

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 797 of 2018

IN THE MATTER OF:

Surender Vasudeva & Anr.

...Appellants

Vs.

Crown Realtech Pvt. Ltd. & Anr.

...Respondents

Present: For Appellants: - Mr. Rakesh Kumar and Ms. Chetna Bisht, Advocates.

For Respondents: - Mr. Amit Agarwal, FCS and Mr. Pankaj Agarwal and Mr. Sameer Rastogi, Advocates.

O R D E R

07.03.2019— This appeal has been preferred by the Appellant(s), Directors/ Shareholders of 'M/s. Crown Realtech Private Limited'- ('Corporate Debtor') against the order dated 3rd December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, whereby and whereunder the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) filed by Mr. Puneet Kumar Jindal (HUF) through Karta Mr. Puneet Jindal- ('Financial Creditor') has been admitted; order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

2. On 20th December, 2018, learned counsel appearing on behalf of the Appellants submitted that the parties have settled the claim with

Contd/-.....

the Respondents- allottees of Real Estate. Such provisional settlement was reached on 5th December, 2018 i.e. after completion of hearing of the application but before the impugned order dated 3rd December, 2018 was passed. It is stated that in terms of such provisional settlement, a sum of Rs. 7 lakh was paid on 14th November, 2018 i.e. prior to the impugned order. After the impugned order, the formal settlement has been reached on 5th December, 2018 but much prior to the constitution of the 'Committee of Creditors'.

3. Mr. Sameer Rastogi, Advocate appearing on behalf of the Respondent- Mr. Puneet Kumar Jindal (HUF ('Financial Creditor')) accepts that the parties have settled the claim. He further accepts that the Respondent- 'Financial Creditor' had received the amount prior to the constitution of the 'Committee of Creditors'.

4. Mr. Pankaj Agarwal, learned counsel appearing on behalf of the 'Interim Resolution Professional' submits that the 'Committee of Creditors' has been constituted on 23rd January, 2019 i.e. prior to the information given by the Appellants on 20th December, 2018 that the parties have settled the claim. He further submits that the 'Committee of Creditors' have now moved before the Adjudicating Authority for appointment of the new 'Resolution Professional'.

5. In the present case, as we find that the parties have reached provisional settlement prior to issuance of the impugned order and

finally settled the matter on 5th December, 2018 i.e. prior to the constitution of the 'Committee of Creditors', in the light of the decision of the Hon'ble Supreme Court in **"Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.", Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73)"**, we allow the Respondent to withdraw the application under Section 7. We, accordingly, set aside the impugned order dated 3rd December, 2018 passed in CP (IB) No. 769 of 2018 and disposed of the application under Section 7 filed by the 'Financial Creditor' as withdrawn.

6. In effect, order (s), passed by the Adjudicating Authority 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 set aside. 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.

7. The 'Interim Resolution Professional' submits that he is entitled to receive Rs. 3, 28, 000/- towards the fees and cost of 'Resolution Process'. Out of the same, a sum of Rs. 1,50,000/- has been paid. In

the circumstance, we direct the 'Corporate Debtor' to pay the rest of the amount of Rs. 1, 78, 000/- to Mr. Amit Agarwal, the 'Interim Resolution Professional' within three weeks.

The appeal is allowed with aforesaid observations and directions.

No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Ar/g