

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1282 of 2024**

**&**  
**I.A. No. 4609 of 2024**

**IN THE MATTER OF:**

**RB Assets & Developers Pvt. Ltd.**

**...Appellant**

**Versus**

**B.P. Food Products Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Palash S. Singhai and Mr. Harshal Sareen,  
Advocates.**

**For Respondent : Mr. Sanjeev Chaudhary and Mr. Shubham  
Bhudiraja, Advocates.**

**O R D E R**  
**(Hybrid Mode)**

**25.07.2024** Heard Counsel for the parties.

**2.** This appeal has been filed against the Order dated 04.04.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Indore Bench, Court No. 1) by which order the Adjudicating Authority has rejected the Section 9 Application filed by the Appellant.

**3.** Appellant claiming to be the Operational Creditor has filed Section 9 Application against the Corporate Debtor claiming an amount of Rs. 2,45,57,000/- which includes the interest.

**4.** Adjudicating Authority issued Notice and Corporate Debtor filed the Reply to the Notice. In the Reply, the Settlement Agreement between the parties was brought on the record dated 14.09.2022 under which Settlement Deed after reconciliation it was agreed that Corporate Debtor shall make a payment of Rs. 51,88,086/-. Adjudicating Authority relying on the settlement

took a view that the amount which is due is less than Rs. 1,00,00,000/- hence the Application cannot be entertained. Adjudicating Authority further dismissed the Application. Aggrieved by the said order, this appeal has been filed.

**5.** Learned Counsel for the Appellant challenging the order contends that the Settlement Agreement was not complied with since no payment was made and the Agreement having been breached that cannot be relied by the Respondent in the Reply. It is submitted that Settlement Agreement having been breached the principal amount due will be Rs. 1,87,59,203/-.

**6.** Learned Counsel for the Respondent refuting the submissions of the Appellant contends that the Settlement was after reconciliation of account which facts have been noted and with regard to the price difference also and the said Settlement is clear admission of the Operational Creditor that the actual amount due is 51,88,086/-. It is further submitted that in Reply to the Demand Notice, Corporate Debtor has issued a Notice of dispute on 08.05.2023 which contains all relevant facts which clearly indicates that there were a Pre-Existing Dispute between the parties and Section 9 Application could not have been admitted on this ground also.

**7.** We have considered the submissions of Counsel for the parties and perused the record.

**8.** The Settlement Agreement which is referred as Compromise Agreement between the parties is at Page 284 of the Appeal Paper Book which is as follows:

***“(Compromise Agreement)”***

*Smt. Rajkumari Bansal wife of Mr. Sanjay Bansal,  
aged 45 years, Director RB Assets and Developers Pvt.*

*Ltd. Head Office 8/3 Manorama Ganj Anand  
Apartment Indore Branch Office Shop No. 07 Town Hall  
Jiwali Ganj Morena M.P.*

*.....first party*

*Girraj Bansal, son of Mr. Radheshyam Bansal, age 50  
years, Director BP Foods Products Pvt. Ltd., in front of  
Triple ITM College, near Police Station Hazira, Gwalior  
Madhya Pradesh.*

*..... Second Party*

*1- That the first party is the director of RB Assets and  
Developers Pvt. Ltd. and has been authorized to take  
all types of legal and court proceedings and enter into  
agreements on behalf of the company. Thus, party no.  
1 is the authorized representative appointed on behalf  
of his company.*

*2- That, party no. 2 is the director of BP Foods Products  
Pvt. Ltd. Gwalior and has been authorized to take all  
types of legal and court proceedings and make  
compromises on behalf of the company. Thus, party no.  
2 is an authorized representative appointed on behalf  
of his company.*

*3 That both the first party and the second party do  
business related to oil, oilseeds and food and both  
have good relations with each other and are doing  
business with mutual consent.*

*4. That, the first party company had sold wheat to the  
second party company in the financial year 2020-21.  
Payment for the purchased goods was also made by  
the second party to the first party. After making  
calculations regarding purchase and sale by both the  
parties, it was decided that a total of Rs 5188086/-  
would be owed to the second party as the remaining  
price of the wheat sold. During the accounting itself,  
Rs. 8466282/- in the total account of wheat sold was  
reduced by the first party in its account in the form of  
difference in fixed rates and settlement of quality claim  
and the total account of the first party was only Rs.  
5188086/- There is an outstanding balance on the  
second party and as per the agreement, as payment of  
the said outstanding balance, the second party has  
provided a Cheque to the first party, Cheque number  
000079 dated 9/10/2022 number 5188086/ Bank of  
Baroda branch Gwalior.*

*And after the payment of the said bank is received by  
the first party, there will be no dispute left between the*

*two regarding the payment of the amount of wheat sold. Both the parties will not present any claim against each other for any other amount in future, and if they do then such demand will be considered void and illegal. This Compromised is being prepared by both the parties so that there is no dispute regarding the payment for the business done between the two parties in future.*

*Therefore, the said Compromised is being signed by both the parties without any pressure, in full consciousness, in the presence of witnesses, after reading and understanding it, so that it may be useful at the time of need.*

*Date .....*

*SIGN: Second Party*

*GIRRAJ BANSAL*

*SIGN: first party*

*RAJKUMARI BANSAL*

***// Witness //***

*1. SIGN: VIJAY KHATRI*

*S/o SHRI H B KHATRI*

*CITY CENTER GWALIOR*

*2. GOVIND PRASAD BANSAL*

*S/O CHHOTE LAL BANSAL*

*JIWAJI GANJ MORENA”*

**9.** Para 4 of the Settlement Agreement clearly indicates that parties after making calculation regarding purchase and sale by both the parties has come to the figure as a remaining price of the wheat sold. It was further noticed that during the accounting in the total account amount of wheat sold was reduced by the first party in its account in the form of difference in fixed rates and settlement of quality claim and the total amount of first part was only Rs. 51,88,086/-.

**10.** The above averment clearly indicates that what was recorded in the Settlement was amount after conciliation between the parties and the Appellant is not right in submission that the averment in the said Settlement be ignored. More so, when we look into the Notice of dispute which was given

by the Corporate Debtor dated 08.05.2023, all facts in details including the issues between the parties have been delineating.

11. The Notice of the dispute dated 08.05.2023, is as follows:

***“M/s RB Assets and Developers Private Limited***

*8/3, Manoram Ganj, Anand Apartment*

***Indore – 452001***

*And at*

***R B Assets and Developers Private Limited***

*Shop No. 6, Town Hall*

***Jiwajiganj, Morena (MP) 476001***

*Dear Sir,*

*We are in receipt of your Notice dated 2<sup>nd</sup> May 2023, regarding payments due to your Company amounting to Rs.1,87,59,203.00. Here, we wish to make it clear that, despite our several reminders, you have not appointed any one to reconcile the account with the ledger maintained by us nor the credits for the shorter quantity, poor quality has been credited as per the Agreed terms of material supplied by you.*

*We have made a purchase of total Rs.11,78,96098.35 and paid Rs.9,91,36,894.80 during April 2021 to April 2023, as per your ledger provided with the notice. The present outstanding as per ledger is Rs.1,87,59,203.55. However, you have not incorporated the following transactions in your account, due to which the reconciliation is pending:*

*a. Quantity Difference in the supply invoices Vis a Vis actual delivery, which amounts to Rs. 28,75,515.00 on various dates as per our previous communication made on your various dates. The reconciliation in your account and credit of the same is still pending, which need to be given immediately.*

*b. Debits for the inferior quality on various occasions amounting to Rs.1,05,74,336.00, which has not been made in your account. The same must be credited and reflected in the account.*

*c. Other debits amounting to Rs. 3,21,266.*

*d. Further, the interest demanded by you is illegal and not the pre-term of supplies made by you.*

*This can also be verified from the invoices raised by you. The amount /payment is pending only due to your non-cooperation and non-reconciliation of the accounts. We do not understand, why you are mis-using any law for fraud and against the Agreed terms of the business.*

*e. Your company is agreed on this amount and therefore, entered into Settlement Agreement dated 14<sup>th</sup> September 2022, wherein your Company agrees for Rs.51,88,086.00. A copy of the Settlement Agreement is also attached herewith.*

*f. We have paid Rs.2,00,000/- after the settlement agreement on 19<sup>th</sup> April 2023. Now, as of today i.e. on 8<sup>th</sup> May 2023, the actual amount payable comes at Rs.49,88,086.01.*

*As the actual payable amount is very small, we also wish to clear your dues, once our enhanced credit facilities released.*

*Therefore, we request you to kindly withdraw the notice and reconcile the account, so that account can be closed.*

*For B.P. Food Products Private Limited*

*Director”*

**12.** When we look into the Notice of dispute it contains sufficient material on basis of which it can be said that the Section 9 Application could not have been admitted there being Notice of dispute received by the Corporate Debtor immediately after issue of Section 8 Notice.

**13.** We thus are of the view that no error has been committed by the Adjudicating Authority rejecting the Section 9 Application. We however make it clear that it shall be open for the Appellant to take such remedy in law as permissible for Settlement.

**14.** Learned Counsel for the Appellant submits that there was no communication prior to issue of sending the Reply to the Demand Notice.

**15.** When we look into the Reply to the Demand Notice, the Reply to the Demand Notice gives the details alongwith the dates which were all prior to receipt of the Demand Notice.

The appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Arun Baroka]  
Member (Technical)**

*himanshu/nn*