

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

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

IN THE MATTER OF:

Sonal Jayesh Shah

...Appellant

Vs

Kamlesh Kumar Singhania & Anr.

...Respondents

Present:

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

**For Respondents: Ms. Garima Sharma, Mr. Mohit Chaudhary, Advocates.
Ms. Deepa Bahal, Interim Resolution Professional (R-2).**

O R D E R

27.02.2019: This appeal has been preferred by 'Sonal Jayesh Shah', Shareholder of 'Vijaykamal Properties Pvt. Ltd.' (Corporate Debtor) against the order dated 21st January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby application under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') filed by Respondent – 'Sanjeev Gupta' (Operational Creditor) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. On 4th February, 2019, when the matter was taken up learned counsel appearing on behalf of the Appellant submitted that after the impugned order dated 21st January, 2019 was passed, the parties have settled the claim on 23rd January, 2019. The entire amount has been paid to 'Sanjeev Gupta' (Operational Creditor). Ms. Garima Sharma, learned counsel appearing on behalf of 'Sanjeev Gupta' (Operational Creditor) also accepted that admitted dues have been paid in full and final and the matter has been settled. It is informed that Interim Resolution Professional has been appointed but Committee of Creditors has not been constituted.

3. This Appellate Tribunal noticed the decision of Hon'ble Supreme Court in '*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*', Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73) wherein by judgment dated 25th January, 2019, the Hon'ble Supreme Court held:

"79. 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."

4. Ms. Deepa Bahal, Interim Resolution Professional appearing in person accepted that no Committee of Creditors was constituted when the settlement was reached between the parties. She further accepts that total amount towards fees and cost of resolution has been paid to her by the Appellant.

5. Taking into consideration the aforesaid fact that the parties have settled the claim prior to the constitution of Committee of Creditors, we set aside the impugned order dated 21st January, 2019 and dismiss the Company Petition No. CP 263/IBC/NCLT/MAH/2018 preferred by the Respondent.

6. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications and actions are declared illegal and are set aside. The 'Corporate Debtor' is released from the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. The appeal is allowed with aforesaid observations. However, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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