

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 352 of 2019

IN THE MATTER OF:

B. Arun Eashwar & Ors.

...Appellants

Versus

**OPG Power Generation Pvt. Ltd.
& Anr.**

...Respondents

Present:

For Appellants : **Mr. Nikhil Nayyar, Senior Advocate with
Ms. Pritha Srikumar Iyer, Advocate**

For Respondent : **Ms. Prerna Bhargava and Ms. Isha Bhalla, Advocates**

O R D E R

03.05.2019 The Appellants – ‘B. Arun Eashwar & Ors.’ (shareholders) of ‘M/s. Balu Spinning Mills Private Limited’ (Corporate Debtor) have filed this appeal against order dated 28th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai admitting the application u/s 9 of the Insolvency and Bankruptcy Code, 2016 (for short, the ‘**I&B Code**’) filed by ‘M/s. OPG Power Generation Private Limited’ (Operational Creditor).

On 12th April, 2019 when the matter was taken up, learned counsel for the Appellant submitted that the parties have settled the matter and the ‘Committee of Creditors’ have not yet been constituted. In the circumstances, the parties were allowed to file the ‘Terms of Settlement’ and the notices were issued to the ‘Operational Creditor’ and the ‘Interim Resolution Professional’.

Pursuant to the notice, Ms. Prerna Bhargava, learned counsel for the respondent – ‘OPG Power Generation Pvt. Ltd.’ (Operational Creditor) and Mr. Ramasamy Shanmugam, Interim Resolution Professional have appeared. It is accepted that before the constitution of ‘Committee of Creditors’, the parties have reached for the settlement on 11th April, 2019, a copy of which has been enclosed as Annexure 1 with the affidavit filed by the Appellant No. 1. In view of the aforesaid statement that the parties have settled the matter prior to the constitution of the ‘Committee of Creditors’ and in view of the decision of the Hon’ble Supreme Court in ‘**Swiss Ribbons Pvt. Ltd. & Anr**’, - ‘2019 SCC Online SC73’ and in exercise of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we set aside the impugned order dated 28th March, 2019 and allow the respondent (Operational Creditor) to withdraw the application under Section 9 of the I&B Code. The Adjudicating Authority will close the proceedings. The ‘Terms of Settlement’ should be treated as a direction of this Appellate Tribunal and should be complied with in its letter and spirit. So far as the fee and resolution cost of the ‘Interim Resolution Professional’ is concerned, the Corporate Debtor will pay the fees of the Interim Resolution Professional within three weeks.

In effect, order (s) passed by Ld. Adjudicating Authority appointing ‘Interim Resolution Professional’, declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the ‘Resolution Professional’ are set aside. The application preferred by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondent Company

is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

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

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc