

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 52 of 2019

IN THE MATTER OF:

Arjun Puri

...Appellant

Versus

Kunal Prasad & Ors.

...Respondents

Present:

For Appellant : **Mr. K. Venugopal Senior Advocate assisted by
Mr. Pawan Sharma, Mr. Anuj Shah and Mr. Rishabh
Sharma, Advocates**

For Respondents : **Mr. Ashish Agarwal and Mr. Gurcharan Singh,
Advocates for Respondent Nos. 1 and 2**

Mr. Tarun Kumar Banga, IRP

O R D E R

31.01.2019 The appellant – Shareholder (Corporate Debtor) has challenged the order dated 10th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi whereby and whereunder the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, ‘the I&B Code’) filed by the respondent – Kunal Prasad has been admitted, order of moratorium has been passed and the interim resolution professional has been appointed.

2. Learned counsel for the appellant submitted that the Adjudicating Authority failed to notice the contract between the parties and if it would have

gone through it, then it was evident that there was no 'default' in payment of 'debt'. It is also informed that the parties have already settled the claim.

3. Mr. Ashish Agarwal, learned counsel appeared on behalf of 1st and 2nd Respondent (Financial Creditors) and accepted that the parties have settled the claim. Mr. Tarun Kumar Banga, Interim Resolution Professional, who is present, submits that in view of the 'Terms of Settlement', the resolution cost and fee has already been paid to him.

4. It is informed by the Interim Resolution Professional that advertisement was issued asking for claims but 'Committee of Creditors' have not been constituted.

5. In the case of **'Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018'** the Hon'ble Supreme Court while upholding the provisions of the Insolvency and Bankruptcy Code by its judgment dated 25th January, 2019, observed 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.”

6. In the present case, parties have settled the matter before constitution of the ‘Committee of Creditors, and argued that the respondent do not want to proceed with the matter and wants to withdraw the application and in view of the fact that the Adjudicating Authority failed to consider the question of ‘default’ as was raised by the ‘Corporate Debtor’, we set aside the impugned order dated 10th January, 2019 and dismiss the application under Section 7 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 1st Respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

8. The 'Interim Resolution Professional' has already been paid the fees and resolution cost, no separate order is required. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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