

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 769 of 2019

IN THE MATTER OF:

Janak Dhawan

...Appellant

Vs

Famous Innovations Digital Creative Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant: Mr. Anuj Shah, Advocate.

**For Respondents: Mr. Pranav Sarthi, Advocate for R-1.
Mr. Gautam Singhal, Advocate with Mr. Atul Tandon, IRP.
Mr. Lzafeer Ahmad, Advocate for Intervener.**

ORDER

20.12.2019: 'M/s Famous Innovations Digital Creative Pvt. Ltd.' (Operational Creditor) preferred application under Section 9 of the Insolvency and the Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') pursuant to which the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench II initiated Corporate Insolvency Resolution Process against 'M/s Mode Advertising and Marketing Pvt. Ltd.' which is under challenge. Initially, when the matter was taken up on 30th July, 2019, learned counsel for the Appellant submitted that the 'agreement' cited by the 1st Respondent was the 'partnership agreement', pursuant to which Respondent was entitled to profit sharing (35%), therefore, it cannot come within the definition of 'Operational Creditor' as defined under Section 5(21) of the I&B Code nor he can claim to be 'Financial Creditor' as the debt, if any,

does not come within the definition of 'Financial Debt' as defined under Section 5(8) of the I&B Code.

2. It was further submitted that if any amount was payable to 'M/s Famous Innovations Digital Creative Pvt. Ltd.', Operational Creditor, pursuant to the agreement, the Appellant is ready for amicable settlement. It was informed that the Committee of Creditors has not been constituted. Subsequently, it is informed and accepted by Mr. Pranav Sarthi, the learned counsel for 'M/s Famous Innovations Digital Creative Pvt. Ltd.' (1st Respondent) that they have agreed for settlement and they have reached settlement to receive amount as shown due in Form 5. Learned counsel for the Appellant has handed over four Demand Drafts for total amount of Rs.17,47,436/- to learned counsel for the 1st Respondent. This apart Interest amount + TDS is being paid by cheques and cheques are handed over to learned counsel for the 1st Respondent, who accepts the same.

3. The learned counsel for the 1st Respondent is accordingly directed to handover the Demand Drafts and Cheques to the 1st Respondent - 'M/s Famous Innovations Digital Creative Pvt. Ltd.'.

4. An affidavit has been filed by the learned counsel for the Appellant and in the Affidavit the Appellant has also enclosed the copy of Demand Drafts and

Cheques. It was informed that another Operational Creditor – ‘G. H. Prints Pvt. Ltd.’ also filed application under section 9 before the Adjudicating Authority for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, which was subsequently admitted on 15th October, 2019, which was not permissible after initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, therefore, the Adjudicating Authority (National Company Law Tribunal), New Delhi by subsequent order dated 5th November, 2019 recalled the order of admission being infructuous. The said order has been brought on the record. It was informed that the Appellant has also entered Memorandum of Understanding (MOU) on 13th December, 2019 with ‘G. H. Prints Pvt. Ltd.’, other Operational Creditor, to ensure that no insolvency resolution process starts in future. The MOU dated 13th December, 2019 is also placed on record.

5. Mr. Gautam Singhal, the learned Advocate appears on behalf of Mr. Atul Tandon, Interim Resolution Professional, who has worked for about five and a half months and claimed payment of Rs.75,000 per month towards his fee. In addition to cost of Rs.15,000 incurred towards publication and Rs.70,000 towards cost of three days appearance of lawyers.

6. In the circumstances, we assess the fee of Mr. Atul Tandon, Interim Resolution Professional at Rs.75,000/- per month, which will be calculated for

period of five and a half months. He is also allowed a sum of Rs.15,000 towards cost of publication and another sum of Rs.70,000 towards cost incurred as legal fee i.e. Rs.85,000 towards actual cost plus fee.

7. The learned counsel for the Appellant submits that he has already paid a sum of Rs.1,68,500/- to Mr. Atul Tandon. The Appellant is directed to pay the rest of the amount towards fee after adjusting the amount of Rs.1,68,500 in terms of our decision, within three weeks.

8. Mr. Lzafeer Ahmad, the learned Advocate, wanted to intervene on behalf of Ms. Rupa Gaur, one employee of the Corporate Debtor. It is submitted that the said employee is entitle for Rs.4 Lakhs approx. and earlier cheques issued has been bounced. The learned counsel for the Appellant submits that already a Summary Suit has been filed by Ms. Rupa Gaur therefore no application under Section 9 of I&B Code is maintainable their being a pre-existing dispute. However, we are not inclined to determine such claim or counter claim.

10. In view of the fact that the 'Committee of Creditors' have not been constituted, which is also accepted by Mr. Atul Tandon, Interim Resolution Professional and also has reached settlement with both the creditors, as discussed above and it is a going concern, we exercise power conferred to us under Rule 11 of NCLAT Rule, 2016 and set aside the impugned order dated 4th July, 2019 passed by the Adjudicating Authority (National Company Law

Tribunal), New Delhi Bench and dispose of the application under Section 9 filed by 'M/s Famous Innovations Digital Creative Pvt. Ltd.' (1st Respondent) as withdrawn. Company Petition No. IB-568/(ND)/2019 pending before the Adjudicating Authority stands disposed off. The Adjudicating Authority will close the proceeding. The Corporate Debtor - 'M/s Famous Innovations Digital Creative Pvt. Ltd.' is released from the rigour of Corporate Insolvency Resolution Process. The Appellant is directed to pay the rest of the amount to the Interim Resolution Professional within three weeks. The Interim Resolution Professional is directed to handover the 'Assets and Records of the Corporate Debtor to Directors / Promoters of the Corporate Debtor'.

11. The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

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