

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 170 of 2019

IN THE MATTER OF:

Rizwan Ahmad & Anr.

...Appellants

Vs.

M/s. Sojitz India Pvt. Ltd. & Anr.

...Respondents

Present: For Appellants: - Mr. Amit Sibal, Senior Advocate with Ms. Ranjana Roy Gawai and Mr. Parvinder Tanwar, Advocates.

For Respondents: - Mr. Arun Kathpalia, Senior Advocate with Mr. Saket Sukla, Mr. Vasanth Rajasekaran and Ms. Soumya AK., Advocates.

O R D E R

11.03.2019— This appeal has been preferred by the Appellants- Mr. Rizwan Ahmad & Anr., Shareholder and Director of 'M/s. Oren Hydrocarbons Private Limited'- ('Corporate Debtor') against the order dated 12th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, whereby and whereunder, the application preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by 'M/s. Sojitz India Private Limited'- ('Operational Creditor') has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

2. On 22nd February, 2019, when the matter was taken up, following order was passed:

“22.02.2019 According to counsel for the Appellant, the relationship between the parties is not that of ‘Corporate Debtor’ or the ‘Operational Creditor’ but as a business partner. Further, according to him, there is a pre-existing dispute.

Learned counsel further submits that the Appellants are ready to settle the claim with the first Respondent and time should be allowed for such settlement, as the Interim Resolution Professional has not yet constituted the Committee of Creditors’.

Mr. Vasant Rajshekharan, Advocate accepts notice on behalf of 1st Respondent. No further notice need be issued to him. The first Respondent may file reply-affidavit within 7 days. Rejoinder, if any, be filed within 7 days thereof.

Let notice be issued on rest of the Respondent by speed post and by Dasti. Requisite along with process fee, if not filed, be filed by 25th February, 2019. If the appellants provide the e-

mail address of rest of the respondent, let notice be also issued through e-mail.

*Post the case 'for Orders' on **11th March, 2019.***

Until further order, the Interim Resolution professional will not constitute Committee of Creditors, if not constituted, to enable the Appellants to settle the claim with the first Respondent.

However, the Interim Resolution Professional (IRP) will ensure that the company remains going concern and the manufacturing and production of the company do not suffer; payment of wages to the employees/ workmen are made on time and if any material is supplied during corporate resolution process, the payment should be paid to the supplier/ creditor. The Insolvency Resolution Professional will also take aid of (suspended) Board of Directors and the officers and the employees. The Banks having account of the corporate debtor will also cooperate with the Insolvency Resolution Professional to ensure compliance of this order.”

3. Learned counsel appearing on behalf of the Appellants submits that the matter has been settled by agreement dated 8th March, 2019 prior to the constitution of the 'Committee of Creditors'. It is also accepted by the learned counsel appearing on behalf of the Respondent- ('Operational Creditor').

4. The 'Terms of Settlement' of the agreement has been enclosed in terms of which the amount will be paid by the Appellant to the 'Operational Creditor' in terms of clause 1.1 of the settlement agreement, which reads as follows:

*“1.1 OREN hereby undertakes and confirms that it shall, and RA and RK hereby undertake and assure SJI that they shall take all such actions as may be necessary to ensure that OREN pays an amount of INR 24,27,64,004 (“**Settlement Amount**”) to SJI, without any deductions, reductions or set-offs whatsoever, in the respective amounts set out in the second column of the following table (each such amount being referred to as “**Instalment**”) and in the scheduled dates set out against each Instalment in third column of the following (each such amount being referred to as “**Due Date**”):*

S.No.	Instalment (INR)	Due Date
1.	7,00,00,000 (" First Instalment ")	8 April 2019
2.	6,00,00,000 (" Second Instalment ")	8 May 2019 (if such day is not a business day for banks in New Delhi (Business Day) then the next Business Day)
3.	6,00,00,000 (" Third Instalment ")	7 June 2019 (if such day is not a Business Day for banks in New Delhi then the next Business Day)
4.	5,27,64,004 (" Final Instalment ")	8 July 2019 (if such day is not a Business Day for banks in New Delhi then the next Business Day)

5. In the case of **“Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.’, Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73)”**, the Hon’ble Supreme Court observed and held:

“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.”

6. In view of the aforesaid fact, while we are not going into the question of relationship between the ‘Corporate Debtor’ and the Respondents or whether there was a pre-existence of dispute or not, allow the prayer of the Respondents to withdraw the application in view of the agreement reached subject to compliance of the agreement by the Appellants.

7. In the circumstances, while we direct the parties particularly the Appellants to comply with the ‘Terms of Settlement’ dated 8th March, 2019 and pay the amount within the period as mentioned therein, we set aside the impugned order dated 12th February, 2019 passed by the Adjudicating Authority and dispose of the application under Section 9 filed by the ‘Operational Creditor’ as withdrawn.

8. In effect, order (s), passed by the Adjudicating Authority declaring moratorium and action, if any, taken by the 'Interim Resolution Professional' all such orders and actions are set aside. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.

9. The matter is remitted to the Adjudicating Authority for determination of the fee of the 'Interim Resolution Professional'; the 'Corporate Debtor' will pay the same.

10. We make it clear that in case agreement is not complied with in its letter and spirit, it will be open to the Respondents not only to file a petition for contempt for flouting the direction of this Appellate Tribunal, it will also be open to the Respondents to revive the prayer for any proceeding under 'Corporate Insolvency Resolution Process' and request this Appellate Tribunal to recall the order and to dismiss the appeal for non-compliance.

The appeal stands disposed of with aforesaid observations and directions. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g