

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

**Company Appeal (AT) (Insolvency)No. 1158 of 2019**

**IN THE MATTER OF:**

**Kaushal Kantilal Salvi**

**.....Appellant**

**Vs.**

**SQM Europe N.V. & Anr.**

**.....Respondents**

**Present :**

**For Appellant:            Mr. Anil Kaushik, Mr. Rajinder Singh, Mr. Shankar,  
   Mr. Naman Garg, Advocates**

**For Respondents:        Mr. Preet Pal Singh, Mr. Rahul Ahuja, Advocates**

**Mrinali Prasad, Advocate**

**O R D E R**

**11.12.2019** - 'SQM Europe N.V. & Anr.' ('Operational Creditor') has moved an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) for initiation of 'Corporate Insolvency Resolution Process' against 'Salvi Chemical Industries Ltd.' ('Corporate Debtor'). The Adjudicating Authority ('National Company Law Tribunal') Mumbai Bench, by impugned order dated 15<sup>th</sup> October, 2019 admitted the application.

On 7<sup>th</sup> November, 2019, when the matter was taken up, the Learned Counsel for the Appellant submitted that the Appellant has already taken steps

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for settlement with the 'Operational Creditor'. It was also informed that 'Committee of Creditors' has not been constituted. In the circumstances, while notice was issued to the 'Interim Resolution Professional', he was asked not to constitute 'Committee of Creditors', if not yet constituted.

The Respondent 'SQM Europe N.V. & Anr.' ('Operational Creditor') and 'Interim Resolution Professional' have appeared. A Settlement Agreement dated 9<sup>th</sup> December, 2019 has been filed, in terms of which, the payment is to be made as per schedule.

Learned Counsel appearing on behalf of 'Interim Resolution Professional' submits that while accepting that the 'Committee of Creditors' was not constituted also stated that the said 'Resolution Professional' has increased the cost and entitled for fee for about two months.

In view of the fact that parties have reached the settlement prior to the constitution of 'Committee of Creditors' and in exercise of powers conferred by Rule 11 of 'NCLT' Rules, 2016, we set aside the impugned order dated 15<sup>th</sup> October, 2019 and allow the application u/s 9 to be withdrawn. The 'Corporate Debtor' is released from the rigour of 'Corporate Insolvency Resolution Process' and subject to compliance of the terms and conditions as made in the said agreement which should be treated to be direction of this Appellate Tribunal. On failure, it will be open to the Respondent

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to ask for initiation of contempt proceedings and also for recall of this order so as to revive the 'Corporate Insolvency Resolution Process'.

So far as fee and cost of 'Interim Resolution Professional' is concerned we assess it at Rs. 4 lakhs to which Learned counsel for 'Interim Resolution Professional' agrees. The Appellant will pay the amount of Rs. 4 lakhs within two weeks by RTGS or Demand Draft.

The Appeal is allowed with aforesaid observations and directions.

[Justice S. J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

[Justice Venugopal M.]  
Member (Judicial)

ss/sk