

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.1084 of 2019

IN THE MATTER OF:

Naresh Patel,
Ex. Director of Kasata Hometech
India Pvt. Ltd.

...Appellant

Versus

Ketki Shah Talati

...Respondent

Present:

**For Appellant: Mr. Ankit Kumar Lal and Ms. Sneha Ravi Iyer,
Advocates.**

For Respondent: Mr. Srijan Singh, Advocate.

O R D E R

18.12.2019 An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') was filed by Ketki Shah Talati ('Financial Creditor') for initiation of 'Corporate Insolvency Resolution Process' against Kasata Hometech (India) Private Limited. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 1st October, 2019 admitted the application.

2. Earlier, when the matter was taken up on 18th October, 2019, it was informed that the Appellant was ready to settle the matter with the Respondent ('Financial Creditor'). Notice was issued to 'Interim Resolution Professional'.

3. On 18th November, 2019, this Appellate Tribunal passed the following order: -

"Learned counsel for the Appellant is agreed to pay the claim amount of Rs. 59,09,845/- in three equal instalments. He is ready with the draft for Rupees Twenty Lakhs for payment in favour of the 'Financial Creditor'. The Appellant will undertake to pay another

*draft of Rupees Twenty Lakhs by 25th November, 2019 and if further four weeks is allowed, it will pay rest of the amount i.e. Rs.19,09,845/- by way of 'Demand Draft' in favour of the 'Financial Creditor'. However, we are not inclined to give such time if the Appellant, so chooses, may settle the matter with the Respondent (Financial Creditor) for payment of the amount of Rupees Twenty Lakhs immediately. Rest Rupees Twenty Lakhs be paid by 25th November, 2019 as offered today and rest Rs.19,09,845/- by 15th December, 2019. If such an offer is given by the Appellant and the amount is paid, this Appellate Tribunal may dispose of the matter in terms of the decision of the Hon'ble Supreme Court in **"Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.- '2019 SCC Online SC 73'**.*

Post the case 'for orders' on 18th December, 2019. The appeal may be disposed of on the next date.

Till the next date, the interim order dated 18th October, 2019 relating to constitution of 'Committee of Creditors' shall continue."

4. Mr. Ankit Kumar Lal, learned Counsel appears on behalf of the Appellant submits that total amount in terms of order dated 18th November, 2019 has been paid to Respondent-Ketki Shah Talati.

5. Mr. Srijan Sinha, learned Counsel for the Respondent also accepts that total amount has been received by 1st Respondent ('Financial Creditor'). It is also informed that the 'Committee of Creditors' has not been constituted.

6. In spite of service of notice by Speed Post on 'Interim Resolution Professional', which is served, as shown in India Post, the 'Interim Resolution Professional' has not appeared.

7. In the facts and circumstances and in exercise of powers conferred under Rule 11 of NCLAT Rules, 2016, we set-aside the impugned order dated 1st October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in CP (IB) 2177/MB-IV/2019 and dispose of the application under Section 7 filed by Ketki Shah Talati ('Financial Creditor') as withdrawn. The Appellant-Kasata Hometech India Pvt. Ltd. ('Corporate Debtor') is released from the rigour of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover the assets and records to the Promoter/ Director of the 'Corporate Debtor' immediately. The case is remitted to the Adjudicating Authority to decide only the Corporate Insolvency Resolution Process cost, which includes fee of the 'Interim Resolution Professional' and cost incurred by him, which is to be paid by the Appellant within 15 days from the date of such order by the Adjudicating Authority. The Appeal is allowed with the aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Ash/GC