

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 119 of 2020

IN THE MATTER OF:

Gajendra Sharma

S/o Sh. Sher Singh Sharma
R/o H-186, Sector-63,
NOIDA (U.P)

...Appellant

Vs

1. M/s Dinesh Sanitary Store

Through its Partner,
Mr. A.R. Ramesh Goel,
160, Prakash Industrial Estate,
Sahibabad, Ghaziabad,
U.P.- 201 005

2. Mr. Rakesh Kumar Jain,

Insolvency Resolution Professional,
J-6, Pocket 9/A,
Jasola,
New Delhi – 110 025

....Respondents

Present:

For Appellant: **Mr. Rakesh Munjal, Senior Advocate with Mr. Siddharth Sangal, Mr. Ritesh Khare, Mr. Rahul Adlakha, Mr. Zeeshan Ali and Ms. Yashita Munjal, Advocates.**

For Respondents: **Mr. Manish Jian, Ms. Souhata Ganguly, Ms. Anjali Jain, Advocates for Operational Creditor**

Mr. Manoj Kumar Garg, Mr. B.L. Sotya, and Mr. Rakehs Kumar Jain, Advocates for IRP.

Mr. Gursat Singh and Mr. Biswaksen Panda, Advocates for Prema Gupta(FC)

ORDER

03.02.2020 Heard learned Counsel for Appellant. It is stated that in this matter the Impugned Order was passed on 04.01.2020 by which Application under Section 9 filed by the 1st Respondent – Operational Creditor was admitted. Learned Counsel states that the Appellant, taking up the case for the Corporate

Debtor – Krishna Estate Developers Private Limited, filed this Appeal on 13.01.2020. Along with the Appeal, the Appellant filed Annexure-F (page-92) i.e. Copy of Settlement Deed dated 10.01.2020 annexing copy of Bank Draft of Axis Bank dated 10.01.2020 to show that Corporate Debtor has settled the dispute with the Operational Creditor. Learned Counsel relies upon paragraph-52 of the Judgement of the Hon'ble Supreme Court in the matter of **“Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.”** – Writ Petition (C) No. 99 of 2018 which reads as follows::

...

“52. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a 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.”

2. Learned Counsel further relies on judgment in the matter of **“Girish Agarwal Vs. M/s Lavis Signature Panel Pvt. Ltd.”** in Company Appeal(AT) (Insolvency) No. 847 of 2019 passed by this Tribunal dated 13.09.2019 to submit that in a similar situation, this Tribunal exercised powers under Rule 11 of NCLAT Rules 2016 and set aside the Impugned Order. Learned Counsel states that in view of this, the Impugned Order may be set aside and the Respondent-Operational Creditor may be permitted to withdraw Application under Section 9 of IBC. Advocate Ms. Anjali Jain is present for the Respondent No. 1 and she supported learned Counsel for the Appellant.

3. Learned Counsel for Interim Resolution Professional (in short ‘**IRP**’) is pointing out that Committee of Creditors (in short ‘**CoC**’) was constituted on 21.01.2020. It is stated that he has received claim from one Financial Creditor, Prema Gupta. It is also stated that if Settlement Deed is seen it is signed by authorised signatory of the Corporate Debtor which could not have been signed in using that status when already Application was admitted on 04.01.2020. Learned Counsel for IRP is pointing out that the Draft which has been annexed with the Settlement Deed was purchased by Krishna Nirman Developers which is sister concern of the Corporate Debtor.

4. Considering the judgment of Hon’ble Supreme Court in the matter of **“Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.”**, it is apparent in

the present matter that the Operational Creditor and the Corporate Debtor had entered into Settlement Deed before CoC was constituted. This is evident from the Bank Draft which is dated 10th January,2020. On behalf of the Corporate Debtor affected party entered into effort to settle with the Operational Creditor and if the person used wrong status in the Settlement Deed, by that itself the settlement need be defeated especially when the learned Counsel for Operational Creditor is stating that the parties have entered into settlement on 10.01.2020 and had entered into such documents and Bank Draft.

5. Although the CoC got constituted on 21.01.2020, when the matter had come up before this Tribunal on 23.01.2010, the fact of prior settlement was brought to the notice of this Tribunal. It appears that Financial Creditor Prema Gupta has filed Intervention Application and filed claim with the IRP. We are disposing the present Appeal on the basis of the compromise referred. It will be open to the Financial Creditor Prema Gupta to initiate proceedings of her own.

6. In view of the settlement reached before formation of CoC between the parties, in exercise of powers conferred under Rule-11 of NCLAT Rules, 2016, we set aside the Impugned Order dated 04.1.2020 whereby 'Corporate Insolvency Resolution Process' was initiated against Krishna Estate Developers Private Limited (Corporate Debtor) and the Application under Section 9 IBC filed by M/s Dinesh Sanitary Store stands disposed of as withdrawn.

7. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and

action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent under Section 9 of the 'I&B Code' is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors. IRP/RP may place particulars of CIRP costs and fees before Adjudicating Authority who will consider the same and direct Corporate Debtor to pay the same, in time as may be specified. In default IRP/RP may move this Tribunal to consider recalling present Orders.

The Appeal is disposed accordingly.

[Justice A.I.S. Cheema]
Member (Judicial)

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Md