

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 544 of 2019

IN THE MATTER OF:

Mr. Ashish Choudhery

...Appellant

Versus

M/s. Unipik Automation Solutions & Anr.

...Respondents

Present:

For Appellant:

Mr. Nikhil Gupta and Mr. Sumit K. Batra, Advocates

For Respondents:

**Mr. Hitesh Malhotra, Managing Partner of R-1
Mr. Ravi Bansal, IRP**

ORDER

10.06.2019 The Respondent – ‘M/s. Unipik Automation Solutions’ filed an application u/s 9 of the ‘Insolvency and Bankruptcy Code, 2016 (for short, ‘the **I&B Code**’) against ‘Choudhery Cheese Bazar Pvt. Ltd.’ (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 23rd April, 2019 having admitted the application u/s 9 of the ‘I&B Code’, the present appeal has been preferred by ‘Mr. Ashish Choudhery’ a shareholder of M/s. Choudhery Cheese Bazar Pvt. Ltd.’

2. On 21st May, 2019, the learned counsel for the Appellant submitted that the Appellant intends to settle the matter with the Respondent and the ‘Committee of Creditors’ have not yet been constituted. Today, it is informed that the Appellant has settled the matter with the 1st Respondent – ‘M/s. Unipik Automation Solutions’ which has received the demand drafts of Rs. 75,502/-

dated 17th May, 2019; Rs. 3,000/- on 23rd May, 2019 and Rs. 1,32,600/- on 17th May, 2019. It is also intimated that a sum of Rs. 2,00,000/- was paid by Respondent No. 1 (Operational Creditor) to the 'Interim Resolution Professional' which has also been paid back by Respondent No. 1 by Demand Draft dated 23rd May, 2019.

3. Mr. Hitesh Malhotra, Managing Partner of 'M/s. Unipik Automation Solutions' appears in person and submits that the 1st Respondent has already received the amounts by Demand Draft.

4. Mr. Ravi Bansal, 'Interim Resolution Professional' appears in person and submits that he has incurred a cost of Rs.1,13,000/- towards expenses and also entitled to receive the fee for a period of one and a half month (45 days). He also informed that the 'Committee of Creditors' have not yet been constituted.

5. Taking into consideration the aforesaid fact that the parties have settled the matter prior to the constitution of the 'Committee of Creditors' and in view of the decision of the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. & Anr**', - '2019 SCC Online SC73' and in exercise of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we set aside the impugned order dated 23rd April, 2019 and allow the respondent (Operational Creditor) to withdraw the application under Section 9 of the I&B Code. The Adjudicating Authority will close the proceedings. So far as the fee and

resolution cost of the 'Interim Resolution Professional' is concerned, the 'Resolution Professional' will be entitled for a fee of Rs. 1,50,000 towards professional fee and a sum of Rs. 1,13,000/- cost incurred by him i.e. total Rs.2,63,000/-. As he has already received Rs. 2,00,000/-, rest of Rs. 63,000/- amount will be paid by the Corporate Debtor within 15 days, failing which it will be open to the 'Resolution Professional' to move before this Appellate Tribunal for initiation of contempt proceedings against the Appellant

In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhyaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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