

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 643 of 2019

IN THE MATTER OF:

Dinesh Kishinchandgajria

...Appellant

Versus

Kanan Graphics Pvt. Ltd. & Anr.

...Respondents

Present

For Appellant:

**Mr. S. Santanam Swaminadhan, Ms. Nishtha Kurana
and Mr. Kartik Malhotra, Advocates**

For Respondents:

**Mr. Kumar Sumit and Mr. Rajendra Beniwal,
Advocates**

O R D E R

16.07.2019 This appeal has been preferred by Mr. Dinesh Kishinchandagajria, Director of 'Print Plus Private Limited' against the order dated 31st May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench for initiating 'Corporate Insolvency Resolution Process' against 'Print Plus Private Limited' (Corporate Debtor).

The proceeding was initiated at the instance of an application preferred by 'Kanan Graphics Private Limited' (Operational Creditor) u/s 9 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the **I&B Code**'). The Appellant took a plea that there is a 'pre-existing dispute' but it was not noticed in absence of any evidence.

On 19th June, 2019 when the matter was taken up, learned counsel appearing on behalf of the Appellant while referring to the *e-mails* dated 30th March, 2016 and 2nd March, 2016 to suggest that there is a 'pre-existing dispute'

relating to supply of the goods and it was also informed that in the meantime, parties have settled the matter. Mr. Deepak Agarwal, learned counsel appearing on behalf of 1st Respondent accepts that the parties have settled the matter and 50% of the payment has been received. It was also informed that the 'Committee of Creditors' has also not yet been constituted as on 19th June, 2019.

In view of such submission, we issue notice to the 'Resolution Professional'. Today it is informed that 50% payment was received by the 1st Respondent and the rest 50% payment has been transferred on 12th July, 2019 in favour of the 1st Respondent. This is also accepted by the 1st Respondent.

Mr. Kumar Sumit, Advocate appears on behalf of the 'Resolution Professional' and submits that the 'Resolution Professional' has worked for about one month and one week and has incurred expenses of Rs. 99,000/- towards 'resolution cost'. He further submits that this apart, 'Resolution Professional' is also entitled for his fee @ Rs. 2 Lakhs per month. However, on negotiations, learned counsel for the 'Resolution Professional' agreed to accept the total Rs. 3 Lakhs towards resolution fee and cost. In view of the fact that the parties have reached for settlement prior to the constitution of the 'Committee of Creditors' and in exercising of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we allow the settlement and set aside the impugned order dated 31st May, 2019 and allow the 1st Respondent to withdraw the application u/s 9 of the I&B Code. The proceedings before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai is closed. The Adjudicating Authority will record its order sheet.

The Appellant and the 'Corporate Debtor' will jointly directed to pay a sum of Rs. 3 Lakhs in favour of the 'Resolution Professional – Mr. Naren Sheth' within

3 weeks failing which it will be open to the 'Interim Resolution Professional' to bring this to the notice of the Appellate Tribunal or for recall of this order.

In effect, 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 Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

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

[Justice S.J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)

ns/sk/