

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1181 of 2019

IN THE MATTER OF:

Somesh Choudhary

...Appellant

Vs

Syndicate Interglobe

....Respondents

Present:

**For Appellant: Mr. P. Nagesh, Mr. Aditya Sharma and
Mr. Gautam Sharma, Advocates.**

**For Respondents: Mr. Neeraj Kr. Gupta, Advocate for R-1.
Mr. Yogesh Kumar Gupta, IRP.**

ORDER

19.11.2019: Respondent – ‘M/s Syndicate Interglobe’ (Operational Creditor) filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) for initiation of Corporate Insolvency Resolution Process against ‘M/s Global Fragrances (P) Ltd.’ (Corporate Debtor). The application was rejected by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III by order dated 25th September, 2019. After the admission but before the constitution of Committee of Creditors, the parties reached Terms of Settlement on 30th October, 2019.

2. Mr. Neeraj Kr. Gupta, learned counsel appearing on behalf of the Operational Creditor also accepts that the Terms of Settlement reached between the parties on 30th October, 2019 i.e. prior to constitution of Committee of Creditors. In terms of Terms of Settlement part of the payment

has been paid and rest part is payable. Mr. Yogesh Kumar Gupta, Interim Resolution Professional appears in person and accepts that the Committee of Creditors had not been constituted as on 30th October, 2019 when the settlement was made.

3. According to learned counsel for the parties before constitution of Committee of Creditors, the Operational Creditor filed application for withdrawal of application under Section 9 on 30th October, 2019 but the same was adjourned by impugned order dated 31st October, 2019.

4. Having heard learned counsel for the parties, we are of the view that the parties having settled the matter on 30th October, 2019 i.e. before the constitution of Committee of Creditors and application having filed by 'M/s Syndicate Interglobe' (Operational Creditor) for withdrawal of application under Section 9, the Adjudicating Authority instead of adjourning the matter should have passed appropriate order in exercise of power conferred under Rule 11 of the NCLT Rules, 2016. The Adjudicating Authority having failed to do so, we exercise inherent power conferred under Rule 11 of NCLAT Rules, 2016 and set aside the Corporate Insolvency Resolution Process initiated against 'M/s Global Fragrances (P) Ltd.' (Corporate Debtor) by order dated 25th September, 2019 and allow the application filed by the Respondent - 'M/s Syndicate Interglobe' (Operational Creditor) for withdrawal of application under Section 9. The

Company Petition stands disposed of as withdrawn. The Adjudicating Authority will close the proceeding. So far fee and cost incurred during Corporate Insolvency Resolution Process by Interim Resolution Professional is concerned, he having worked for about 45 days and cost incurred for publication etc. as per his statement, we ascertain the fee and cost at Rs.2.50 Lakhs (Rupees Two Lakhs Fifty Thousand Only). The Appellant has agreed to pay the said amount to the Interim Resolution Professional.

5. We accordingly direct the Appellant to pay the rest of the amount to the Operational Creditor within the time as agreed in the Terms of Settlement. The Appellant/ Corporate Debtor will also pay the fee of Mr. Yogesh Kumar Gupta, Interim Resolution Professional alongwith cost of CIRP amounting to Rs.2.50 Lakhs before three weeks. The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

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