

(14)

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 22-01-2020

PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER : MA/56/2020
PETITION NUMBER : IBA/1252/2019
NAME OF THE PETITIONER(S) : SHRIRAM CITY UNION FINANCE LTD
NAME OF THE RESPONDENTS : PREMIER DISTILLERIES LTD
UNDER SECTION : SEC 12(A)

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
			REPRESENTATION BY WHOM

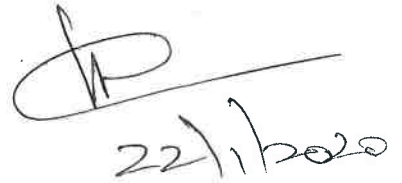
1. S. SATHIYANARAYANAN,
KMC. ARUNMOKAN,
FOR LUISE AND WORTH ADVOCATES.

Counsel for
Respondent



2) R. Uma Shetty

Counsel for
Applicant



22/1/2020

ORDER

1. This is an Application filed by the Applicant/Petitioner in the main Company Petition in IBA/1252/2019 under Section 12(A) of the Insolvency & Bankruptcy Code, 2016 (in short 'I&B Code, 2016') seeking for withdrawal of the Company Petition which was admitted by this Tribunal on 08.01.2020 and initiating the Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
2. The Ld. Counsel for the Applicant makes his submissions that a settlement was arrived at between the Financial Creditor and the Corporate Debtor even prior to the initiation of the CIRP of the Corporate Debtor, however, the same was failed to be intimated before this Tribunal by the parties which has resulted in admitting the Petition and ordering the CIRP of the Corporate Debtor.
3. It is further stated in the averments made in the Petition that the act of the Financial Creditor in not reporting to this Tribunal earlier i.e., on 08.01.2020 when the matter was disposed of by this Tribunal is neither willful nor wanton and in view of the fact that the settlement was not communicated to the Counsels to withdraw



the matter on the date of hearing of the main Company Petition resulted in its admission. Taking into consideration the above, it is represented by the Ld. Counsel for the Applicant represents that it is a fit case and that this Tribunal has inherent powers as contemplated under Rule 11 of the NCLT Rules, 2016 read with Section 12(A) of the I&B Code, 2016.

4. Consequent to moving the Application, this Tribunal had directed the Interim Resolution Professional (IRP) as appointed by this Tribunal vide Order dated 20.01.2020 to file a status report as to the action taken by the IRP pursuant to his appointment. In compliance with the said Order of this Tribunal, a status report has been filed by the IRP on 21.01.2020 and the same is available on record.
5. A perusal of the said status report shows that the IRP has caused the paper publication to be effected in the newspapers viz., 'Dinamani' (Tamil edition) and 'Business Standard' (English edition) respectively on 13.01.2020 and that as on the date of filing the



status report it is stated that no claims have been received from any of the creditors of the Corporate Debtor.

6. From the status report it is also evident that despite notices to the Financial Creditors of the Corporate Debtor viz., Axis Bank Limited, Puducherry and State Bank of Hyderabad where the Corporate Debtor is maintaining its accounts have not chosen to file their claims if any due as such. It is also evident from the status report that the Corporate Debtor is running a unit having on its roles the employees. Upon a specific query posed by this Tribunal to the IRP to confirm whether any claim has been received as of today i.e., date of hearing, the answer is in negative.
7. It is represented by the Ld. Counsel for the IRP that no claims have been received in relation to the Corporate Debtor and in the circumstance as such no Committee of Creditors (CoC) has been formed in relation to the Corporate Debtor. During the course of the submissions, the Ld. Counsel for the Applicant also relies on the decision of the Hon'ble Supreme Court of India as passed in **Swiss Ribbons Pvt. Ltd & Anr -vs- Union of India & Ors in Writ**

Petition (Civil) No. 99 of 2018 dated 25.01.2019 and draws the attention of this Tribunal particularly to Para No.52 of the said Judgement which reads as follows:-

*“52. It is clear that once the Code gets triggered by admission of a creditors 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.**”*

8. It is further submitted by the Ld. Counsel for the Applicant that in exercise of the inherent powers and also taking into consideration the decision of the Hon'ble Supreme Court of India in the case as referred to above namely, **Swiss Ribbons Pvt. Ltd & Anr -vs-**



Union of India & Ors in Writ Petition (Civil) No. 99 of 2018 dated 25.01.2019 and as well the Mumbai Bench of the NCLT in the matter of **Ancon Steel Industries -vs- Sanika Chemicals Pvt. Ltd in C.P. (IB)-791(MB)/2019 dated 25.11.2019** which has allowed on the very same set of facts as prevalent in the instant case allowed the Applicant thereunder to withdraw the Company Petition who had sought originally for initiation of the CIRP pursuant to which the CIRP was also initiated and relying on the above judgement of the Hon'ble Supreme Court of India as well as the Mumbai Bench of the NCLT, the Ld. Counsel for the Applicant exhorts this Tribunal to allow the Application as no prejudice will be caused to any persons in the absence of the CoC being constituted and on the other hand the Corporate Debtor will be greatly prejudiced as even prior to the Order of admission dated 08.01.2020 both the parties have come to a settlement, however, which was failed to be reported before this Tribunal as averred in the Application.

9. We have carefully considered the pleas of the Ld. Counsel for the Applicant in support of the Application. From the status report filed



by the IRP it is evident that as such no CoC has been constituted. It is also seen from the said status report that despite approaches made to the secured Financial Creditor of the Corporate Debtor as early as on 13.01.2020 and 14.01.2020 by the IRP, the said secured Financial Creditors have failed to file their claim before the IRP. The Hon'ble Supreme Court of India by virtue of the above judgement cited namely, **Swiss Ribbons'** case under such circumstances has held that this Tribunal is well within its powers to exercise the powers vested under Rule 11 of the NCLT Rules, 2016 viz., inherent powers with a view to do justice to the parties. Under similar circumstances, the Hon'ble NCLAT in the matter of **Shivkumar Easwaran -vs- NTC Logistics India Pvt. Ltd** arising out of the order passed by this Bench of the Tribunal in Company Appeal (AT) (Insolvency) No.1374 of 2019 had chosen to exercise the inherent powers vested in Rule 11 of the NCLT Rules, 2016 following **Swiss Ribbons'** case (cited supra) had allowed the settlement between the parties therein and thereby **setting aside** the Order of this Tribunal.



10. Taking into consideration of the above aspects, this Application stands **allowed**. Consequently the CIRP initiated vide Order dated 08.01.2020 stands withdrawn and the IRP shall cease to act as such in relation to the Corporate Debtor. The powers of the Board of the Corporate Debtor also stand restored. However, the Financial Creditor shall defray the cost and expenses incurred by the IRP and his fees if any payable, upon the production of invoices and proofs of expenditure within a period of ten days from today. With the above directions, this Application stands **disposed of**.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)