

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. 312 & 336 of 2019

IN

Company Appeal (AT) (Insolvency) No. 94 & 95 of 2019

IN THE MATTER OF:

Jogendra Kumar Arora

...Appellant

Versus

Dharmender Sharma & anr.

...Respondents

Present:

For Appellant : **Mr. Rakesh Kumar and Mr. Aashish Khattar,
Advocates**

For 1st Respondent: **Mr. Dharmender Sharma**

For 2nd Respondent : **Mr. Sandeep Chandna, RP**

O R D E R

12.02.2019 This appeal has been preferred by Mr. Jogendra Kumar Arora, Shareholder of 'SRS Real Infrastructure Limited' against order dated 10th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh whereby application under Section 9 of the Insolvency and Bankruptcy Code, 2016 filed by the respondent – Mr. Dharmender Sharma, Proprietor of 'ADP Interiors and Contractors' (Operational Creditor) has been admitted.

2. On 29th January, 2019 when the matter was taken up and the following order was passed by this Appellate Tribunal :

“Learned counsel appearing on behalf of the Appellant submits that no Committee of Creditors have been appointed and relied on Para 52 of decision of Hon’ble Supreme Court in ‘Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.’, Writ Petition (Civil) No. 99/2018 dated 25th January, 2019, which reads as follows:

“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.”

It is submitted that the Appellant is ready to pay all the debt to the Operational Creditor. It is informed that the Interim Resolution Professional has been appointed but no advertisement has been published till date.

In this circumstance, let notice be issued on Respondents by speed post. Requisites alongwith process fee, if not filed, be filed by tomorrow. If the Appellant provides email address of the Respondents, let notice be also issued through email.

Post the case ‘for admission’ on 22nd February, 2019.

In the meantime, the Interim Resolution Professional will not issue any advertisement calling for claims, if not yet issued and will not constitute the Committee of Creditors without prior permission of this Appellate Tribunal. It will be open to the Appellant to make settlement with the Respondents (Operational Creditors) and move before the Adjudicating Authority in light of the decision of Hon’ble Supreme Court in ‘Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.’ as quoted above.”

3. Mr. Dharmender Sharma, Proprietor of 'ADP Interiors and Contractors' (Operational Creditor) appears in person and submits that the parties have settled and he has received the settled amount. Mr. Sandeep Chandna, Resolution Professional submits that he has performed duties for about 20 days and pursuant to publication of notice he has collating the claims. He had quoted the fees of Rupees Ten Lakhs for 30 days and incurred Rs. 4.5 lakhs for publication of notice etc.

4. Mr. A.M. Ranjan Kumar, Advocate wanted to intervene on behalf of the Eight Financial Creditors to oppose the prayer. He submitted that the Eight Financial Creditors have already submitted their claim before the 'Resolution Professional'. However, parties having settled the matter prior to constitution of 'Committee of Creditors', we are not inclined to entertain any application for creditors.

5. Further in view of the decision of the '*Swiss Ribbons Pvt. Ltd. & Anr*', and in exercise our inherent powers under Rule 11 of the NCLAT Rules, 2016, allow the prayer made by Mr. Dharmender Sharma for withdrawal of the application in view of the settlement already reached. We accordingly set aside the impugned order dated 10th January, 2019 and dismiss the C.P. (IB) No. 158/Chd/Hry/2018 as withdrawn.

6. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the 1st

Respondent under Section 9 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. Taking into consideration the fact that we have closed the proceedings, we direct the 'Corporate Debtor' to pay the total sum of Rs. 14.5 Lakhs towards fee and cost incurred by Mr. Sandeep Chandna, (Resolution Professional) within two weeks. So far as the 'Financial Creditors' who wanted to intervene and other 'Operational Creditors' who applied pursuant to the advertisement, this order will not come in their way to take recourse in accordance with law.

8. The appeal is allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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