

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 120 of 2019

IN THE MATTER OF:

Aliasgar Chadarwala

...Appellant

Vs

Asona India Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellant: Mr. Debmalya Banerjee and Mr. Kartik Bhatnagar,
Advocates.**

For Respondents: Mr. Girish Kumar, Advocate for RP.

O R D E R

11.04.2019: This appeal has been preferred by 'Aliasgar Chadarwala', Director of 'AHZ Interior Pvt. Ltd.' against order dated 10th December, 2018 whereby application under Section 9 preferred by 'Asona India Pvt. Ltd.' (Operational Creditor) has been admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai bench. Learned counsel appearing on behalf of the Appellant submits that there was only one creditor i.e. 'Asona India Pvt. Ltd.' (Operational Creditor) and Appellant has settled the matter on 28th February, 2018 and paid the amount. Copy of the settlement has also been enclosed. Relevant portion of the Agreement and Terms and Condition read as follows:-

*“(a) Corporate Debtor has paid Rs.21,21,000/- (Rupees
Twenty One Lakhs Twenty One Thousand Only) vide
Demand Draft No. 0011096 dated 27th February 2019, to*

the Operational Creditor on 28th February 2019, (herein after called the “settlement amount”).

- (b) On transfer and receipt of the settlement amount, the Operational Creditor will take necessary steps to withdraw the above said petition being company petition no CP(IB)-1330/(MB)/2017 filed before the said “Hon’ble Bench”.*
- (c) Both the parties hereto agree that as and when the settlement amount is paid, the same is deemed to be received by the Operational Creditor and the Operational Creditor further agrees that the Operational Creditor shall not file any claim/complaint against the Corporate Debtor, its employees and or its representatives, whether arising out of or in connection with the said claim, and the claim of the Operational Creditor stands fully and finally settled and Corporate Debtor’s refutation/ repudiation of Operational Creditor’s claim will also come to end.*
- (d) The Operational Creditor hereby declares and acknowledges that the Operational Creditor has unconditionally withdrawn their complaints made to*

various regulatory authorities/police, courts etc, if any, and the Operational Creditor further unconditionally agrees that the Operational Creditor will not pursue any further proceedings against Corporate Debtor or its party of the third part. Accordingly, the Operational Creditor has no such complaints/ claims pending against Corporate Debtor and / or its employees.”

2. Mr. Girish Kumar, Advocate appearing on behalf of Mr. Nagaraj, Resolution Professional submits that the Resolution Professional received only one claim, that is, from the Operational Creditor in question and there is no other claimant and also accepted that the parties have settled the claim and a sum of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) has been paid to the Resolution Professional towards his fees and resolution cost. He is allowed to file the reply affidavit in course of day. Taking into consideration the aforesaid fact that the parties have settled and the Respondent – Operational Creditor intends to withdraw application under Section 9, we set aside the impugned order dated 10th December, 2018 and allow the prayer of the Respondent to withdraw the application under Section 9, which stands withdrawn. The Adjudicating Authority will close the case as withdrawn.

3. In result, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications and actions are declared illegal and are set aside. The 'Corporate Debtor' is released from the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

4. The appeal is allowed with aforesaid observations. However, 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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