

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 734 of 2019

IN THE MATTER OF:

Manoj Gaur & Anr.

.... Appellants

Vs

Ajay Jugran & Anr.

.... Respondents

Present:

For Appellants: Mr. Sidharth Joshi and Ambreen, Advocates.

For Respondents: Mr. Suveer Dhyani and Mr. Skshay Dhaundiyal, Advocates for Respondent No.1.

Mr. Kundan Kr. Raj, Advocate for Respondent No.2-IRP

O R D E R

14.08.2019 This Appeal has been preferred by Manoj Gaur and Anr., Promoter of M/s Gaursons Sportswood Private Limited ('Corporate Debtor') against order dated 10th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi admitting application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') filed by Mr. Ajay Jugran - ('Financial Creditor') against the 'Corporate Debtor'.

2. When the matter is taken up on 19th July, 2019, learned Senior Counsel for the Appellants submitted that in the facts and circumstances, the Respondent – 'Mr. Ajay Jugran' cannot be treated as 'Financial Creditor', having failed to pay the amount on receipt of Demand Notice. However, it was intimated that the Appellants are negotiating the matter for settlement

with the 1st Respondent ('Financial Creditor'). It was also informed that 'Committee of Creditors' has also not been constituted.

3. Parties have appeared and filed Settlement Deed dated 19th July, 2019, which reads as follows: -

"SETTLEMENT DEED"

*This Agreement is made at Ghaziabad on 19th of July
2019*

*By
And
Between*

*M/S. Gaursons Sportswood Private Limited through its authorized signatory Smt. Veenu Singhal W/o Sh. Vineet Singhal having registered office at address at D-25, Vivek Vihar New Delhi-110092 and Corporate Office at Gaur Biz Park, Plot No.-1, Abhay Khand-II, Indirapuram-201014 Tehsil & District Ghaziabad Uttar Pradesh (hereinafter to be referred as **FIRST PARTY**)*

AND

*Mr. Ajay Jugran S/o Late Sh. Debeshwar Prasad Jugran R/o B-59, SF, Sarvodaya Enclave, New Delhi 110017 (hereinafter to be referred to as **SECOND PARTY**)*

The expressions FIRST PARTY and SECOND PARTY above shall include all the LR's, successor, assign, legal representative etc. of the parties.

The parties recite and agree as under: -

1. *That the First Party is involved in the real-estate and Second Party has booked an apartment no.1005, block B, in Gaur Sportswood Project of the First*

Party. The Second Party has filed a complaint / petition before Hon'ble National Company Law Tribunal, Principal Bench vide Complaint / Petition number (IB) – 1069 (PB) OF 2018 against the First Party and it has been decided on 10.07.19 by Hon'ble NCLT.

- 2. Thereafter the parties discussed the issue & mutually settled it and the Second Party has agreed to withdraw the Complaint / Petition number (IB) – 1069 (PB) of 2018 from Hon'ble NCLT and agreed to continue with the booking of apartment no.1005 / Gaur Sportswood subject to the terms contained herein*
- 3. That for this settlement the First Party has given Rs.1509353/- to the Second Party as interest on received amount by giving credit in the Applicant Ledger (adjusted amount in the cost of the apartment). Further the First Party has agreed to finish / complete the apartment by and give time extension to the Second Party till 31.10.2019 for the balance payment without any past, present or future interest and or any additional costs or charges.*
- 4. That the parties have understood the clauses of this Settlement Agreement in their vernacular language and they are appending signatures to it after understanding each and every clause thereof.*
- 5. That the present Settlement Agreement has been signed by the parties with their free will consent and without any coercion, undue influence, duress from any sort what so ever.*

IN WITNESS WHEREOF the parties have put their respective hands on this Settlement Deed in the presence of following witnesses, after fully understanding the same which have read over and explained to them in vernacular.

*Sd/-
FIRST PARTY*

*Sd/-
SECOND PARTY*

WITNESS:

*Sd/-
1. Rajeev Yadav S/o Sh. M.S. Yadav*

*Sd/-
2. Suveer Dhyani*

4. Mr. Kundan Kumar Raj, Counsel appearing on behalf of Mr. Prabhjit Singh Soni ('Interim Resolution Professional') submits that the 'Committee of Creditors' has not yet been constituted. Counsel for the 1st Respondent also accepts that Settlement Deed has been signed by the 1st Respondent ('Financial Creditor').

5. In the facts and circumstances, in exercise of inherent power conferred upon this Appellate Tribunal under Rule 11 of the NCLAT Rules 2016, we accept the Terms of Settlement and set aside the impugned order dated 10th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)-1069 (PB)/2018.

6. Learned Counsel for the 'Interim Resolution Professional' submits that the fee and cost incurred by the 'Interim Resolution Professional' has already been paid.

7. In the result, 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 7 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondents Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

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

[Justice S. J. Mukhopadhaya]
Chairperson

[Kanthi Narahari]
Member (Technical)