

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 113 of 2019

IN THE MATTER OF:

Alchemist Infra Ventures Ltd. & Anr.

...Appellants

Vs

Kiran Malhotra & Anr.

....Respondents

Present:

For Appellants: Mr. Anurag Singh, Advocate.

**For Respondents: Mr. Prem Kumar Chugh, Advocate.
Mr. Pramod Goyal, IRP in person.**

ORDER

01.03.2019: The Appellant 'Alchemist Infra Venture Ltd.' a shareholder of 'Alchemist Township India Ltd.' (Corporate Debtor) has challenged the judgment dated 25th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, whereby application under Section 7 of I&B Code preferred by 'Kiran Malhotra' (Financial Creditor) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. Learned counsel appearing on behalf of the Appellant submits that the Committee of Creditors have not been constituted and before the same the parties have reached settlement. Terms of Settlement entered between the parties dated 27th February, 2019 has been filed.

3. Learned counsel appearing on behalf of the Financial Creditor accepts that in terms of settlement reached between the parties, the amount has been paid by way of cheque. Prayer has been made to allow the Respondent (Financial Creditor) to withdraw the application under Section 7 subject to encashment of the cheque.

4. Mr. Pramod Goyal, Interim Resolution Professional has appeared and accepts that Committee of Creditors has not been constituted by the date the settlement has been reached. He has received only one claim that is of Ms. Kiran Malhotra (Financial Creditor). He further states that he has incurred a cost of about Rs.60,000/- and he is entitled for a fee of Rs.2 Lakhs.

5. Having heard learned counsel for the parties and following the decision of the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.**', **Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73)** (at para 52) as we find that the parties have reached settlement prior to constitution of the 'Committee of Creditors', we set aside the impugned order dated 25th January, 2019.

6. In effect, order(s) passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim 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 Respondent under Section 7 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (Company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. 'M/s Alchemist Township India Ltd.' (Corporate Debtor) will pay the fee and cost of Rs.2,60,000/- (Rupees Two Lakh Sixty Thousand Only) in favour of Mr. Pramod Goyal, Interim Resolution Professional, for the period he has functioned, within four weeks.

8. However, we make it clear that the amount payable in favour of Respondent – ‘Kiran Malhotra’ through cheque, if bounce or for one or other reason encashment not allowed, it will be open to Respondent – ‘Kiran Malhotra’ to revive the application under Section 7.

9. The appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc