

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 105 of 2020**

**IN THE MATTER OF:**

**Gouri Prasad Goenka**

**...Appellant**

**Vs.**

**Surendra Kumar Agarwal & Anr.**

**...Respondents**

**Present: For Appellant: - present but not marked appearance.**

**For Respondents:- Ms. Shruti Agarwal, Advocate.  
Mr. Pranay, Advocate for IRP**

**O R D E R**

**21.01.2020—** ‘M/s. Tirupati Timber & Packaging Limited’- (‘Operational Creditor’) moved an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) against ‘M/s. Duncans Industries Limited’- (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 18<sup>th</sup> December, 2019 admitted the application.

2. According to learned counsel for the Appellant, the matter was immediately settled with the ‘Operational Creditor’ much prior to the constitution of the ‘Committee of Creditors’ and more than the amount claimed has been paid by two Demand Drafts handed over to the Advocate on record of the ‘Operational Creditor’ on 9<sup>th</sup> January, 2020.

3. The ‘Operational Creditor’ also moved an application for withdrawal under Rule 11 of the NCLAT Rules, 2016 on the same date i.e. on

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9<sup>th</sup> January, 2020, but no order was passed and it was adjourned for 3<sup>rd</sup> March, 2020. The Adjudicating Authority directed the 'Interim Resolution Professional' to constitute the 'Committee of Creditors' within a week. It is submitted that such direction itself made application under Rule 11 infructuous so that the parties cannot settle which is against the decision of the Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018**".

4. Mr. Kshitiz Khera, Advocate submits that he intends to move an application on behalf of Asset Reconstruction Company India Limited, a member of the 'Committee of Creditors'. He is allowed to do so and to state whether its claim is barred by limitation or not.

5. Ms. Shruti Agarwal, Advocate appears on behalf of the 'Operational Creditor' accepts that two Demand Drafts have been handed over to the Advocate on record of the 'Operational Creditor', but has not been handed over for encashment as settlement has not been reached.

6. Mr. Pranay, Advocate appears on behalf of the 'Interim Resolution Professional' accepts that the direction was given by the Adjudicating Authority to constitute the 'Committee of Creditors' on 14<sup>th</sup> January, 2020.

Learned counsel for the Appellant will serve a copy of the paper book on counsel for the parties in course of the day.

7. In the circumstances, we allow two days' time to the Respondents to file their respective reply affidavits along with Vakalatnama and intervention applications.

Post the appeal 'for admission (fresh case)' on 30<sup>th</sup> January, 2020. The appeal may be disposed of at the stage of admission.

In the meantime, the 'Committee of Creditors' will not approve any 'Resolution Plan' though proceed in accordance with law.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

(Justice Anant Bijay Singh)  
Member(Judicial)

Ar/RR