

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Application No. CA-1222 (PB)/2019

**In
IB-1567(PB)/2018**

In the matter of:

M/s National Products

Applicant/Operational Creditor

Vs.

M/s Delhi Control Devices Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 06.08.2019

CORAM

CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT

S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Applicant/Petitioner Mr. Manish Malhotra, Advocate

For the IRP: Mr. Abhishek Anand,
Mr. Tushar Tyagi, Advocates



ORDER

S. K. Mohapatra, Member

1. M/s National Products, an operational creditor of M/s Delhi control Devices (P) Ltd (*in CIRP*) has filed the present application with prayer to initiate contempt proceedings against the Corporate Debtor and one of its directors and also to direct both these respondents to honor the memorandum of settlement dated 22.02.2019.
2. There is no dispute that on the application of the applicant operational creditor Corporate Insolvency Resolution Process was initiated against the respondent corporate debtor on 15.02.2019 and Mr. Ashok Kumar Gupta was appointed as IRP. Subsequently there was a settlement between the parties and on their request made well before the constitution of CoC, the main petition CP No. (IB)- 156 (PB) / 2018 was withdrawn on 07.03.2019 nullifying the admission order dated 15.02.2019.




3. Thereafter on account of breach of settlement, applicant operational creditor moved the Adjudicating Authority for revival of the Company Petition. Despite granting opportunity as the corporate debtor failed to make payment and as default continued, the company petition was revived. The Resolution Professional Mr. Ashok Kumar Gupta was directed on 05.07.2019 to proceed with the CIRP from where it was left.
4. There is thus no dispute that the corporate debtor against whom prayer has been made is in Corporate Insolvency Resolution Process. Clause (a) of subsection (1) of Section 14 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') bars institution of suits or any proceeding against the corporate debtor during the Corporate Insolvency Resolution Process. Similarly, the second prayer to enforce the settlement deed *during the CIRP* will also be against the provisions of the Code. Once CIRP commences, all claimants / creditors of the corporate debtor have to submit their respective claims before the IRP which shall be dealt with as per the provisions



of the Code. It is pertinent to state here that there cannot be any preferential payment to any of the creditors of the corporate debtor during Corporate Insolvency Resolution Process in contravention of the provisions of the Code.

5. It is now well settled proposition of law that the provisions of the Code will override anything inconsistent contained in any other instrument / memorandum of settlement.
6. As a sequel to the above discussion the company application is dismissed.
7. Let the copy of the order be communicated to the parties.


06.08.2019
(M.M. KUMAR)
PRESIDENT


(S. K. MOHAPATRA)
MEMBER (T)

Deepak Kumar