

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 17.08.2020

**THROUGH VIDEO CONFERENCING**  
**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 199/BB/2018	For orders IA 273/2020	Sec 7 of I&B code 2016	M/s ICICI Bank	Trilegal, Anuradha Agnihotri	M/s OPTO Circuits (India) Limited	Samrath shreedhar, advocate, Pankaj Srivatsav, IRP Shashi Kiran shetty

ADVOCATE FOR PETITIONER/s:

MR. SHASHI KIRAN SHETTY - SENIOR COUNSEL } For  
MR. SAMARTH SHREEDHAR - Advocate } applica  
MS. ANURADHA AGNIHOTRI - For ICICI Bank } in GA 2:  
2e

ADVOCATE FOR RESPONDENT/s:

MR. PANKAJ SRIVASTAVA - R.P

**ORDER**

I.A No. 273 of 2020 and CP (IB) No. 199/BB/2018 is disposed of by separate order.

  
MEMBER (T)

  
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A. No.273 of 2020  
U/s. 12A of the I&B Code, 2016  
R/w Regulation 30A of the  
IBBI Regulations, 2016  
& Rule 11 of the NCLT Rules, 2016

And

C.P (IB) No. 199/BB/2018  
U/s 7 of the IBC, 2016.

**Between:**

**Mr. Vinod Ramnani,**

*Shareholder of*

*M/s. Opto Circuits (India) Ltd.*

No.83, Electronic City, Phase-I,

Off Hosur Road,

Bangalore-560 100

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Applicant

**And**

**1. Mr. Pankaj Srivastava,**

*Interim Resolution Professional of*

*M/s. Opto Circuits (India) Ltd.*

#5, 5<sup>th</sup> Cross, Navya Nagar, Jakkur,

Bangalore- 560 064

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Respondent/Corporate Debtor

**2. ICICI Bank Ltd.**

ICICI Bank Tower,

Near Chakili Circle, Old Padra Road

Vadodara 390 007, India

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Respondent/Financial  
Creditor/Petitioner

**Date of Order: 17<sup>th</sup> August, 2020**

**Coram:**


1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (Through Video Conference):**

For the Applicant

: Shri Shashi Kiran Shetty, Senior  
Counsel with Samarth Sreedharan

  
Page 1 of 7

Resolution Professional : Mr. Pankaj Srivastava

For the Petitioner/ICICI Bank : Ms. Anuradha Agnihotri

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 273 of 2020 in C.P. (IB) No.199/BB/2018 is filed by Mr. Vinod Ramnani, Shareholder of M/s. Opto Circuits (India) Limited U/s 12A of the I&B Code, 2016 R/w Regulation 30A of the IBBI Regulations, 2016, and Rule 11 of the NCLT Rules 2016, by inter alia seeking to dispose of the instant matter in the light of settlement arrived at between the Petitioner and the Respondent by giving liberty to the Petitioner Bank to resume the CIRP in case of non-compliance of the terms of the OTS dated 22.04.2020.
2. Brief facts of the case, which are relevant to the issue in question, are as follows:
  - (1) C.P (IB) No. 199/BB/2018 filed by M/s. ICICI Bank Limited (Financial Creditors) U/s. 7 of the Code, 2016,R/w Rule 4 of the IBBI(AAA) Rules, 2016, was admitted by the Adjudicating Authority, by an order dated 18.03.2020 by initiating CIRP in respect of Corporate Debtor, appointing IRP; imposing moratorium etc. Accordingly, IRP issue Public Announcement (FormA) dated 20<sup>th</sup> March, 2020, in two News Papers namely, Deccan Herald and Prajavani Karnataka by calling upon the Creditors of Corporate Debtor to submit their claims with proof on or before 03.04.2020, to him.
  - (2) While receiving claims from the Claimants, and before expiry of last date, the Corporate Debtor had filed Writ Petition (WP No. 6640 of 2020) before the Hon'ble High Court of Karnataka at Bengaluru by seeking to stay the operation of the impugned order dated 18.03.2020 passed in the case, for the grounds mentioned therein. Accordingly, the said WP was disposed of by an order

  
Page 2 of 7

dated 24<sup>th</sup> March, 2020 by directing the Pctitioner to prefer Appeal before Hon'ble NCLAT, and in the meanwhile, granted stay of impugned order for a period of eight weeks. And also granted liberty to the Corporate Debtor to seek further extension of the stay in case circumstances warrant. Therefore, the Corporate Debtor has again approached the Hon'ble High Court, by filing IA No. 01 of 2020 seeking further extension of the order of stay. Accordingly, the said stay was further extended for a further period of eight weeks vide order dated 20<sup>th</sup> Mary, 2020. It was further extended for additional two weeks till 06.08.2020, vide order 22.07.2020, which is still in operation.

- (3) During the subsistence of the interim stay, the Corporate Debtor again gave a One Time Settlement proposal to the Financial Creditor vide its letter dated 22.04.2020. The Petitioner/ ICIC Bank vide its letter dated 10.07.2020, has accepted the proposal of One Time Settlement (OTS) given by the Corporate Debtor Company, and thus received the part-payment of Rs.45 million. As per OTS, a total payment of Rs.227 million is to be made by the Corporate Debtor, within a course of three months from the date of acceptance of the OTS proposal. The details of the payment of Rs.45 million made by the Respondent Company is as follows:

Date	Amount	UTR No.
08.07.2020	5,000,000	UTIBR52020070800357024
09.07.2020	7,000,000	UTIBR520200709003560118
10.07.2020	12,000,000	AXSK201920012924
14.07.2020	7,500,000	UTIBR520200714003524
14.07.2020	7,500,000	AXSK201960003849
14.07.2020	6,000,000	AXSK201960003898
<b>Total</b>	<b>45,000,000</b>	

- (4) The Applicant ultimately preferred Company Appeal (A Insolvency) No. 675 of 2020 before Hon'ble NCLAT by questioning the order of Adjudicating Authority passed in the case. And the Appeal was disposed of by an order dated 10.08.2020 by *inter-alia* permitting the Appellant/Applicant to take steps for invoking jurisdiction of this Adjudicating Authority, in terms of Settlement Agreement, Under Rule 11 of NCLT Rules, 2016. Accordingly, the instant Application has been filed by seeking the relief as mentioned supra, by relying upon the law as laid down by the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt Ltd and Anr. Vs. Union of India & Ors.*
3. Heard Shri Shashi Kiran Shetty , learned Senior Counsel for the Applicant, Shri Pankaj Srivastava, Resolution Professional, and Ms. Anuradha Agnihotri, learned Counsel for the Petitioner((ICICI Bank) **through Video Conference**. We have carefully perused the pleadings of the Parties, extant provisions of the Code, the Rules made thereunder and the Law on the issue.
4. Shri Shashi Kiran Shetty , learned Senior Counsel for the Applicant, while reiterating averments made in the instant Application, has further submitted that the Petitioner, who have initiated, CIRP has agreed for settlement in question, and Constitution of Committee was not constituted as the Hon'ble High Court has stayed further process. Therefore, the Adjudicating Authority may terminate CIRP proceedings in question by exercising its inherent powers conferred on it under Rule 11 of NCLT Rules, 2016, in the light of law as laid down by the Apex Court in Swiss Ribbon case.
5. Ms. Anuradha Agnihotri, learned Counsel appearing for Petitioner (ICICI Bank) has *inter-alia* submits that they have accepted the OTS in question, and also received part payments as mentioned in the instant Application. Therefore, they have no objection to dispose of the main Company Petition in terms of OTS, however, subject to

- grant leave to the Bank to approach the Adjudicating Authority, in case, the Corporate Debtor committed breach of terms of OTS.
6. The record of the case discloses that though the main case was initiated in the year 2018, it was not admitted till 18<sup>th</sup> March, 2020, due to various grounds, which includes settlement of the issue, as raised by the Parties. After admission of the case, the Hon'ble High court granted stay of CIRP proceedings, which continues to be in operation till day, as detailed supra. Though Public Announcement in pursuance to initiation of admission of the case was issued by Interim Resolution Professional, Constitution of Committee was not constituted due to the stay granted by the Hon'ble High Court.
  7. Mr. Vinod Ramnani, being a Shareholder of the Corporate Debtor, has ultimately filed Company Appeal (AT) (Insolvency) No. 673 of 2020 before Hon'ble NCLAT by questioning the admission order of this Adjudicating Authority, which was disposed of by an order dated 10.08.2020 by permitting the Applicant to approach the Adjudicating Authority for invoking its jurisdiction, under Rule 11 of the NCLT Rules, 2016, in terms of Settlement Agreement. It is also recorded that since Committee of Creditors was not constituted, there would be no legal impediment in seeking to an exit from the CIRP, through medium of settlement inter-se the Financial Creditor and Corporate Debtor. Therefore, the Applicant can maintain the instant Application seeking the relief as stated supra.
  8. As stated supra, the Petitioner (ICICI Bank), who have initiated the CIRP proceedings in question against the Corporate Debtor, has accepted the OTS in question, and received part-payments too as mentioned supra. Therefore, they have no objection for termination of the instant Proceedings. It is settled position of law that object of Code is maximisation of assets of distressed Company. And the Adjudicating Authority, before taking extreme step of initiation of CIRP, has to explore the possibilities of settlement of issue.




Page 5 of 7

In the instant case, though the Parties tried to settle the issue in question during the course of admission, it could not materialise, resulting in admission of the Case. Since the Parties now have settled the issue in question, and further process of CIRP was stayed and only Public Notification was issued inviting claims from the Creditors, there would be no prejudice cause to any other claimants, as their claims would intact against the Company, if the instant Application is allowed as prayed for. Therefore, it would be just and proper to terminate the CIRP in question , by following principle of ease of doing business, by exercising the powers conferred on the Adjudicating Authority, U/R 11 of NCLT Rules, 2016 in consonance with the law as laid down by the Apex Court in Swiss Ribbon case, as cited supra.

9. In view of the of the above facts and circumstances of the case, the Law on the issue, and by exercising the powers conferred on this Adjudicating Authority, U/s. 12A of the I&B Code, 2016, R/w Regulation 30A of the IBBI Regulations, 2016 and Rule 11 of the NCLT Rules 2016, and by following law as laid down in *Swiss Ribbons Pvt Ltd and Anr. Vs. Union of India & Ors.*, the **CP (IB) No. 199/BB/2018** as well as **I.A.No.273/2020**, are hereby disposed of with the following directions:

- (1) The CIRP proceedings initiated vide an order dated 18.03.2020 passed in C.P (IB) No. 199/BB/2018, are hereby terminated; and consequently, the main CP (IB) No. 199/BB/2018 stands disposed of;
- (2) All actions taken by Resolution Professional stands nullified, and the status of the Corporate Debtor is restored status quo ante to initiation of CIRP, and it can carry on its normal business functions;
- (3) The Resolution Professional is directed to hand over all the records of the Corporate Debtor to its management immediately. He is further directed to intimate all concerned Authorities, and



Page 6 of 7

stake holders of Corporate Debtor, by giving suitable notification,  
about the cessation of CIRP in respect of Corporate Debtor;

- (4) The Corporate Debtor is directed to strictly adhere to terms and conditions of One Time Settlement in question, failing which, the Petitioner/ICICI Bank is entitled to file fresh Company Petition in accordance with provisions of Code.
- (5) No order as costs.



**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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