

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**I. A. No.229 of 2019 in
Company Appeal (AT) (Insolvency) No. 79 of 2019**

IN THE MATTER OF:

Amit Katyal

...Appellant

Vs

Manjula Khullar & Ors.

....Respondents

Present:

For Appellant: Dr. Abhishek Manu Singhvi, Mr. Amit Sibal and Mr. Virender Gnada, Sr. Advocates with Mr. Pulkit Deoria, Ms. Devanshi and Mr. Prashant Katara, Advocates.

For Respondents: Mr. Praveen Kumar Aggarwal, Advocate for R-1 to 3 (Financial Creditors). Mr. Ashok Kumar Juneja and Mr. Akash Srivastava, Advocates for IRP.

O R D E R

04.02.2019: ‘Manjula Khullar and Ors.’ filed application under Section 7 of the I&B Code for initiation of Corporate Insolvency Resolution Process against ‘M/s Krrish Shalimar Projects Pvt. Ltd.’ (Corporate Debtor). The Adjudicating Authority by impugned order dated 16th January, 2019 admitted the application being C. P. No. (IB)-1148(PB)/2018. During the pendency of the aforesaid petition and this appeal and before constitution of Committee of Creditors, Mr. Amit Katyal, Shareholder of the Corporate Debtor reached settlement with the Respondent No. 1, 2 and 3 (Financial Creditors) on 27th January, 2019. Thereafter Appellant filed application for withdrawal of the Insolvency Resolution Proceeding in view of the decision of Hon’ble Supreme Court in ‘*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*’, Writ Petition (Civil) No. 99/2018 dated 25th January, 2019, wherein the Hon’ble Supreme Court observed as follows:

“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 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 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.”

2. In the aforesaid background, the prayer has been made before this Appellate Tribunal to pass appropriate order under Rule 11 of the National

Company Law Appellate Tribunal Rules, 2016 as had been passed in the case of *'Arjun Puri Vs. Kunal Prasad & Ors.'* in *Company Appeal (AT) (Insolvency) No. 52 of 2019*, disposed of on 31st January, 2019.

3. Learned counsel appearing on behalf of the Resolution Professional accepts that no Committee of Creditors was constituted and the parties have reached settlement. This is also accepted by learned counsel for Respondent Nos. 1, 2 and 3 (Financial Creditors).

4. Mr. Rakesh Kumar, learned counsel appears on behalf of one Mr. Jyoti Handa, who is not party to the present appeal. He submits that he also filed application under Section 7 of the I&B Code against the same Corporate Debtor but in view of the admission by impugned order dated 16th January, 2019, the application has been disposed of by order dated 16th January, 2019, which reads as follows:-

“ORDER

In connected matter namely C.P. No. (IB)-1148(PB)/2018, Manjula Khullar & Ors. v. M/s. Krrish Shalimar Projects Pvt. Ltd. we have already initiated the Corporate Insolvency Resolution Process vide order

pronounced today i.e. 16.01.2019. The petitioner may file its claim before the Resolution Professional and the same shall be considered in accordance with law. However, if for any reason the order dated 16.01.2019 passed today in C. P. No. (IB)-1148(PB)/2018, Manjula Khullar & Ors. v. M/s. Krrish Shalimar Projects Pvt. Ltd. is set aside. The parties shall be at liberty to file appropriate application for revival of the petition.

C.P. No. (IB)-113(PB)/2019 stands disposed of.”

4. In the present case, as we find that the parties have reached settlement before constitution of the Committee of Creditors, exercising our power under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we set aside the impugned order dated 16th January, 2019 and thereby dismiss C. P. No. (IB)-1148(PB)/2018 as withdrawn. The parties are directed to abide by the settlement reached on 27th January, 2019, which should be treated as direction of this Appellate Tribunal.

5. In so far as Mr. Jyoti Handa, who claims to be another Financial Creditor is concerned, we are not expressing any opinion in view of the observation made by the Adjudicating Authority (National Company Law Tribunal) Special Bench, New Delhi in C.P. No. (IB)-113(PB)/2019. It will be also open to the Corporate

Debtor to settle the matter with Mr. Jyoti Handa without admission of the application under Section 7 filed by Mr. Jyoti Handa. If it is revived, in case of non-settlement, the Adjudicating Authority may pass appropriate order in accordance with law uninfluenced by the order passed by the Appellate Authority.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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