

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

**Company Appeal (AT) (Insolvency) No. 564 of 2019**

**IN THE MATTER OF:**

**Dr. Ashish Naithani**

**...Appellant**

**Vs.**

**Anil Matta & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. Mrinal Harshvardhan and Mr. Kartik Sarin, Advocates.**

**For Respondents: - Mr. Dhairya Madan and Mr. shwetank Singh, Advocates.**

**O R D E R**

**24.05.2019—** Having heard learned counsel for the Appellant and being satisfied with the grounds, the delay of 1 day in preferring the appeal is hereby condoned. I.A. No. 1737 of 2019 stands disposed of.

This appeal has been preferred by Dr. Ashish Naithani, Director of 'Primrose Infratech Pvt. Ltd.'- ('Corporate Debtor') against the order dated 8<sup>th</sup> April, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, rejecting the prayer of the Appellant for withdrawal of the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short).

Contd/-.....

2. Learned counsel for the Appellant submitted that the parties having settled with the 'Operational Creditor', the Adjudicating Authority ought to have allowed the Appellant to withdraw the application.

3. It is further submitted that the Appellant was agreed to settle the matter with the rest of the parties also after withdrawal.

4. Reliance has been placed on the decision of the Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— 2019 SCC OnLine SC 73**" wherein the Hon'ble Supreme Court observed and held 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.”*

5. In the present case, learned counsel appearing on behalf of one of the ‘Financial Creditors’ submits that the ‘Committee of Creditors’ was constituted on 4<sup>th</sup> February, 2019. However, this is disputed by learned counsel for the Appellant. According to him, much prior to the constitution of the ‘Committee of Creditors’ the settlement has been reached.

6. In the case of **“Swiss Ribbons Pvt. Ltd.”** (Supra), the Hon’ble Supreme Court has made it clear that 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.

7. In the present case, there is dispute about the date of constitution of the 'Committee of Creditors'. This apart, learned counsel for the Appellant submits that the settlement has been reached. The 'Operational Creditor' filed an application under Section 9 and giving undertaking that after withdrawal he will settle with the other creditors that means who are the other creditors who have filed claim.

8. Further, except the 'Operational Creditor', who has filed application under section 9, no other person asked to withdraw the application and thereby the Director/ Promoter of the 'Corporate Debtor' cannot request for withdrawal.

9. This apart, as we find that the 'Financial Creditor' has already appeared before us, we are also not inclined to exercise inherent power under Rule 11 of the National Company Law Tribunal Rules, 2016 to allow even the Respondent- 'Operational Creditor' to withdraw the application on oral prayer.

The appeal is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Kanthi Narahari)  
Member(Technical)

Ar/g