

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 452 of 2019

IN THE MATTER OF:

Sh. Sunil Choudhary

...Appellant

Vs.

Hubergroup India Pvt. Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. Nikhilesh Kumar and Mr. Vinod Kr. Chaurasiya, Advocates.

For Respondents: - Mr. Ashok Kriplani, Advocate for IRP. Mr. Wamika Trehan and Mr. Milind Sharma, Advocates.

O R D E R

29.07.2019— The Respondent- 'Hubergroup India Pvt. Ltd.' filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Shreemataji Graphics Pvt. Ltd.'- ('Corporate Debtor'), which was admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on 6th March, 2019 against which the appeal has been preferred.

2. Earlier on 10th May, 2019, when the matter was taken up, learned counsel for the Appellant submitted that the Appellant is negotiating for settlement with the 'Operational Creditor' and no 'Committee of Creditors' has been constituted.

3. On 16th July, 2019, it was stated that the parties reached the settlement and 'Terms of Settlement' has been filed.

4. Mr. Ashok Kriplani, learned counsel appearing on behalf of the 'Interim Resolution Professional' accepts that the 'Committee of Creditors' has not been constituted and the 'Terms of Settlement' reached between the parties on 15th July, 2019 and in terms thereof the admitted dues will be paid by the 'Corporate Debtor' within the time period shown therein.

5. The Settlement Agreement dated 15th July, 2019 reads as follows:

Settlement Agreement

WHEREAS Respondent herein instituted Company Petition No. 1738 of 2018 before the National Company Law Tribunal, Mumbai ("**NCLT**"), against Shree Mataji Graphics Private Limited ("**Corporate Debtor**"). By way of an order dated 6 March 2019 ("**Order of Admission**") the NCLT admitted the said Company Petition, thereby commencing the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

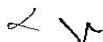
AND WHEREAS pursuant to the said Order of Admission, one Mr Vimal P. Agarwal (IBBI Registration No. IBBI/IPA-001/IP-P00741/2017-2018/11247) was appointed as the Interim Insolvency Resolution Professional ("**IRP**") of the Corporate Debtor. The said IRP issued Public Announcement on 24 March 2019. However, to date, no Committee of Creditors has been constituted in respect of the Corporate Debtor.

AND WHEREAS Appellant herein, being the erstwhile director of the Corporate Debtor, has preferred the instant appeal before the Hon'ble National Company Law Appellate Tribunal, bearing number 452 of 2019 ("**Appeal**").

AND WHEREAS the said Appeal was listed for hearing for the first time on 29 April 2019, at which time the Hon'ble NCLAT without going into merits was pleased to observe *prima facie*, no infirmity in the Order of Admission. However, the said interim order dated 29 April 2019, permitted the said Appellant to settle the matter with the Respondent herein.

PURSUANT THEREOF the Appellant, representatives of the Respondent, and the IRP, on behalf of the Corporate Debtor, above named held a meeting at Mumbai on 13 July 2019 and decided to settle all pending claims between them, in the manner set out herein below. Appellant, Respondent and the Corporate Debtor are collectively referred to as "**Parties**" and each referred to as a "**Party**" to this Settlement Agreement.







The Corporate Debtor agrees and undertakes to this Hon'ble Tribunal to pay a sum of Rs. 1,20,04,280/- (Rupees One crore twenty lakh four thousand two hundred and eighty only) to the Respondent herein and the Respondent agrees to accept the payment of the said sum of Rs. 1,20,04,280/- (Rupees One crore twenty lakh four thousand two hundred and eighty only) ("**Agreed Settlement Amount**") towards full and final settlement of all claims between the Respondent and the Corporate Debtor, *inter alia* as raised in the captioned Company Petition in the following manner:

On the signing of this Settlement Agreement, the same being taken on record by the Hon'ble NCLAT, and the Order of Admission being set aside by the Hon'ble NCLAT, the Corporate Debtor shall pay to the Respondent the first instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six only) by a dated Cheque bearing number [784797] dated 16.07.2019 drawn on Hubergroup India Private Limited;

- I. On or before 16 August 2019, the Corporate Debtor shall pay to the Respondent second instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784801] dated 16.08.2019 drawn on Hubergroup India Private Limited;
- II. On or before 16 September 2019, the Corporate Debtor shall pay to the Respondent third instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784803] dated 16.09.2019 drawn on Hubergroup India Private Limited;
- III. On or before 16 October 2019, the Corporate Debtor shall pay to the Respondent fourth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784804] dated 16.10.2019 drawn on Hubergroup India Private Limited;
- IV. On or before 16 November 2019, the Corporate Debtor shall pay to the Respondent fifth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784805] dated 16.11.2019 drawn on Hubergroup India Private Limited;
- V. On or before the 16 December 2019, the Corporate Debtor shall pay to the Respondent sixth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh

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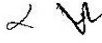
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- Three hundred and fifty-six) by a post-dated Cheque number [784806] dated 16.12.2019 drawn on Hubergroup India Private Limited;
- vi. On or before the 16 January 2020, the Corporate Debtor shall pay to the Respondent seventh instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784807] dated 16.01.2020 drawn on Hubergroup India Private Limited;
- vii. On or before the 16 February 2020, the Corporate Debtor shall pay to the Respondent eighth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784808] dated 16.02.2020 drawn on Hubergroup India Private Limited;
- viii. On or before the 16 March 2020, the Corporate Debtor shall pay to the Respondent ninth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784809] dated 16.03.2020 drawn on Hubergroup India Private Limited;
- ix. On or before the 16 April 2020, the Corporate Debtor shall pay to the Respondent tenth instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784810] dated 16.04.2020 drawn on Hubergroup India Private Limited;
- x. On or before the 16 May 2020, the Corporate Debtor shall pay to the Respondent Eleventh instalment of a sum of Rs. 10,00,356 (Indian Rupees Ten lakh Three hundred and fifty-six) by a post-dated Cheque number [784811] dated 16.05.2020 drawn on Hubergroup India Private Limited; and
- xi. On or before the 16 June 2020, the Corporate Debtor shall pay to the Respondent Twelfth instalment of a sum of Rs. 10,00,364 (Indian Rupees Ten lakh Three hundred and sixty-four) by a post-dated Cheque number [784812] dated 16.06.2020 drawn on Hubergroup India Private Limited;

For ease of reference the payment schedule is enclosed as **Schedule 'A'**.

Respondent herein agrees and acknowledges that an amount of Rs 17,04,637 (Indian Rupees Seventeen lakh four thousand six hundred and thirty-seven only) is to be paid by it to an entity named Kruthika Inks Private Limited ("Kruthika"), which







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 is a sister concern of the Corporate Debtor. Parties acknowledge that the Agreed Settlement Amount has been arrived at after deducting the said amount of Rs 17,04,637 (Indian Rupees Seventeen lakh four thousand six hundred and thirty-seven only), from the total debt due and payable by the Corporate Debtor to the Respondent. Kruthika has confirmed that it accepts this deduction from the total debt, as being valid discharge of the debt owed by Respondent to Kruthika.

Post-dated cheques for payment by the Corporate Debtor under this Settlement Agreement are to be drawn in favour of Hubergroup India Private Limited.

It is further agreed between the Parties that in the event of three continuous default committed by the Corporate Debtor in making any payment mentioned in Schedule 'A' and/or breach of any of the clauses of this Settlement Agreement following consequences shall follow:

The total debt claimed in the Company Petition, by the Respondent against the Corporate Debtor shall stand revived and admitted;

It is made clear that payments made by the Corporate Debtor, if any, under this Settlement Agreement, and the amount of Rs 17,04,637 (Indian Rupees Seventeen lakh four thousand six hundred and thirty-seven only), referred in Paragraph 1 of this Settlement Agreement, shall be deducted from the total debt claimed in the Company Petition, for the purposes of (i) above;

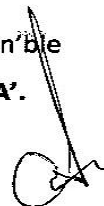
The Respondent herein shall be at liberty to institute a fresh Insolvency Application for the default in payment of the total debt claimed in the Company Petition, before the NCLT against the Corporate Debtor; and

The Respondent shall have the right to approach Hon'ble NCLT and the Hon'ble NCLAT under Section 425 of the Companies Act, 2013, against the Appellant and the Corporate Debtor.

The Appellant and the Corporate Debtor gives an undertaking to the Hon'ble Tribunal that the payment to the Respondent be made as per the Schedule 'A'.







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Upon receipt of the entire Agreed Settlement Amount, the Respondent agrees to withdraw the Criminal Complaint bearing No. 848 of 2017, pending before the LD. Metropolitan Magistrate 28th Court at Esplanade Mumbai ("**Criminal Complaint**"). Respondent further agrees to not prosecute the said Criminal Complaint, during the pendency of payments under this Settlement Agreement. Parties undertake to take all necessary steps and actions for this purpose. It is however, made clear that in the event of three consecutive defaults committed by the Appellant in making the payments mentioned in Schedule 'A' and/or breach of any of the clauses of this Settlement Agreement, Respondent shall continue to prosecute the said Criminal Complaint against the Appellant, in accordance with law.

In view of the settlement between the Parties, the Parties shall jointly seek an order to set aside the Order of Admission, before the Hon'ble NCLAT.

It is reiterated that the payment or discharge of the entire Agreed Settlement Amount by Corporate Debtor to Hubergroup, as set out above, shall be the consideration for full and final settlement of all disputes, differences and claims between the Appellant, Respondent and the Corporate Debtor, and from and upon the execution of these presents, the Parties agree not to raise any fresh claims and/or to initiate and/or continue any proceedings against the other in respect of disputes, differences or claims between the Parties, save as contemplated herein.

It is agreed that the fees of the IRP for an amount of Rs.2,36,000.00, shall be borne by the Appellant. Appellant agrees to pay the said amount as IRP fees, on the signing of this Settlement Agreement, the same being taken on record by the Hon'ble NCLAT, and the Order of Admission being set aside by the Hon'ble NCLAT.

Parties represent and warrant that they have the requisite authority to enter into the present Consent Terms.

This Settlement Agreement is entered in 4 (four) counterparts, one to be retained by the Appellant, one by the Respondent, one by the Corporate Debtor and one to be filed before the Hon'ble NCLAT.





Dated this 15th day of July 2019

For SHREE MATAJI GRAPHICS PVT. LTD.

Mr Sunil Choudhary

Appellant

For SHREE MATAJI GRAPHICS PVT. LTD.

Mr Chetan Naik

Authorised Signatory of the Respondent

For KRUTHIKA INKS PVT. LTD.

Mr Sunil Choudhary
Authorised Signatory of Kruthika Inks
Private Limited

Mr Vimal Agarwal

Interim Insolvency Resolution
Professional of the Corporate Debtor



6. Learned counsel for the Appellant submits that the Appellant, all Shareholders/ Promoters and Directors and Officers of the 'Corporate Debtor' will be bound by the 'Terms of Settlement'.

7. Learned counsel for the Respondent- 'Operational Creditor' submits that the 'Operational Creditor' has no objection to the 'Terms of Settlement' as agreed subject to payment should be made on time.

8. Similar plea has been taken by learned counsel appearing on behalf of the 'Interim Resolution Professional'.

9. In view of the aforesaid development and taking into consideration the fact that the 'Committee of Creditors' has not been constituted and the parties have already reached the settlement in the light 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"** and being

satisfied, we exercise inherent power under Rule 11 of the National Company Law Appellate Tribunal, 2016 and allow the Respondent- 'Operational Creditor' to withdraw the application under Section 9.

10. In the result, the impugned order dated 6th March, 2019 admitting the application under Section 9 stands set aside. The 'Terms of Settlement' should be treated to be a decision and decree of this Appellate Tribunal. The Appellant, all Shareholders, Promoters, Directors and Officers of 'Shreemataji Graphics Pvt. Ltd.'- ('Corporate Debtor') are bound by the 'Terms of Settlement' and are directed to comply with the 'Terms of Settlement, failing which, it will be open to the 'Operational Creditor' or the 'Interim Resolution Professional' to request to recall the order and revive the 'Corporate Insolvency Resolution Process' as also for initiation of Contempt Proceedings against the Appellant and other Shareholders, Promoters, Directors and Officers of 'Shreemataji Graphics Pvt. Ltd.'- ('Corporate Debtor').

11. In effect, order (s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the 'I&B Code' is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate

Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

12. The 'Interim Resolution Professional' will be paid as per the Settlement. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

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