a standard form and requiring sufficient information to allow interested parties to assess the validity of the claim, and set a deadline for objections to claims, limited discovery and an expedited resolution of disputed claims by the Court.

- The Central Funds will be used (i) first, to pay in full all allowed administrative expenses, (ii) second, subject to setting aside funds in an amount determined by the Receiver in his sole discretion for estimated administrative expenses to be incurred with respect to Central in the Dissolution Action (the “Carve Out”), to pay in full all allowed tax claims, and (iii) third, subject to the Carve Out and after all disputed claims have been resolved by the Court or the parties by negotiated settlement, to pay all remaining allowed claims in full or on a pro-rata basis, whether or not such claims were assumed by Cosmos Corp. pursuant to the Upset Bid APA (the “Assumed Claims”).
- If any allowed Assumed Claims remain unpaid after the Central Funds are exhausted, the Prasad Parties will pay up to, but not exceeding an aggregate amount of \$350,000 (the “Prasad Contribution”) of the Assumed Claims in full or on a pro rata basis.
- If any allowed Assumed Claims remain unpaid after the Prasad Contribution is exhausted, the Vamsi Parties will pay up to, but not exceeding an aggregate amount of \$150,000 (the “Vamsi Contribution”) of the Assumed Claims in full or on a pro rata basis.
- In the event the Carve Out is not sufficient to pay all allowed administrative expenses in full, the Receiver, in his discretion, can use equal portions of the Prasad Contribution and the Vamsi Contribution to increase the Carve Out. Such portions shall reduce the Prasad Contribution and the Vamsi Contribution on a dollar-for-dollar basis.
- After the claims resolution process with respect to Central has been concluded, Central shall be dissolved and the Receiver, in his capacity as the liquidating trustee of Central, will be discharged.
- The April 3, 2020 Agreement provides for certain releases of claims subject to conditions and exceptions provided for in the Agreement, including: (a) mutual releases as between the Vamsi Parties and the Prasad Parties, excluding certain Non-Released Claims (as that term is defined in the April 3, 2020 Agreement); (b) mutual releases as between Group, Holdings, East, DC, Central, West, South East, Central Logistics, and East Logistics, including but not limited to intercompany payables, intercompany receivables, and intercompany due-to/due-froms; (c) releases by the parties of any claims against the Receiver or any of the Receiver’s professionals, excluding the pending claims asserted against any of the Receiver’s professionals in the ABTV Action, upon entry of the Approval Order.

- The April 3, 2020 Agreement also provides for certain dismissals, including but not limited to the following: (a) Within three (3) days after the entry of the Approval Order, Prasad and Justh shall take a dismissal of the Notice of Appeal filed in the Dissolution Action on March 18, 2020 (ECF No. 296); (b) Within three (3) days after the filing of the motion to approve the Settlement Agreement, Cosmos Corp. will file a motion in the ABTV Action to stay the proceeding, subject to the Court's entry of the Approval Order, with respect to the Creditor Defendants and Central; and, (c) within three (3) days after the claims resolution process has been completed, Cosmos Corp. will dismiss the claims against the Creditor Defendants and Central, with prejudice.
- Finally, the April 3, 2020 Agreement provides the Receiver, under certain defined circumstances, to file Chapter 7 petitions on behalf of one or more of Group, Holdings, and Central.

35. On June 1, 2020, NSC filed NSC's Opposition. NSC argues that the Court should not approve the settlement because, among other things: it relieves Cosmos Corp. of any obligation for most of the Assumed Liabilities, but permits Cosmos Corp. to retain Central's assets; it does not resolve all of the outstanding disputes between the parties, including disputes in this lawsuit; it does not benefit Central's creditors; and it is unfair to the other members of Holdings - NSC, Venkat, and Sreekanth/Deepa. (ECF No. 307, at pp. 1–12.) Instead, NSC recommends that the Court deny approval of the settlement and permit the Receiver to place Group, Holdings, and Central into Chapter 7 bankruptcy. NSC argues that the bankruptcy court is better suited to reviewing the entire relationship, history, and transactions between the parties including the original settlement of this lawsuit, forensic accounting, the spinout of companies resulting from the original settlement, and the sale of Central's assets to Cosmos, and can more efficiently consider the claims of Central's third-party creditors. (*Id.* at pp. 10–12.)

36. On June 1, 2020, ABTV filed ABTV's Opposition. ABTV summarizes its objections, in relevant part, as follows:

First, the Settlement Agreement prejudices [ABTV]'s claims against Central for reimbursement of all expenses and fees incurred by [ABTV] to participate in the Cosmos Litigation and [ABTV]'s claims for indemnification against all claims, damages, liability, or expenses that relate to or arise from [ABTV] serving as Central's court-appointed Manager. . . .

Second, the Settlement Agreement proposes eliminating Cosmos's obligation to pay the liabilities it assumed from Central, which includes [ABTV]'s claim for reimbursement of fees and indemnity. Specifically, the asset purchase agreement executed by Cosmos and Central included the "costs of sale" as an assumed liability and listed [ABTV]'s fees as an example of a cost of sale. Yet the Settlement Agreement would eliminate Cosmos's liability and cap the liability for its owner and alter ego Justh Holdings, LLC.

Third, [ABTV] objects to the release and dismissal of claims against Northen and Central because at all relevant times, [ABTV] acted as Northen's agent and with his consent and approval. Thus, it is both inappropriate and inefficient that Northen—in his capacity as Receiver—attempt to absolve himself of exposure and pin all potential liability and litigation risk on [ABTV]. . . .³

(ECF No. 308, at pp. 3–5.)

37. Finally, on June 10, 2020, the Receiver filed a Reply. The Receiver contends that disapproving the settlement will result in the Receiver being forced to file petitions for bankruptcy for Group, Holdings, and Central. The Receiver asserts

² With regard to ABTV's contention that the April 3, 2020 Agreement releases the Receiver (Northen) from liability to ABTV, the Receiver argues that the settlement does not "unduly prejudice" ABTV because "[p]ursuant to the claims procedure for the Receivership Entities" ABTV "may file a claim as an administrative claim or unsecured claim, as appropriate," and have that claim determined by the Court. ("Reply," ECF No. 310, at p. 8.)

that, despite NSC's arguments to the contrary, "transferring these disputes to a new forum and a new judge will not guarantee creditors of the Receivership Entities a larger distribution on their claims," but instead "indefinitely postpone" any distributions to Group, Holdings, and Central's creditors, and diminish the amount available to satisfy creditors. (ECF No. 310, at pp. 2–3.)

38. On the other hand, Receiver argues that approval of the April 3, 2020 Agreement will result in the payment of Group and Holdings' 2017–2020 tax obligations and administrative expenses associated with this lawsuit; Prasad contributing \$350,000 and Vamsi contributing \$150,000 toward payment of Central creditors. (*Id.* at p. 5.) These contributions are in addition to the amounts Central has in cash funds (more than \$400,000). (*Id.*)

39. The Receiver also contends that

the Settlement Agreement resolves (1) all disputes between Central as "Seller" and Cosmos Corp. as "Purchaser" of the Central Assets as set forth in the Sale Dispute Motion and the ABTV Action (the "Central Disputes"), and (2) disputes between the Receiver and the beneficiaries of the Group spin-out transactions (the "Group/Holdings Disputes"). The significant risk, delay and expense associated with litigating these disputes weighs in favor of the proposed settlement.

As of the present date, the Receiver has approximately \$445,000 on hand arising out of the sale of the Central Assets. All of these funds likely would be expended to litigate the Central Disputes with Cosmos Corp. to conclusion (including any appeal), given the fact-intensive nature of the disputes and the possibility that the Receiver would need to hire an expert witness to assist during the discovery process and testify at trial. The litigation could take years to complete, and the outcome is uncertain,

(*Id.* at pp. 4–5.)

40. On June 24, 2020, the Receiver filed a Certificate of Service with the Court stating that he had served Central’s creditors with a Notice of Hearing on Receiver’s Motion for Approval of Compromise and Settlement by regular mail, postage prepaid. (Notice, ECF No. 315; Cert. of Service, ECF No. 317)

41. On July 7, 2020, the Receiver filed the Receiver’s Second Inventory of Assets and Liabilities. (“Second Inventory,” ECF No. 320.) The Second Inventory provided, in relevant part, the following:

- a. Holdings owns a 68.6% ownership interest in Group. As of the present date, the Receiver believes that the membership interest has no value. Holdings has liabilities of \$26,721.86.
- b. Group owns a 100% ownership interest in Central. As of the present date, the Receiver believes that the membership interest has no value. Group has liabilities of \$102,408.73.
- c. The Receiver is holding in his trust account on behalf of Central the sum of \$444,644.37. Central has liabilities of \$1,429,058.55.⁴

42. On July 10, 2020, the Court held a hearing on the Motion for Approval (“Approval Hearing”). The Receiver and counsel for Plaintiffs and Intervenor-Defendants attended and made argument. Although Group, Holdings, and

⁴ Central’s liabilities do not include amounts owed to the Illinois Department of Revenue or the unliquidated claim asserted by Cosmos Central Corp. The liabilities also do not include unknown tax liabilities, intercompany liabilities, potential claims of members or affiliates of the companies, or potential claims of parties to the litigation pending in this Court, as *Cosmos Central Corp. v. ABTV et al.*, Case No. 19 CVS 14948.

Central's third-party creditors were provided notice of the hearing, no third-party creditors attended the hearing. The Motion for Approval is now ripe for determination.

II. ANALYSIS

A. *Standard of Review*

43. There is a dearth of case authority in North Carolina, and in other jurisdictions, on the standard to be applied by a court in deciding whether to approve a settlement reached by a receiver. *Lowder v. All Star Mills, Inc.*, 60 N.C. App. 275, 290, 300 S.E.2d 230, 239 (1983) (“The parties have not cited any North Carolina cases and we have found none which deal with the standard by which we review the trial court in approving settlements of litigation by receivers.”) In *Lowder*, the Court quoted, but did not expressly adopt, language from a decision of the Delaware Chancery Court stating that, when considering a settlement reached by a receiver, the trial court “is only called upon to consider the nature of the claims and the nature of the possible defenses and the situation of the parties and exercise what may be called business judgment in determining whether the proposed compromise is reasonable in the circumstances.” *Id.* (quoting *In re Ortiz’s Estate*, 27 A. 2d 368, 374 (Del. 1942)). Nevertheless, the Court of Appeals made clear that the decision to approve a settlement reached by a receiver is within the trial court’s discretion. *Id.* (“We hold this approval of the settlements was within [the trial judge]’s discretion.”).⁵

³ NSC suggests that “[a]n analogous standard that seems appropriate in the circumstances is the standard employed by bankruptcy courts in evaluating settlements reached by

44. The Court concludes that, consistent with a trial court's generally broad discretionary authority over all aspects of a receivership, the decision whether to approve the settlement reached by the Receiver and set forth in the April 3, 2020 Agreement falls within its discretion, taking into account the nature of the claims or disputes being settled, any claims or disputes not settled by the agreement, the impact of the settlement on the parties and on third-party creditors, and whether the settlement is reasonable under the circumstances and equitable.

B. The Nature of the Claims and Disputes and Impact on Parties and Creditors

45. The Court first considers the nature of the claims and disputes being resolved, and those not resolved, by the April 3, 2020 Agreement (hereinafter, "April 3, 2020 Agreement" or "Agreement") and the effect of settlement on the parties and creditors.

46. This long and bitterly contested matter involves the following claims and disputes:

- a. Claims and disputes between Vamsi and NVM (hereinafter, Vamsi and NVM are referred to as "Vamsi") and Prasad and Justh (hereinafter, Prasad and Justh are referred to as "Prasad") regarding the authority to manage Group and Holdings;

bankruptcy trustees, who are also charged with acting in the interest of creditors" citing *Brantley v. CitiFinancial, Inc. (In re Brantley)*, 2015 Bankr. LEXIS 129 (Bankr. E.D.N.C. Jan. 15, 2015). In *Brantley*, the court held, *inter alia*, that "[a] court's acceptance or rejection of a settlement must be based on an 'informed and independent judgment as to whether a proposed compromise is fair and equitable.' The court's 'overriding concern . . . is to determine . . . whether the [s]ettlement is proper under law and whether it is fair and equitable and in the best interest of all interested parties.'" (citations omitted).

- b. Claims and disputes between NSC and the parties to the Settlement Agreement;
- c. Claims and disputes between Cosmos Corp. and Central arising from the Sales Transaction;
- d. Claims by third-party creditors of Central; and
- e. Claims and disputes between the Non-Party Owners and Group, Holdings, and the Subsidiaries.

1. Vamsi and Prasad

47. The claims in this lawsuit between Vamsi and Prasad are completely resolved by the April 3, 2020 Agreement. (ECF No. 290, Ex. A at pp. 11–12.) However, the Agreement does not fully resolve all legal disputes and claims between Vamsi and Prasad, and expressly leaves open a lawsuit pending in Georgia: *Cosmos Granite (South East), LLC v. Cosmos Granite (East), LLC, et al.*, Civil Action No.: 1:19-cv-05187-SDG.

2. NSC and the Settlement Parties

48. The April 3, 2020 Agreement does not settle the potential legal claims between NSC and the Settlement Parties. Most importantly, the Agreement does not resolve NSC's potential challenges to the Settlement Agreement [REDACTED], and the spin-out of the Subsidiaries resulting from the Settlement Agreement. While it is not clear that any of these challenges have merit, the failure to address the disputes leaves unresolved significant potential claims.

3. Cosmos Corp. and Central

49. The most significant impact of the Agreement as it relates to this lawsuit is that it resolves the disputes between Cosmos Corp. and Central arising from the Sales Transaction. Cosmos Corp. has raised claims, *inter alia*, that Central's assets were misstated by Central and that Cosmos Corp. is entitled to a set-off to the Assumed Liabilities to account for the misstatements.⁶ The resolution of these disputes and claims is important because it eliminates the potential long and difficult battle that would ensue from an effort to enforce the Cosmos Corp–Central APA, and thereby saves Central's shrinking assets for possible use in paying Central's creditors. On the other hand, the failure to pursue enforcement of the Cosmos Corp–Central APA has a substantial impact on the April 3, 2020 Agreement Parties because it arguably allows Cosmos Central and Prasad to avoid their obligations under the Cosmos Corp–Central APA while shifting responsibilities onto other parties, notably Vamsi, and disadvantaging Central's third-party creditors. If successfully enforced, the Cosmos Corp–Central APA would require Cosmos Corp. to satisfy all of the Assumed Liabilities.

4. Central's Creditors

50. As discussed immediately above, the Agreement likely disadvantages Central's third-party creditors. Instead of having their claims fully satisfied by Cosmos Corp., they will be forced to submit the claims to the Receiver for resolution by this Court under the proposed claims process in the April 3, 2020 Agreement. It

⁶ A full discussion of all claims raised by Cosmos Corp. arising from the Sales Transaction are summarized in the Receiver's Motion to Establish Procedures, ECF No. 284, at pp. 5–12.

is not clear how this process will impact payment to third-party creditors. For example, it cannot at this time be determined how much, if any, of Central's cash assets will be available for potential payment of creditors' claims after payment of certain tax obligations and the administrative expenses. In addition, although Prasad and Vamsi are required to contribute up to \$500,000 towards payments of Central's creditors' claims after Central's cash assets are depleted, those contributions are also subject to reduction to pay administrative expenses. What is clear is that the amount available to pay Central's creditors will be far less than the amount of their claims, which exceed \$1.4 million. (ECF No. 320 at Ex. 2.)

51. The Court also is concerned about whether Central's creditors will participate in the claims process proposed in the Agreement. Despite receiving notice, none of Central's creditors attended the Approval Hearing or even submitted objections or other comments in writing. The Court is skeptical that Central's creditors will be inclined to make claims in a North Carolina state trial court attempting to administer a procedure created, in part, by the debtor. In addition, as proposed, the claims process would permit "limited discovery [] on the validity of the claim" (ECF No. 299, Ex. A at p. 3), which is likely to drive up the cost of pursuing such claims. On the other hand, the Court believes that Central's creditors probably are more familiar and comfortable with the long-established procedures administered by the United States bankruptcy courts and may be more likely to make claims with the bankruptcy court.

52. Finally, the April 3, 2020 Agreement, unfortunately, allows Prasad and Vamsi to purchase claims from Central's creditors, likely at a substantial discount, and then pursue those claims under the procedure established by the Agreement. This creates yet another means by which Central's creditors may be disadvantaged. At the Approval Hearing, Prasad Parties' counsel candidly admitted that if the settlement is approved, Prasad is likely to attempt to buy claims from Central's creditors and pursue payment of those claims in this Court.

5. Non-Party Owners and Group, Holdings, and the Subsidiaries

53. The record does not make clear what disputes and claims, or potential claims, the Non-Party Owners may have against Group, Holdings, and the Subsidiaries, whether the claims have merit, or the likelihood that the Non-Party Owners will pursue such claims. However, any such claims are excepted from and not resolved by the Agreement.

C. Whether the Settlement is Reasonable Under the Circumstances and Equitable.

54. The Court has no doubt that the April 3, 2020 Agreement Parties' *desire* to settle is reasonable. The Settlement Parties appeared to have reached a final settlement in January 2019 subject to [REDACTED]

[REDACTED]

[REDACTED]. All the Settlement Parties agreed the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. This set into motion a series of events that resulted in the appointment of the Receiver, the sale of Central's assets to the Cosmos Corp., and Prasad's refusal to fulfill their obligations under the Cosmos Corp–Central APA. All of this has depleted Group's, Holding's, and Central's assets. The Receiver, who also is the liquidating trustee for Central, has worked tirelessly over many months to try to complete his appointed duties and to bring some resolution to the disputes between the parties. Group, Holdings, the Vamsi Parties, the Prasad Parties, and NSC, and other interested parties, have expended substantial time and resources in furtherance of settlement of this matter. There is no question that attempting to reach a settlement under these circumstances was reasonable. The strong desire to settle this action, however, caused the April 3, 2020 Agreement Parties to agree upon settlement terms that are not reasonable or equitable.

55. First, the April 3, 2020 Agreement fails to resolve all of the disputes directly arising from this lawsuit and the Sales Transaction, instead leaving NSC, ABTV, and other interested parties to continue to face potential future liabilities and incur additional legal costs. This cannot be viewed as equitable to those parties.

56. Second, instead of fully resolving this action, the Agreement provides for a claims process that appears likely to create additional, lengthy litigation in this Court in order to bring the case to a conclusion, particularly given the provision for discovery regarding the claims. (See ECF No. 299, Ex. A at p.3.) Almost every

issue in this case has been the subject of acrimonious dispute and hotly contested. There is no reason to believe that the claims process will be any different. The Court concludes the inclusion of the claims procedure as part of the April 3, 2020 Agreement is not reasonable.

57. Third, the Agreement confers a disproportionate share of its benefits on the Prasad Parties, while placing additional burdens on Vamsi for problems caused primarily by NSC's failure to abide by the Settlement Agreement and the Prasad Parties' refusal to fulfill the obligations in the Cosmos Corp. – Central APA. While the Prasad Parties have agreed to pay some of Central's outstanding debts and potentially contribute up to \$350,000 towards payment of other claims against Central, the April 3, 2020 Agreement inequitably favors the Prasad Parties at the expense of the other parties.

58. Finally, the April 3, 2020 Agreement does not treat Central's creditors equitably. As explained herein, the Agreement relieves Cosmos Corp. of any obligation to pay the Assumed Liabilities in full, and instead foists on them an unfamiliar and potentially expensive claims procedure created by the April 3, 2020 Agreement Parties. Furthermore, the authority, procedures and remedies available to a trustee under the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq., may permit a more exacting review of the transactions underlying this lawsuit, the Settlement Agreement, and the Sales Transaction, and final resolution of claims related thereto. The Agreement also provides an opportunity for the Prasad Parties

to further benefit at Central's creditors expense by purchasing their claims and seeking payment under the claims process.

59. In summary, the Court concludes that, when considered in light of all the parties interested in this matter, the April 3, 2020 Agreement is not reasonable and does not provide an equitable result. Nevertheless, the Court does not want to preclude the parties from seeking approval of the Agreement in any other venue, and concludes that the denial of the Motion should be without prejudice.

III. CONCLUSION

60. Based on the foregoing, the Motion to Approve should be DENIED without prejudice.

THEREFORE, the Motion to Approve is DENIED, without prejudice.

SO ORDERED, this the 23rd day of July, 2020.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases