

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1036 of 2019

IN THE MATTER OF:

Vinay Tambi, Partner
M/s Taruchaya Colonizers LLP

...Appellant

Vs

Khandelwal Buildcon Pvt. Ltd. & Anr.

...Respondents

Present:

**For Appellant: Mr. Rajshekhar Rao, Ms. Ankita Chaudhry and
Mr. Raghav Kacher, Advocates.**

**For Respondents: Mr. Prakul Khurana and Mr. Ankit Sareen,
Advocates for R-1.**

Mr. Prashant Agrawal, IRP.

O R D E R

06.12.2019: 'Khandelwal Buildcon Pvt. Ltd.' (Financial Creditor) moved application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'), pursuant to which Corporate Insolvency Resolution Process initiated against 'Taruchaya Colonizers LLP' (Corporate Debtor) by impugned order dated 1st October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Jaipur Bench (Rajasthan).

2. When the matter was taken up on 14th November, 2019, learned counsel for the Appellant stated that the Appellant is ready to pay principal amount of Rs.2,25,00,000/- as shown in Part IV of Form-1, which is the 'defaulted amount' shown. Mr. Sanjay Jhawar, learned counsel appeared on behalf of the Respondent – 'Khandelwal Buildcon Pvt. Ltd.' (Financial Creditor) submitted

that the said Respondent may accept the offer provided the Appellant withdraws the 'FIR' filed against the Financial Creditor, its Director, other family members and Interim Resolution Professional. Learned counsel appearing on behalf of the Appellant agreed on behalf of the Appellant to withdraw such FIR lodged against 'Khandelwal Buildcon Pvt. Ltd.', its Directors, other family members and the Interim Resolution Professional. It was also informed that the Committee of Creditors has not been constituted.

3. An affidavit has been filed by the Appellant stating that the Appellant has agreed to withdraw the FIR lodged against 'Khandelwal Buildcon Pvt. Ltd.', its Directors, family members and Mr. Prashant Agrawal, Interim Resolution Professional. Another affidavit has been filed on behalf of the Respondent - 'Khandelwal Buildcon Pvt. Ltd.'. It is informed that the Respondent has agreed to settle the matter for Rs.2,25,00,000/- subject to withdrawal of the FIR No. 0586/2019 registered at PS Bhankrota, Jaipur lodged by the Appellant against 'Khandelwal Buildcon Pvt. Ltd.', its Directors, family members and Mr. Prashant Agrawal, Interim Resolution Professional. It is also stated that the Appellant should pay fee and cost of the Interim Resolution Professional. The Interim Resolution Professional has been provided an advance amount of Rs.2 Lakhs by 'Khandelwal Buildcon Pvt. Ltd.' (Financial Creditor), which he should return.

4. Mr. Prashant Agrawal, Interim Resolution Professional while accepted that the Committee of Creditors has not been constituted, agreed to return a sum of Rs.2 Lakhs to 'Khandelwal Buildcon Pvt. Ltd.', if he is paid by the Appellant a sum of Rs.5,38,471/-, which is the fee and cost incurred by him.

5. Learned counsel appearing on behalf of the Appellant hands over Demand Draft No. 014588 dated 5th December, 2019 issued by Axis Bank, Civil Lines, Jaipur (Rajasthan) in the name of 'Khandelwal Buildcon Pvt Ltd' for Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakh Only) to Mr. Prakul Khurana, learned counsel for the Respondent - 'Khandelwal Buildcon Pvt. Ltd.' for onward transmission to the said Respondent.

6. Learned counsel for the Appellant also handed over a post-dated cheque No.160306 dated 20th December, 2019 issued by 'Axis Bank Ltd.', Civil Line, Jaipur (Rajasthan) in the name of 'Mr. Prashant Agrawal' for Rs.5,38,471/- (Rupees Five Lakh Thirty Eight Thousand Four Hundred and Seventy One Only) signed by Mr. Vinay Tambi (Appellant) to Mr. Prashant Agrawal, Interim Resolution Professional. The Appellant undertakes that the above cheque will not bounce and can be encashed on or after 20th December, 2019.

7. In the circumstance, while we order to keep a copy of aforesaid Demand Draft and Post-dated Cheque in the record of this appeal, taking into consideration the fact that the Committee of Creditors had not been constituted by the time the matter has been settled between the parties, following the decision of Hon'ble Supreme Court in **'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.'**, **Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73**, in exercise of power conferred under Rule 11 of NCLAT Rules, 2016, we set aside impugned order dated 1st October, 2019 passed by the Adjudicating Authority and allow 'Khandelwal Buildcon Pvt. Ltd.' (Financial Creditor) to withdraw the application under Section 7 of the I&B Code. The application under Section 7 stands withdrawn.

8. Mr. Prashant Agrawal, Interim Resolution Professional is directed to return the sum of Rs.2,00,000/- to the person from whom he received the amount on behalf of 'Khandelwal Buildcon Pvt. Ltd.' within 15 days from the date of encashment of cheque of Rs.5,38,471/-. He is also directed to handover possession of assets and records of the Corporate Debtor to the Promoter/ Board of Directors of 'Taruchaya Colonizers LLP' on receipt of the amount of Rs.5,38,471/- The Appellant or any other person who has lodged FIR No. 0586/2019, will move appropriate application for withdrawal/

quashing of FIR before appropriate Police Station / Court of Law, which may take into consideration the agreement reached between the parties and pass appropriate order. The application must be moved within a period of two weeks. The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/gc