

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1390 of 2019

IN THE MATTER OF:

Mr. Rajiv Sharma

...Appellant

Versus

M/s Rajgopal Creation & Anr.

...Respondents

Present:

**For Appellant: Mr. Piyush Sharma and Ms. Deeti Ojha,
Advocates.**

**For Respondents: Mr. Asad Mazgaonwala, Advocate for
Respondent No.1.**

**Mr. Vikram Hegde, Ms. Hima Lawrence and
Mr. Shantanu Lakhota, Advocates for
Respondent No.2.**

O R D E R

17.12.2019 M/s Rajgopal Creations filed application for initiation of 'Corporate Insolvency Resolution Process' against Samrat Gems Impex Private Limited. The Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by order dated 13th November, 2019 admitted the application.

2. Earlier, when the case was taken up, learned Counsel appearing on behalf of the Appellant – Shareholder submitted that the application under Section 9 was barred by limitation. Further in view of the fact that no 'Committee of Creditors' was constituted, the 'Interim Resolution Professional' was directed not to constitute the 'Committee of Creditors'.

3. Mr. Asad Mazgaonwala, learned Counsel appearing on behalf of M/s Rajgopal Creation submits that the parties have reached settlement and a reply affidavit has been filed enclosing the Consent Terms of Settlement dated 12th December, 2019. It is also stated that the parties have agreed to bear the cost of 'Corporate Insolvency Resolution' incurred by 'Interim Resolution Professional' in equal proportion.

4. Mr. Vikram Hegde, learned Counsel appearing on behalf of 'Interim Resolution Professional'—Mr. Anurag Kumar Sinha submits that the

‘Committee of Creditors’ has not been constituted. He submits that ‘Interim Resolution Professional’ has incurred cost of Rs.20,000/- towards publication. This apart, ‘Interim Resolution Professional’ is also entitled for his fee and fee for his team, which looked into three projects and has also spent money towards Lawyer.

5. In the circumstances, we fix the fee and cost of ‘Interim Resolution Professional’ at Rs.3,00,000/- in total, which is to be borne by Appellant and Respondent-M/s Rajgopal Creation in equal proportion, which will be paid within 15 days.

6. In view of such settlement and in exercise of inherent power conferred under Rule 11 of NCLAT Rules, 2016, we set-aside the impugned order dated 13th November, 2019 passed by the Adjudicating Authority and dispose of the application filed under Section 9 by M/s Rajgopal Creation as withdrawn. The company petition being CP 1731(IB)/MB/2018 is closed. The Adjudicating Authority will pass order showing the said petition disposed of. Samrat Gems Impex Private Limited (‘Corporate Debtor’) is released from the ‘Corporate Insolvency Resolution Process’. ‘Interim Resolution Professional’ will handover the records and assets of the ‘Corporate Debtor’ to the Shareholder immediately, who will manage the ‘Corporate Debtor’. The Appeal is allowed with the aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

Ash/SK