

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins) No. 138 of 2019

IN THE MATTER OF:

MMTC Ltd.

....Appellant

Vs.

Sai Sulphonates Pvt. Ltd. & Anr.

....Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. R.M. Patnaik, Mr. Dhananjaya Mishra, Mr. Amit Patnaik and Mr. Arnav Dash, Advocates

**For Respondents: Mr. Kedarnath Tripathy, Advocate for R-1.
Mr. Venket Rao and Mr. Satya Prakash Singh,
Advocates for IRP.**

ORDER

07.03.2019: Learned counsel for the appellant submits that Corporate Debtor – ‘M/s Neelachal Ispat Nigam Ltd.’, a Government of Orissa undertaking. Parties have already reached settlement and entire amount has already been paid during the pendency of the application under Section 9 of the Insolvency and Bankruptcy Code, 2016. The entire principal amount was paid on 23rd August, 2018 and the parties settled the claim relating to interest on 08th February, 2019. Counsel for the appellant further submitted that the Committee of Creditors had not constituted by the time settlement was reached.

2. Learned counsel appearing on behalf of ‘M/s Sai Sulphonates Pvt. Ltd.’ (Operational Creditor) accepts that the parties have settled the matter finally on 08.02.2019. Mr. Satya Prakash Singh, Advocate appearing on behalf of Resolution Professional accepts that the Committee of Creditors was not constituted before 08th February, 2019, when the parties settled the matter.

3. In the case of '**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. - Writ Petition (Civil) No. 99 of 2018 (2019 SCC OnLine SC 73)**', the Hon'ble Supreme Court observed as follows"

" 79. 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."

4. In view of the fact that the parties have now settled the matter prior to the constitution of the 'Committee of Creditors' and the Adjudicating Authority has failed to notice that the principal amount has already been paid and original plea of the 'Corporate Debtor' was that no interest was payable in terms of the Agreement/ Contract, we set aside the impugned order dated 06.02.2019 passed by the Adjudicating Authority and allow the settlement.

5. In effect, order(s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent under Section 9 of the I&B Code' is dismissed as withdrawn. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (Company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

6. Counsel for the Interim Resolution Professional said that the Interim Resolution Professional is entitle for total Rs. 2.5 lakhs towards fees and cost.

7. We, accordingly direct the Corporate debtor to pay sum of Rs. 2.5 lakhs to Mr. Uday Narayan Mishra, Interim Resolution Professional within 3 weeks. The appeal is allowed directions. There shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

sa/gc