

NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item No. 29

IA 1781/2023 in C.P. (IB)/2584(MB)2019

CORAM:

MS. ANU JAGMOHAN SINGH

SH. H. V. SUBBA RAO

HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON 16.05.2023

**NAME OF THE PARTIES: TOYO INK INDIA PRIVATE LIMITED V/s
SUNDEEP PLASTICS PRIVATE LIMITED**

Section 9 of the Insolvency and Bankruptcy Code, 2016 & Rule 11

ORDER

IA 1781/2023

1. Mr. Avinash Khanolkar, Advocate for the Applicant is present.
2. The Applicant, Interim Resolution Professional of the Corporate Debtor, has filed the present Interlocutory Application under Rule 11 of the National Company Law Tribunal, Rules, 2016 r/w Regulation 30A (1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
3. The facts leading to the case in hand are as follows:
 - i. The Company Petition against the Corporate Debtor was admitted *vide* an order of this Bench **dt. 30.03.2023**, passed in the Company Petition



bearing **CP (IB) No. 2584 of 2019**, and the Applicant herein was appointed as the Interim Resolution Professional of the Corporate Debtor.

- ii. Applicant submits that the said Admission Order was communicated to the Applicant through Registry only on 03.04.2023.
- iii. Thereafter, Applicant took initial steps to the CIRP and published the notices inviting claims from the Stakeholders of the Corporate Debtor on 06.04.2023 in two newspapers, namely Free Press Journal, Mumbai Edition (English), Silvassa Mirror, Silvassa Edition (English), Janadesh, Silvassa Edition (Gujarathi) and on 07.04.2023 in Navashakti, Mumbai Edition (Marathi). Applicant submits that pursuant to the same, she has received only One claim from the Operational Creditor being the State Tax Dept. of Gujarat Unit-2(74), Vapi. Gujarat, amounting to the tune of Rs. 2,41,885/- and no claims have been received from the Financial Creditors.
- iv. Applicant submits that as per the provisions of the Regulations she was required to complete verification of the received claims latest by 24.04.2023 being the 7th day from the last day of receipt of claims.
- v. Accordingly, the Applicant was in process to collate the claims and verification thereto.
- vi. However, Applicant further submits that on 19.04.2023, she has received a communication from the Original Petitioner contending that



the Promoters/Directors of the Corporate Debtor have settled the claimed amount with the Original Petitioner and now Original Petitioner do not want to continue with the CIRP. **“FORM FA”** dt. 19.04.2023, is annexed here as Annexure 4.

- vii. Original Petitioner informed to the Applicant that the cost of the CIRP, as on date of FORM FA, would be borne by the Corporate Debtor. Accordingly, a payment to the tune of Rs. 1,23,621/- has been made to the Applicant towards the CIRP cost by the Promoters/Directors of the Corporate Debtor through NEFT vide transaction ID NKGSH23108434371 and NKGSH23108434375. The summary / details of the CIRP cost, as on date of this Application, is annexed herewith as Annexure 5.
- viii. Applicant submits that after receipt of the aforementioned amount, as on date, there is no due left towards the CIRP cost.
- ix. It is submitted that the matter has been mutually settled between the Parties and the Original Petitioner does not want to continue with the CIRP; hence, the Applicant do not have any other alternative than that of presenting this Application under the provisions of Rule 11 of the NCLT Rules, 2016 read with Regulation 30A (1) (a) of the Regulations.
- x. It is also submitted that the last date of verification of claims was 24.04.2023 and before formation of the Committee of Creditors, the Applicant has received the FORM FA from the Original Petitioner;



therefore, the Applicant could not get an opportunity to form the Committee of Creditors of the Corporate Debtor and since, the CoC is not formed the provisions of Section 12A of the Code would not come into picture. Counsel for the Interim Resolution Professional submits that the fees and expenses of the Applicant herein, have also been paid by the Corporate Debtor.

xi. To buttress the submissions, Ld. Counsel for the Applicant has also relied on the judgment passed by the Hon'ble Apex Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. V/s. Union of India & Ors. W.P. (Civil) No. 99 of 2018, dt. 25.01.2019*, wherein it is specifically held that the Adjudicating Authority can invoke its jurisdiction under Rule 11 of the NCLT Rules, 2016 and can permit the withdrawal of the CIRP before formation of the Committee of Creditors.

xii. Hence this Application.

4. Having considered the submissions of the Applicant and on perusal of averments made in the present Interlocutory Application, this Bench is satisfied and is of the Considered view that the present Interlocutory Application is in consonance with Rule 11 of NCLT Rules, 2016 r/w Regulation 30A (1)(a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and the same is liable to be allowed. Accordingly, this Bench permits the withdrawal of the CIRP of the Corporate Debtor, **Sudeep Plastics Private**



Limited, taking note of the fact that the Corporate Debtor has settled the matter with the Original Petitioner and the Original Petitioner has desirous to withdraw the CIRP, which was set into motion *vide* an order of this Bench dt. 30.03.2023, passed in CP (IB) No. 2584 of 2019.

5. The Moratorium declared under Section 14 of the IBC 2016, *vide* an order of this Bench dt. 30.03.2023, shall cease to operate here from.
6. The Corporate Debtor, **Sudeep Plastics Private Limited**, is now free from all the clutches and Rigors of the Corporate Insolvency Resolution Process.
7. Applicant herein is hereby directed to handover all the assets, effects and records of the Corporate Debtor, available with her in the Physical or Electro form to the Promoters/Directors of the Corporate Debtor forthwith.
8. With the aforesaid observation and direction, the Interlocutory Application bearing IA No. 1781 of 2023, is disposed of. Resultantly, the Company Petition bearing CP (IB) No. 2584 of 2019, along with all pending Interlocutory Applications, if any, disposed of.
9. There would however be no order as to costs.
10. File be consigned to record.

Sd/-

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

H. V. SUBBA RAO
MEMBER (JUDICIAL)