

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 21 of 2019

IN THE MATTER OF:

Rahul Singhwal

...Appellant

Versus

M/s. Sarvottam Rolling Mills (P) Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Rajeev Ranjan, Senior Advocate assisted by
Mr. Ramanjit Singh and Mr. Upender Singh,
Advocates**

For Respondent : **Mr. Arjun Sanjay, Advocate
Mr. Rohit Rathi, Advocate for R.P.**

O R D E R

08.02.2019 Respondent - 'M/s. Sarvottam Rolling Mills (P) Ltd.' filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, 'I&B Code') for initiating 'corporate insolvency resolution process' against M/s. Panchsheel Realtech Pvt. Ltd (Corporate Debtor). The application preferred by the Director/Shareholder has been admitted by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 17th December, 2018.

2. Learned counsel appearing on behalf of the appellant submits that there is a 'pre-existing dispute' about supply of material, for which reliance has been placed on copy of the FIR enclosed at page 138. It is also submitted that 'Committee of Creditors' has not been constituted and before that parties have

settled the claim. Reliance has been placed on 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**', wherein 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.”

3. Mr. Arjun Sanjay, learned counsel appearing on behalf of the respondent – ‘M/s. Sarvottam Rolling Mills (P) Ltd. (‘Operational Creditor’) accepts that the parties have settled the matter. Mr. Rohit Rathi, learned counsel appearing on behalf of the ‘Resolution Professional’ also accepts that the ‘Committee of Creditors’ had not been constituted before the parties settled the matter. He further submits that a sum of Rs. 8.37 Lakhs is payable to Mr. Rameshwar Dayal, ‘Resolution Professional’ towards the fee and the cost incurred.

4. Having heard the learned counsel for the parties and taking into consideration that the parties have settled the matter prior to constitution of the ‘Committee of Creditors’ and ‘pre-existing dispute’ as emanating from the FIR enclosed at page 138, we set aside the impugned order dated 17th December, 2018.

5. In effect, order (s) passed by Ld. Adjudicating Authority appointing ‘Resolution Professional’, declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the ‘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 1st Respondent under Section 9 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 2nd Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

6. So far as the fee and cost of 'Resolution Professional' is concerned, we allow Rs. 8.37 lakhs and direct the 'corporate debtor' to pay the amount within two weeks. The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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