

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 1135 of 2020

In the matter of:

Sintex Plastics Technology Ltd.

....Appellant

Vs.

Zielen Industries Pvt. Ltd. & Ors.

....Respondents

Present:

Appellant: Mr. Arvind Kumar Gupta, Ms. Henna George, Mr. Arjun Sheth, Advocates.

**Respondents: Mr. Abhishek Mehta, Advocate for R1.
Mr. Keyur Gandhi, Mr. Raheel Patel, Advocate for R2
Mr. Neeraj Kishan Kaul, Senior Advocate with Mr. Vividh, Mr. Deepak Joshi, Mr. Shankh Sen Gupta, Mr. Kaazvin Kapadia, Advocates for Intervenor.**

ORDER

(Through Virtual Mode)

04.01.2021: The only ground on which setting aside of order of admission of application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) by the Respondent No.1- Creditor is sought is that a settlement has been arrived at between the Respondent No.1- Creditor and the Corporate Debtor. It is submitted by learned counsel for the Appellant that after passing of order of admission dated 18th December, 2020 by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court-1, the settlement has been arrived at on 26th December, 2020. It is patently clear that the Settlement is a development which took place after the admission of application under Section 9 of the 'I&B Code' and the fact that settlement had not been reached prior to the date of passing of the order of admission would not render the order of admission in question flawed on that ground alone. It is submitted by learned counsel for the Appellant that the Committee of Creditors ("CoC" for short) has not been constituted so far. Mr. K.V. Gandhi, Advocate representing the Respondent No.2- Interim Resolution Professional (IRP). IRP admits that the COC has not been constituted till date. In view of this factual

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position and keeping in view the dictum of the Hon'ble Apex Court in "**Swiss Ribbons and Ors. V. Union of India & Ors.- MANU/SC/0079/2019**", the Corporate Debtor may avail the opportunity of seeking exit from Corporate Insolvency Resolution Process (CIRP) at the stage of pre-constitution of COC but whether the same takes care of interest of all the stakeholders involved and can be permitted is a decision to be taken by the Adjudicating Authority on the peculiar facts of the case. It would, therefore, be appropriate for the Appellant to approach the Adjudicating Authority to seek exit from CIRP by filing the terms of settlement and the Adjudicating Authority will have to pass the appropriate order.

Since it is submitted by learned counsel for the Appellant that the Adjudicating Authority could not be accessed due to holidays, we deem it appropriate to dispose off this appeal with direction to Appellant to approach the Adjudicating Authority for seeking exit after filing Settlement Terms before it. To enable the Appellant to seek such exit, we direct that the COC shall not be constituted for one week from today. Liberty is granted to the Respondent to oppose such motion if permissible in law.

Copy of this order be communicated to Adjudicating Authority forthwith.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

AR/g