

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1051 of 2019**

**IN THE MATTER OF:**

**Sujeet Suresh Shah**

**...Appellant**

**Vs**

**Savino Del Bene Freight Forwarders India Pvt. Ltd.  
& Anr.**

**....Respondents**

**Present:**

**For Appellant: Mr. Debopriyo Moulik, Advocate.**

**For Respondents: Ms. Surekha Raman and Mr. Purushottam Kr. Jha,  
Advocates for R-1.**

**Mr. Shikhil Suri, Mr. Shiv Kumar Suri and  
Ms. Shilpa Saini, Advocates for IRP.**

**ORDER**

**02.01.2020:** ‘Savino Del Bene Freight Forwarders India Pvt. Ltd.’ (Operational Creditor) filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 pursuant to which the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, by impugned order dated 17<sup>th</sup> September, 2019 initiated Corporate Insolvency Resolution Process against ‘Olive Tree Trading Private Limited’ (Corporate Debtor).

2. When the matter was taken up, learned counsel for the Appellant, a Shareholder of the Corporate Debtor, submitted that Appellant has agreed to pay the default amount and settle the matter, the Committee of Creditors having not been constituted in the meantime.

3. On notice, counsel for Respondent – ‘Savino Del Bene Freight Forwarders India Pvt. Ltd.’ (Operational Creditor) has appeared and counsel for Interim Resolution Professional has also appeared. The counsel for Interim Resolution Professional submits that Interim Resolution Professional has received six claims but Committee of Creditors has not been constituted.

4. Appellant in its affidavit dated 20<sup>th</sup> December, 2019 has made the following statement and given following undertaking:-

*“2. I undertake, as stated before this Hon’ble Tribunal on 16.12.2019, to pay the amounts mentioned hereinbelow towards full and final settlement of all outstanding dues of Respondent No.1:*

- a. An amount of Rs.5,06,051/- (Rupees Five Lakhs Six Thousand and Fifty One Only) payable by 31<sup>st</sup> December, 2019; and*
- b. An amount of Rs.5,06,050/- (Rupees Five Lakhs Six Thousand and Fifty Only) payable by 15<sup>th</sup> of January, 2020; and*
- c. An amount of Rs.5,00,000/- (Rupees Five Lakhs only) which includes interest and the IRP Fees as claimed by the Respondent payable by 28<sup>th</sup> February, 2020.*

3. *I undertake to abide by the aforementioned terms of payment and further undertake to pay the same on or before the aforementioned due dates. I state that the same shall be towards the full and final settlement of all outstanding dues payable to the Respondent No. 1.”*

5. Another affidavit has been filed by 1<sup>st</sup> Respondent – ‘Savino Del Bene Freight Forwarders India Pvt. Ltd.’ (Operational Creditor), wherein following statement has been made:-

“2. *I say that this Hon’ble Tribunal by order dated 16.12.2019 has inter alia directed Respondent to state as to whether it intends to accept the defaulted amount of Rs.10,12,101/- in two equal instalments, first instalment to be paid by the Appellant by 31.12.2019 and second instalment by 15.01.2020 and the balance amount restricted to Rs.5 lakhs which includes the fee of IRP by 28.02.2020.*

3. *I say that Respondent intends to accept the defaulted amount as well the balance in instalments as suggested by this Hon’ble Tribunal and agreed to by the Appellant.”*

6. In view of the fact that the parties have reached the settlement as above, which undertakes to pay fee and cost of the Interim Resolution Professional, and that the Committee of Creditors have yet not been constituted, we in exercise of power conferred under Rule 11 of NCLAT Rules, 2016 set aside order of admission dated 17<sup>th</sup> September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench and dispose of application under Section 9 filed by 'Savino Del Bene Freight Forwarders India Pvt. Ltd.' (Operational Creditor) as withdrawn. The Appellant is directed to comply with the undertaking given before this Appellate Tribunal and it should be treated as direction of this Appellate Tribunal, failing which Corporate Insolvency Resolution Process may be restored. The parties are directed to pay the fee and cost of the Interim Resolution Professional on prorata basis, as provided in Terms of Agreement. The Corporate Debtor - 'Olive Tree Trading Private Limited' is released from the rigour of Corporate Insolvency Resolution Process. The appeal is allowed with aforesaid observations and actions.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/gc*