

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 110 of 2019

IN THE MATTER OF:

Sonal Jayesh Shah

...Appellant

Versus

Sanjeev Gupta & Anr.

...Respondent

Present:

For Appellant : **Mr. Ravi Prakash, Mr. Subir Kumar, Ms. Avika Madhura, Advocates**

For Respondents : **Ms. Garima Sharma, Advocate for R-1**

O R D E R

4.02.2019 Learned Counsel for the Appellant submits that after the impugned order dated 21.1.2019 the parties have settled the claim on 23.1.2019. The entire amount has been paid to Mr. Sanjeev Gupta ('Operational Creditor').

Ms. Garima Sharma, learned Counsel appears on behalf of Mr. Sanjeev Kumar ('Operational Creditor') accepts that the admitted dues have been paid in full and final and the matter has been settled. It is also informed that the

‘Interim Resolution Professional’ has been appointed but ‘Committee of Creditors’ have not been constituted.

The Hon’ble Supreme Court in its judgement dated 25th January, (Swiss case), 2019 observed as under: -

“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 101 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.”

First Respondent has appeared. No notice be issued. The first Respondent may file reply within ten days.

Let notice be issued on rest of the Respondents by Speed Post. Requisite along with process fee, be filed by 5th February, 2019 . If the appellant provides the e-mail address of the respondent, let notice be also issued through e-mail.

The appeal may be disposed of on the next date of hearing.

Post the case for ‘Orders’ on **27th February, 2019.**

In the meantime, the Interim Resolution Professional will not issue public announcement nor constitute ‘Committee of Creditors’ without prior permission of this Appellate Tribunal. He will ensure that the company remains going concern and the manufacturing and production of the company do not suffer, payment of wages to the employees/workmen are made on time and if any material is supplied during corporate resolution process, the payment must be paid to the supplier/creditor. The Insolvency Resolution Professional will take aid of (suspended) Board of Directors and the employees. The person who is empowered to sign the cheque will sign it for day to day function of the Corporate

Debtor, after approval of Interim Resolution Profession. The Banks having account of the corporate debtor will also cooperate with the Insolvency Resolution Professional to ensure compliance of this order.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

ss/sk/