

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

Item No. 6
(IB)-1229(PB)/2018

IN THE MATTER OF:

Alka Agarwal & Ors

.... Applicant/petitioner

Vs.

Parsvnath Landmark Developers Pvt. Ltd.

.... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on 01.02.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR

HON'BLE PRESIDENT

DR. DEEPTI MUKESH,

HON'BLE MEMBER (JUDICIAL)

PRESENTS:

For the Petitioner/Applicant: Mr. Ankur Garg, Mr. Siddharth Shama, Ms. Charu Tyagi, Advs.

For the respondent Mr. Vijay Nair, Mr. Sakal Bhushan, Mr. Manoranjan Sharma, Advs
Mr. Yash Jeet Basrar, IRP in person.

ORDER

CA-162(PB)/2019:-

This is an application filed under Rule 11 of the NCLT Rules, 2016 with a prayer for closure of Corporate Insolvency Resolution Process initiated on 11.01.2019 in CP No. (IB)-1229(PB)/2018. The application is supported by para 52 of the judgment rendered by Hon'ble the Supreme Court in the case of *Swiss Ribbons Pvt.Ltd. & Anr. v. Union of India & Ors.* in Writ Petition (Civil) No. 99 of 2018 decided on 25.01.2019, holding that the National Company Law Tribunal-Adjudicating Authority can entertain an application under Rule 11 of the NCLT Rules, 2016 before the constitution of Committee of Creditors. By the aforesaid exception and a process for withdrawal of the CIR Process is carved out because under Section 12 A of the Code, it is only by Committee of Creditors by 99 % of the voting share which could permit the withdrawal of the process.



However, between the period of constitution of Committee of Creditors and the issuance CIR Process this exception has been carved out.

In the present application, the financial creditor has stated that the matter has been amicably settled and affidavit to that effect has also been filed by suspended director of corporate debtor Mr. Atul Jain (A-2) and affidavits of the three applicants Ms. Alka Agarwal, Mr. Alok Agarwal & Mr. Ankit Agarwal are also on record. In the affidavit filed by the IRP which has been stated that the committee of creditors has not yet been constituted. Learned IPR states that public notice inviting the claim was issued on 14.01.2019 and 300 claims have been received which are under scrutiny. He further states that the fee/expenses have also been settled between the parties.

Keeping in view the ratio of the judgment rendered in the case of Swiss Ribbons Pvt. Ltd. & Ors. (supra) particularly para 52 thereof we find that this application is covered, however we constrained to observe that the 300 claims which have been received by the IRP may result in to a spat of the other petitions under Section 7 or 9 of the Code, 2016.

Be that as it may. The matter is covered by the observation made by the para 52 of the judgment in the case of Swiss Ribbons Pvt. Ltd. & Anr. (supra) reads as under:-

“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 101 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.”

As a sequel to the above discussion, the order dated 11.01.2019 initiating Corporate Insolvency Resolution Process against the Corporate Debtor is closed and naturally the order would not be given effect any further. The IRP is also discontinued to conduct any proceedings.

We hope and trust that the parties will abide by the terms of the settlement and avoid another petition with a prayer for triggering of Corporate Insolvency and Bankruptcy Process.

The application stands disposed of.

A copy of the order be given dasti to the counsel for the parties.

Sd/-

(M. M. KUMAR)
PRESIDENT

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)