NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 778 of 2019
Interlocutory Application No.2493 of 2019

IN THE MATTER OF:

Mr. Ritesh Khandelwal .... Appellant

Vs

Dimension Data India Private Limited .... Respondent

Present:

For Appellant: **Mr. Abhinav Vasisht, Senior Advocate with Ms. Padmaja Kaul, Mr. Yugank Goel and Ms. Priya, Advocates.**

For Respondents: **Mr. Y. Suryanarayana, Advocate for Interim Resolution Professional representing Corporate Debtor.**

Mr. Srinivas Thatikonda, Interim Resolution Professional.

Ms. Monalisa Kosaria and Mr. D. Abhinav Rao, Advocates for Respondent No.1.

O R D E R

21.08.2019 M/s. Dimension Data India Pvt. Ltd. ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short the 'I&B Code') against M/s. NextGen Datacenter and Cloud Technologies Private Limited ('Corporate Debtor'), which was admitted by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench by impugned order dated 24th July, 2019, which has been challenged by the Appellant-Shareholder of the 'Corporate Debtor'.

2. Earlier, when the matter was taken up, learned Counsel for the Appellant submitted that the 'Committee of Creditors' has not been constituted and the Appellant intends to settle the matter with the Respondent. Today, a Joint Application on behalf of Appellant and 1st Respondent has been filed, enclosing therein the Settlement Agreement dated 12th August, 2019, which shows that the parties have settled the matter. Ms. Monalisa Kosaria, Counsel appearing on behalf of 1st Respondent – Dimension Data India Private ('Operational Creditor') accepted that they have settled the matter and, therefore, Joint Application has been filed on their behalf.

3. Mr. Srinivas Thatikonda, 'Interim Resolution Professional' is present and submits that the Appellant has settled the claim and a Demand Draft of Rs.5,49,708/- is being handed over to him towards his fee and resolution cost. He accepts that the 'Committee of Creditors' has not been constituted.

4. In the facts and circumstances, in exercise of inherent powers conferred upon this Appellate Tribunal under Rule 11 of the NCLAT Rules 2016, we accept the Settlement and set aside the impugned order dated 24th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench and dispose of the Company Petition (IB) No.153/BB/2017 (preferred by 1st Respondent- M/s Dimension Data India Pvt. Ltd.). The terms of Agreement of Settlement reached between the parties be treated as direction of this Appellate Tribunal and the Appellant, Managing Director, Directors, Officers and the 'Corporate Debtor' are directed to implement the same in its 'letter and spirit', failing which, it will

be open to the Respondent to file Petition for initiation of contempt proceeding and for the revival of the Appeal and the Company Petition.

5. In the result, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondents Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

6. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC