

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

**I.A. No. 3533 of 2019**

**IN**

**Company Appeal (AT) (Insolvency) No. 1139 of 2019**

**IN THE MATTER OF:**

**Ashoke Ghosh**

**...Appellant**

**Vs.**

**Ranjan Kumar Sovasaria & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. Abhijeet Sinha, Mr. Vikrant Pachnanda, Ms. Iram Hassan and Mr. Nitin Kumar, Advocates.**

**For Respondents: - Mr. Shyam D. Nandan, Advocate for R-1.**

**Mr. Nipun Katyal, Advocate for R-2.**

**O R D E R**

**11.11.2019—** Respondent- Mr. Ranjan Kumar Sovasaria ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Apeejay Tea Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 18<sup>th</sup> October, 2019 admitted the application giving rise to this appeal.

2. Earlier when the matter was taken up, learned counsel appearing on behalf of the Appellant submitted that there is a pre-existing dispute and Civil Suit pending with regard to the same claims, therefore, application under Section 9 of the 'I&B Code' was not maintainable.

Contd/-.....

3. It was further submitted that the Appellant is ready to settle the matter with the 1<sup>st</sup> Respondent. He further submits that the 'Committee of Creditors' has not been constituted.

4. On such submissions, notice was issued on the Respondents who have appeared. An affidavit enclosing the copy of the 'Terms of Settlement' dated 6<sup>th</sup> November, 2019 (Annexure II B) has been filed.

5. Mr. Shyam D. Nandan, learned counsel appearing on behalf of the 1<sup>st</sup> Respondent- Mr. Ranjan Kumar Sovasaria accepts that they have settled the matter.

6. From the 'Terms of Settlement' also, we find that there is a suit pending with regard to the same claim and parties have agreed to settle the matter.

7. Mr. Nipun Katyal, Advocate appears on behalf of 2<sup>nd</sup> Respondent- 'Interim Resolution Professional'- Mr. Samya Sengupta, also accepts that the 'Committee of Creditors' has not been constituted. He further submits that the fees and cost of the 'Interim Resolution Professional' has also been settled.

8. In view of the fact that there was a pre-existence of dispute and parties have settled the matter before the constitution of the 'Committee of Creditors', we set aside the impugned order dated 18<sup>th</sup> October, 2019.

9. In the result, the 'Corporate Debtor' (company) is released from all the rigours of law and is allowed to function independently through its Board of Directors from immediate effect. The 'Interim Resolution Professional' will hand over the assets and records to the Board of Directors.

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

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Venugopal M)  
Member(Judicial)

(Justice Jarat Kumar Jain)  
Member(Judicial)

Ar/g