

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1393 of 2019

[Arising out of Order dated 7th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No.IV) in Company Petition No. IB-543/ND/2019]

IN THE MATTER OF:

Sh. Phool Chand Goyal
Ex. Director/ Shareholder
R/o 2131/1, Nai Basti, narela,
Delhi-110040.

....Appellant

Vs

1. Avneet Goyal
Prop. Of M/s R.B. Enterprises
Having office at:
4064, Naya Bazar, Delhi-110006.

2. M/s Black Diamond Pulses Pvt. Ltd.
Having registered office at:
2131/1, Nai Basti, Narela, Delhi-110040.
Through its IRP Mahesh Tane.

....Respondents

Present:

**For Appellant: Mr. Vikas Mishra, Mr. Ajay Kumar and
Mr. Himanshu Singh, Advocates.**

**For Respondents: Mr. Hitesh Sachar, Advocate for IRP with
Mr. Mahesh Taneja, IRP (R-2).**

**Mr. Madhusudan Sharma, Advocate for
Intervenor.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

M/s R.B. Enterprises ('Operational Creditor') – 1st Respondent moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') against M/s Black Diamond Pulses Private Limited ('Corporate Debtor'). The Adjudicating Authority (National

Company Law Tribunal), New Delhi (Court No.IV) by order dated 7th November, 2019 admitted the application.

2. The present Appeal has been presented by the Appellant on the ground that the Appellant has settled the matter with the 'Operational Creditor' prior to the constitution of the 'Committee of Creditors' and, therefore, to pass appropriate order exercising inherent power under Rule 11 of the NCLAT Rules, 2016. The 'Operational Creditor' has appeared and accepted that the parties have settled prior to the constitution of the 'Committee of Creditors'. The parties were noticed and they have appeared. The Settlement Term reached on 27th November, 2019 has been enclosed by the Appellant. The learned Counsel for the Appellant submitted that the Appellant will take care of the fee and cost incurred by the 'Interim Resolution Professional'.

3. Learned Counsel appearing on behalf of the 'Interim Resolution Professional' submitted that 'Committee of Creditors' was constituted on 28th November 2019, which was communicated to the Adjudicating Authority on 3rd December, 2019.

4. It has been brought to our notice that the same very impugned order was challenged by one Mr. Rahul Goel, another 'Operational Creditor' in Company Appeal (AT) (Insolvency) No. 1356 of 2019, which was withdrawn on 26th November, 2019 from this Appellate Tribunal with liberty to approach the 'Operational Creditor' for negotiations and to arrive at an amicable settlement, which is as under:-

“After arguing for a while, learned counsel for the Appellant offered to withdraw the appeal as according to him Appellant is desirous of settling the dispute with the

Respondent (Operational Creditor). Learned counsel for the Respondent (Operational Creditor) is present and submits that the Respondent (Operational Creditor) is not averse to settlement being reached between the parties.

In view of the same, the appeal is dismissed as withdrawn. The Appellant shall be at liberty to approach the Respondent (Operational Creditor) for negotiations so as to arrive at an amicable settlement.

I.A. No. 3862 of 2019 seeking exemption from filing certified copy of the impugned order stands disposed of with direction to the Appellant to file the certified copy of impugned order within a week.”

5. Mr. Avneet Goyal, Proprietor of M/s. R.B. Enterprises (‘Operational Creditor’) appeared through Mr. Abhishek Tandon, Chartered Accountant, who accepted that the Agreement has been reached.

6. The Agreement dated 27th November, 2019 is on India Non Judicial Stamp Paper issued by National Capital Territory of Delhi. The e-Stamp is dated 27th November, 2019, is extracted below: -

“SETTLEMENT DEED

THIS SETTLEMENT DEED made dated and effective as of the 27/11/2019 is made,

BETWEEN

AVNEET GOYAL, PROP. M/S R.B. ENTERPRISES, Office at 4064, Naya Bazar, Delhi-100006, herein after referred to as the FIRST PARTY

AND

SH. PHOOL CHAND, SHAREHOLDER OF M/S BLACK DIAMOND PULSES PRIVATE LIMITED, office at 2131/1,

Nai Basti, Narela, Delhi-110040 herein after referred to as the SECOND PARTY.

WHEREAS vide order dated 07.11.2019 of National Company Law Tribunal, the Hon'ble bench had appointed Mr. Mahesh Taneja having registration No.IBBI/IPA-002/IP-N00739/2019-2019/12326 as the IRP of the Respondent/ Corporate Debtor company (M/S Black Diamond Pulses Private Limited).

WHEREAS an appeal dated 25.11.2019 had filed in NCLAT against the order dated 07.11.2019 and in compliance of the order dated 25.11.2019 both the parties have agreed to settle the entire dispute.

IT IS AGREED AS FOLLOWS:

- 1. THAT the SECOND PARTY and FIRST PARTY have amicably settled the entire dispute for a total sum of Rs.1582410.10 Cheque No.954059 (Punjab and Sing Bank) against all the claim/ damages/ compensation etc.*
- 2. That the Second party has made the entire payment of Rs.1582410.10 Cheque No.954059 (Punjab and Sing Bank) to the first party as full and final settlement.*
- 3. Both the parties agree and undertake that by entering into this agreement, no other legal action/ complaint/ case/ petition shall be initiate by either of them against each other.*
- 4. That the parties hereto voluntarily agreed and this settlement has not been obtained by force/coercion/ undue Influence.*
- 5. That the contents of the abovesaid settlement agreement have been read over, explained and*

understood by both the parties in vernacular language and both the parties have agreed to the same in the presence of witness and the same shall be binding upon both the parties.

6. *That this Memorandum of Settlement has been voluntarily executed by the parties in their full senses, without any pressure, threat or coercion from any corner and this memorandum of Settlement is binding on all the parties, their legal heirs, successors etc. these deposition of the parties can also be placed before any court of law or any other authority.*
7. *That the first party hereby withdraw all its claims against the Second Party and First Part undertakes to assist the Second Party before NCLT/ NCLAT for quashing/ setting aside/ removal of IRP.*

IN WITNESSES WHEREOF, both the parties have put their respective hands on this memorandum of Settlement signed at Delhi on the date first mentioned above, in presence of following witness this agreement on the 27, November and 2019 first written above”

7. One Intervention Application has been filed by one Mr. Rishu Goyal, Proprietor of Shaurya Impex, opposing the prayer on the ground that it has also filed claim. From the pleadings made by the Intervener - Rishu Goyal, Proprietor of Shaurya Impex, we find that after the impugned order dated 7th November, 2019, a public announcement was made on 11th November, 2019. According to the Intervener, he filed claim before the 'Interim

Resolution Professional’ on 19th November, 2019. However, the ‘Interim Resolution Professional’ asked for additional documents on 2nd December, 2019. Subsequently, by email dated 13th December, 2019 ‘Interim Resolution Professional’ informed that the claim is not legally tenable on oral agreement. Therefore, we are not inclined to deliberate on the issue with regard to the claim of the Intervener. Intervention Application further shows that a suit is pending before the District Judge with regard to outstanding dues and there is allegation that details of ledger attached therein were not proper. Such issues cannot be determined particularly when ‘Interim Resolution Professional’ has not accepted the claim. Admittedly, this Appellate Tribunal by order dated 26th November, 2019 noticed the prayer made by one of the Shareholder/ Promoter that it intends to settle and allowed the Promoter to settle the matter with the ‘Operational Creditor’. The settlement was reached by next day as evident from Stamp Paper dated 27th November, 2019. The ‘Committee of Creditors’ was constituted thereafter on 28th November, 2019, about which the Adjudicating Authority was informed on 3rd December, 2019. Therefore, we find that the Promoters settled the matter with the ‘Operational Creditor’ prior to constitution of the ‘Committee of Creditors’ on 27th November, 2019 in view of the liberty given by the Appellate Tribunal.

8. In view of the aforesaid facts and in view of the decision of the Hon’ble Supreme Court in **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018”**, we in exercise of power conferred by Rule 11 of the NCLAT Rules, 2016 set-aside the impugned order dated 7th November, 2019 and dispose of the application under Section 9 of

the I&B Code filed by M/s R.B. Enterprises ('Operational Creditor') as withdrawn. In the result, the 'Corporate Debtor' is released from all the rigors of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover the assets and records to the Promoters. We assess the fee of the 'Interim Resolution Professional' @ Rs.1,00,000/- per month. The 'Interim Resolution Professional' will forward the 'Corporate Insolvency Resolution Process' cost incurred by it for publication etc. and the fee payable to it as per our decision to the Appellant/ Promoters/ 'Corporate Debtor', who will pay the same within three weeks.

The Appeal is allowed with the aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

7th February, 2020

Ash