

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

COURT-III

IB-1463/ND/2018
(CA No.606/2019)

In the matter of :
ORIENTAL BANK OF COMMERCE
No.166 & 207, FATEH PURI,
CHANDNI CHOWK, DELHI – 110 006.

.. PETITIONER

Vs.

SHREE SWASTIC SALES CORPORATION (P) Ltd
REGISTERED OFFICE : 104, CHAWRI BAZAR,
DELHI – 110 006.

..RESPONDENT

SECTION

Under Section 7 of IBC, 2016

Order delivered on 12.9.2019

Coram :

Sh. R. Varadharajan,
Hon'ble Member (Judicial)
Shri Kapal Kumar Vohra,
Hon'ble member (Technical)

For the Petitioner/Op. Creditor:
For the Respondent/Corporate Debtor :

ORDER

CA-606/C-III/ND/2019 has been moved by the Financial Creditor (FC) at whose instance, the main Company petition in IB-1463/ND/2018 was admitted on 06.5.2019 and at the time of admission, one Mr. Rakesh Takyar registered with IBBI having Registration No. IBBI/IPA-001/IP-P00160/2017-18/10329 was named as the Insolvency Resolution Professional (IRP) to

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IB-1643/ND/2018 Oriental Bank of Commerce vs. Shree Swastic Sales Corporation(P) Ltd

Surjit (Court-III)

carry out the CIR process of the Corporate Debtor (CD). As per the averments made in the Application as well the submissions of Ld. Counsel for the Petitioner, subsequent to the date of admission, the parties entered into a Settlement agreement, the parties have arrived at a settlement in terms of One Time Settlement offer made by the CD on 12.8.2019. It is brought to the notice of this Tribunal by Ld. Counsel for the Applicant/petitioner that despite the public announcement which was caused and to be made by the above named IRP wherein the last date of the submission of the claim was fixed on 29.8.2019, the only claim which was submitted in relation to the Corporate Debtor was by the Financial Creditor, namely, the Applicant herein.

In the circumstances, other than the Financial Creditor, there are no other claimants and hence, the COC was not constituted by the IRP, as in the meanwhile, the above settlement has been made by the CD which has also been accepted by the FC.

The above named IRP Mr. Rakesh Takyar has been impleaded as a Respondent to this application and upon notice given by the applicant itself, reply has been filed by the IRP on 04.9.2019 wherein it is seen that the only claim which has been filed consequent to the announcement as represented by Ld. Counsel for the applicant in support of the application seems to be that of the applicant to the extent of Rs.61.50 crores. In relation to the publication, it is represented that the publication was effected in the "Financial Express" (English) Delhi NCR Edition and "Jansatta" (In Hindi) Delhi NCR Edition in terms of Section 15 of the IBC, 2016 read with attendant Rules and Regulations. That vide said publication, the last date of filing the claim was fixed on 29.8.2019. It is further brought

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to the notice of this Tribunal that in Paragraph-6 of the reply that the application which has been admitted under Section 7 , 9 & 10 should have been filed under Section 12 (A) read with Regulations 30 (A) of Insolvency Resolution Process for the Corporate persons.

Ld. Counsel for the applicant, in relation to the same, represents that in the absence of the COC and before its constitution, One Time Settlement was offered by the Corporate Debtor and the Settlement has been arrived. In the circumstances, this application as filed under Rule 11 of the NCLT Rules, 2016 invoking the inherent powers of this Tribunal will be in order in light of the Judgment as rendered in Swiss Ribbons (P) Limited vs. Union of India & Ors. in Writ Petition (Civil) No.99/2018.

Taking into consideration the above representation as well as the Judgment rendered in the above-referred Citation by Hon'ble Surpeme Court, this Tribunal can exercise its inherent powers and record the Settlement where the COC has not been constituted and as evidenced per reply filed by Ld. Counsel for IRP appointed by this Tribunal.

On a query posed by this Tribunal in relation to the fees and expenditure which are payable, the IRP appointed by this Tribunal, Ld. Counsel for the Applicant, on behalf of the applicant specifically undertakes that all the expenses and fees as may be raised by the IRP appointed by this Tribunal will be paid in full subject to IRP raises necessary Vouchers in this regard.

In view of the said undertaking as given by the applicant as well as taking into consideration the COC has not been constituted in relation to the Corporate Debtor, consequent upon the admission of the Petition in



relation to the Corporate Debtor on 06.8.2019, this Application is allowed and the CIR process as initiated against the Corporate Debtor on 06.8.2019 stands withdrawn. Let all affairs of the management of the Company be duly handed over by the IRP appointed by this Tribunal to the Board of Directors whose powers stood suspended upon the initiation of CIR process, forthwith.

With the above directions, this Application stands allowed.

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(K.K. Vohra)
MEMBER (TECHNICAL)

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(R. VARADHARAJAN)
MEMBER (JUDICIAL)