

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
SPECIAL BENCH

ITEM No. 152
(IB)-1100(PB)/2018

IN THE MATTER OF:

Noble Buildtech LLP

Vs.

UTC Softech Pvt. Ltd.

.... Applicant/petitioner

.... Respondent

Order under Section 7

Order delivered on 06.02.2019

Coram:

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

SH. PRADEEP R. SETHI
HON'BLE MEMBER (TECHNICAL)

PRESENTS:

For the Petitioner/Applicant: Mr. U. K Chaudhary, Sr. Adv. with Mr. Abhishek Pareek, Adv.

For the Respondent(s): Mr. Anil Kumar Sharma, Adv. with IRP Mr. Anup Kumar

ORDER

CA-175(PB)/2019

This is an application filed under Rule 11 of the NCLT Rules, 2016 with a prayer to dispose of C.P. No. (IB)-1100(PB)/2018 and direct the closure of Corporate Insolvency Resolution Process against the corporate debtor. It is pertinent to mention that vide order dated 17.01.2010, this Tribunal admitted company petition No. (IB)-1100(PB)/2018 and had initiated the Corporate Insolvency Resolution Process in the matter of Noble Buildtech LLP v. UTC Softech Pvt. Ltd. The application is supported by the affidavit filed by both the parties.

In case of *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.* in Writ Petition (Civil) No. 99 of 2018 passed by Hon'ble Supreme

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Court. Supreme Court has culled out another area whereas Corporate Insolvency Resolution Process could be discontinued on the basis of settlement between the parties. In para 52, it has been held that the National Company Law Tribunal can entertain an application under Rule 11 of NCLT Rules, 2016 on the basis of settlement reached between the parties before the constitution of the Committee of Creditors. Therefore, the necessity of going before the CoC as per of Section 12A of Insolvency & Bankruptcy Code has been obviated. Mr. Anup Kumar, Ld. RP has stated that public notice was issued and 24 claims have been received. Ld. IRP has also stated that the expenses incurred by him have been settled and he has received a sum or Rs. 3,15,000/- after deduction of TDS Rs. 35,000/- from the Corporate Debtor vide UTR No. BDBLR52019020600003767.

Keeping in view the ratio of the judgement rendered in the case of *Swiss Ribbons Pvt.Ltd. & Anr. v. Union of India & Ors.* in Writ Petition (Civil) No. 99 of 2018 particularly in para 52 we find that this application warrants acceptance although the question stares in the face is how the claims filed before the IRP would be dealt with.

Be that as it may. The matter is covered by the observation made by the Hon'ble Supreme Court in para 52 of the judgment in the case of *Swiss Ribbons Pvt. Ltd. & Anr.* (supra) reading 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

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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 17.01.2019 initiating Corporate Insolvency Resolution Process against the Corporate Debtor is closed. It is needless to say that order dated 17.01.2019 need not be given effect to any further. The IRP is also directed to discontinue proceedings.

We hope and trust that the parties will abide by the terms of the settlement and avoid another round of litigation with a prayer for triggering of Corporate Insolvency Resolution 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/-

(PRADEEP R. SETHI)
MEMBER(TECHNICAL)