THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I, MUMBAI

MA 477/2019 & MA 473/2019

IN CP(IB) 2315/MB/2018

CORAM : SHRI V.P. SINGH, MEMBER (J)
SHRI RAVIKUMAR DURAISAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **05.02.2019**

NAME OF THE PARTIES: **HERMES TRAVEL & CARGO PVT. LTD.**

v/s

GOODRICH LOGISTICS PVT. LTD.

SECTION 9 OF INSOLVENCY & BANKRUPTCY CODE, 2016

ORDER

3. MA 477/2019 & MA 473/2019 IN CP(IB) 2315/MB/2018

MA 473 of 2019 has been filed for an urgent listing of MA 477 of 2019 relating to CP No.2315/2019 given the settlement arrived at between the parties.

MA 477/2018 has been filed by the Insolvency Resolution professional for recalling the order of the admission passed in CP No.2315/2018 in the case of Hermes Travel & Cargo Pvt Ltd vs Goodrich Logistics Pvt Ltd. It is stated in the application that the CP No.2315/2018 was admitted by this Tribunal by order dated 18.1.2019 and the applicant has been appointed as RP. The applicant has further stated that within two days of the passing of the order by this Tribunal, the Corporate Debtor and the Operational Creditor arrived at an amicable settlement. The Corporate Debtor agreed to pay off the dues and the Operational Creditor agreed to accept the amount of Rs.16,12,165/- in full and final settlement of the claims of the Operational Creditor. As agreed between the parties, the payment to the tune of Rs.16,12,165 was transferred by the Corporate Debtor into the Bank Account of the Operational Creditors on 21.1.2019. It is further stated in the application that, barring the claims of the Operational Creditor for which the Corporate Debtor has arrived at settlement, there is no default by the Corporate Debtor on any repayments/

payments to pay of its Financial Creditors and is in fact a financially viable company and is in a position to make payments to all vendors/suppliers, subcontractors, employees and also make payments of all undisputed claims, dues and liabilities, if any.

Further reliance has been placed by the applicant on the law laid down in the case of *Swiss Ribbons Pvt Ltd vs. Union of India* wherein Hon'ble Supreme Court in Para 52 has held that "*It is clear that once the Code gets triggered by the admission of a creditors' petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being the proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional).* ***We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement.*** *This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.*"

"The main thrust against the provision of Section 12A is the fact that 90% of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into."

Resolution professional is present in the court, and he made a statement that till date no CoC has been formed on account of a settlement between the parties. It is clear that withdrawal under the statutory provision of Section 12A of IBC can be made with 90% approval of the CoC, but in this case, where CoC has not been formed, withdrawal can be made under Rule

11 of the NCLT Rules given the law laid down by the Hon'ble Supreme Court in the case supra.

In this case, before the formation of the CoC, parties have settled the matter and application has been filed for withdrawal of the Petition. Operational Creditor received the full amount in full and final satisfaction of his claim.

It is pertinent to mention that the settlement has arrived and the parties have moved the application after consuming the precious time of the court. We at this moment allow MA 477/2019 subject to payment of Rs.2,00,000/- as costs to be paid by the Corporate Debtor. Out of Rs.2,00,000/-, Rs.1,75,000/- is to be paid in the account of Prime Minister's National Relief Fund and Rs.25,000/- is to be paid to the Resolution Professional. The amount mentioned above shall be paid within three days from today. Corporate Debtor is directed to file the receipts of the payment in respect of depositing the amount in the account of Prime Minister's National Relief Fund and to the Resolution Professional.

Given the law laid down by the Hon'ble Supreme Court in the above case, MA 477/2019 is allowed.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 20-2-2019.

B.A. Parag

Deputy Registrar
National Company Law Tribunal Mumbai Bench

राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL