

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 298 of 2020

IN THE MATTER OF:

Mr. Sandeep Kukkar

S/o Mr. Nand Lal Kukkar,
Presently resides at:
F-21 (BDE), Malviya Industrial Area,
Malviya Nagar,
Jaipur,
Rajasthan – 302 018.

...Appellant

Vs

1. Mr. Vijay Kumar Todi,
Sole Proprietor of M/s V. One
A-301, Shiromani residency,
Nehru Nagar,
Ahmedabad- 380 015
(Gujarat)

**Operational
Creditor/
Respondent
No. 1**

2. M/s Siddarth Organisation Limited,
F-21 (BDE), Malviya Industrial Area,
Malviya Nagar,
Jaipur,
Rajasthan – 302 018.

**Corporate
Debtor/
Respondent
No. 2**

....Respondents

Present:

For Appellant: Mr. Naresh Kumar Sejvani and Mr. Kaushal Kishore Jain, Advocates

For Respondents: Mr. Puneet Maheshwari, Advocate for Respondent No. 1

Mr. Abhishek Naik, Advocate for Respondent No. 2.

Ms. Anuradha Gupta, IRP.

ORDER

13.03.2020 Heard Mr. Naresh Kumar Sejvani, learned Counsel for the Appellant and Mr. Puneet Maheshwari, learned Counsel for the Respondent No. 1- Operational Creditor. Both the learned Counsel state that they have already settled their dispute. Copy of the Settlement Deed is also tendered at Bar.

2. Learned Counsel for the Interim Resolution Professional (in short '**IRP**') states that the Committee of Creditors (in short '**CoC**') has not yet been constituted and that although CoC is not constituted, IRP has received claim of Rs. 4 Crores from Bank of Baroda.

3. It is also stated that the Respondent No. 1- Operational Creditor has already filed Application under Rule-11 of NCLT, 2016 in view of the judgement of the Hon'ble Supreme Court in the matter of "**Swiss Ribbons Pvt. Ltd & Anr. Vs. Union of India & Ors**" in Writ Petition(C) No. 99 of 2018 (2019 SCC Online SC 73)– paragraph-52.

4. IRP has grievance that no clear assurance regarding CIRP costs and payment of Fee of IRP is there.

5. We dispose of this Appeal permitting the Appellant to pursue the matter before the Adjudicating Authority with regard to withdrawal of Application under Section 9 of IBC, which Application is stated to have been filed by Respondent No. 1- Operational Creditor.

6. The Adjudicating Authority will deal with the matter calling response from IRP in the light of judgement "**Mr. K.C. Sanjeev Vs. Mr. Easwara Pillai Kesavan Nair & Ors.**" passed in Company Appeal(AT)(Insolvency) No. 1427 of 2019 by this Tribunal. The Adjudicating Authority is requested to get response from IRP and urgently decide the Application under Rule 11 of NCLT Rules for withdrawal of Section 9 Application which is stated to have been filed by the Respondent No. 1- Operational Creditor. The IRP will not constitute CoC till

25.03.2020 by which time this process should be completed by the parties before the Adjudicating Authority.

The Appeal is disposed of with the above observations.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Mn