

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Item No. 203
(IB)-945(ND)/2018

IN THE MATTER OF:

Chryso (India) Pvt. Ltd.
Vs.

.... Applicant/petitioner

Reom Infrastructure and Construction Ltd. Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, CIRP

Order delivered on 22.08.2019

Coram:

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

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Applicant

: Mr. Arijit Mazumdar, Mr. Shambo Nandy, Ms.
Akansha Kaushik, Advs.

For the respondent

Mr. Jayant Mehta, Mr. Dibyadyuti Banerjee, Advs.

ORDER

CA-1525(PB)/2019:-

The question raised in this application is whether CIRP initiated by this Tribunal be set aside by accepting the compromise. On the last date of hearing i.e. 19.08.2019, we have noticed that claims of six other claimants were received by the IRP though the CoC was not constituted. We have then passed the following order:-

“The claims of four other creditors have not been satisfied till date although the CoC is yet to be constituted. One last opportunity is granted to the applicant to satisfy the claims of all the creditors which have been received by the IRP. It has now been represented that in addition two more claims have also been received. It is appropriate to mention that in para 52 of the judgment rendered in Civil Appeal No. 99/2018 dated 25.01.2019 *Swiss Ribbons Pvt. Ltd. & Anr. v. Union Bank of India & Ors.* by Hon'ble the Supreme



Court it has been observed that **the proceedings under the IBC are collective proceedings and therefore these proceedings are in rem.** It is pertinent to point out that if six claims have already been received it will be a futile exercise to permit the settlement only with one operational creditor alone because the Corporate Insolvency Resolution Process would not come to an end.

List for further consideration on 23.08.2019.” (emphasis added)

However, even today, learned counsel for the corporate debtor is not in a position to state that the claims of all the other claimants who have filed their claims before IRP, have been settled although the contention raised on behalf of the corporate debtor is that the claims are disputed.

Be that as it may; keeping in view the ratio of the judgment rendered in Civil Appeal No. 99/2018 dated 25.01.2019 (*Swiss Ribbons Pvt. Ltd. & Anr. v. Union Bank of India & Ors.*) rendered by Hon'ble the Supreme Court, we are not able to persuade ourselves to accept the application for withdrawal. In para 52 of the Swiss Ribobon's case (supra), Hon'ble the Supreme Court has made a following pertinent observations:-

“52. It is clear that once the Code gets triggered by admission of a creditor's 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.”

A bare perusal of the aforesaid para reveals that the Corporate Insolvency Resolution Process is a collective process and the proceedings are in *rem*. In the absence of any settlement with all creditors/claimants it would be futile to accept the application for settlement of an individual claim which constitute a microscopic minority. Such a settlement would fall in the category of ‘preferential transactions’ because the other claimants/operational creditors or financial creditors either have already filed or may also file petitions under Section 7 or 9 of the Insolvency & Bankruptcy Code, 2016 which again may result in initiation of CIR Process. Once other unsettled claims have come on record, those cannot be overlooked. This would be against the rudiment principles of Insolvency & Bankruptcy Code, 2016 and violate the provisions of the Code in letter and spirit leaving so many claims unsatisfied would only be delaying the resolution by accepting present application which is not possible. Accordingly, the application fails and the same is dismissed.

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(S. K. MOHAPATRA)
MEMBER (TECHNICAL)