

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

**Company Appeal (AT) (Insolvency) No. 1501 of 2019**

**IN THE MATTER OF:**

**Dhiraj Prabhu**

**...Appellant**

**Vs.**

**Rajeev Shetty & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. P.V. Dinesh, Mr. Ashwini Kumar Singh and Ms. Sindhu T.P., Advocate.  
Mr. Dhiraj Prabhu, Appellant in person.**

**For Respondents: - Mr. Abhishek Singh, Advocate for Operational Creditor.  
Mr. Gautam Singh, Advocate for IRP.**

**O R D E R**

**07.02.2020—** The Respondent- Mr. Rajeev Shetty was Associate Vice President of 'M/s. Skyline Construction & Housing Pvt. Ltd.' ('Corporate Debtor'). He moved Application under Section 9 of the Insolvency and Bankruptcy Code, 2019 ("I&B Code" for short) in the year 2017, but on objection it was withdrawn. Subsequently, another Application under Section 9 of the 'I&B Code' was filed after Demand Notice under Section 8(1) to the 'Corporate Debtor' which was admitted by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench on 27<sup>th</sup> November, 2019.

Contd/-.....

2. The Appellant- Promoter of 'M/s. Skyline Construction & Housing Pvt. Ltd.' ('Corporate Debtor') preferred the Appeal on the ground that the Application under Section 9 was barred by limitation.

3. On 19<sup>th</sup> December, 2019, when the matter was taken up, learned counsel for the Appellant submitted that 'Leave Travel Allowance' or 'Leave Encashment' or 'Bonus' cannot be claimed as a matter of right by an employee. Therefore, the Respondent- Mr. Rajeev Shetty does not come within the definition of 'Operational Creditor' as defined under Section 5(20) & (21) of the 'I&B Code'. It was further informed that the Application under Section 9 with regard to the claim of 'Leave Travel Allowance' or 'Leave Encashment' or 'Bonus' was barred by limitation.

Notice was issued on the Respondents and as no 'Committee of Creditors' was constituted, this Appellate Tribunal stayed the constitution of the 'Committee of Creditors'.

4. The Appellant instead of pursuing the Appeal on merit wanted to settle the matter with Mr. Rajeev Shetty (Ex- Vice President). As the settlement has not been finalised, we vacated the interim order on 30<sup>th</sup> January, 2020, but subsequently on 5<sup>th</sup> February, 2020, the settlement has been reached. Formal agreement of Settlement was reached in a stamp paper on 6<sup>th</sup> February, 2020.

5. In the meantime, in view of the vacation of the interim order, the 'Committee of Creditors' was formally constituted on 4<sup>th</sup> February, 2020 and was informed on 5<sup>th</sup> February, 2020 to the Adjudicating Authority and by the aforesaid period, the parties have reached settlement.

6. In the light of the decision of the Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— 2019 SCC OnLine SC 73**", this Appellate Tribunal can exercise inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 accepting the settlement and thereby to allow the Respondent to withdraw the application under Section 9 as prayed for, but technically constitution of the 'Committee of Creditors' was intimated on the same date i.e. 5<sup>th</sup> February, 2020, the day the parties reached the settlement.

7. As we find that the parties have been negotiating and almost reached a final settlement and on merit the Appellant has also raised certain issues, taking into consideration that the 'Corporate Debtor' is an Infrastructure Housing Company on which a large number of allottees are dependant and if the 'Corporate Debtor' goes on 'Corporate Insolvency Resolution Process', then it may delay the completion, we in exercise of powers conferred under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 accept the settlement reached between the parties and allow Mr. Rajeev Shetty to withdraw the application under Section 9.

The Appellant is directed to comply with the Terms of Settlement dated 5<sup>th</sup> February, 2020, as recorded in the Indian Non-Judicial paper on 5<sup>th</sup> February, 2020. The Appellant will ensure that the cheques are encashed. On failure, this Appellate Tribunal may initiate Contempt Proceeding against Mr. Dhiraj Prabhu and may also direct to re-initiate the 'Corporate Insolvency Resolution Process'. This order is passed in the presence of Mr. Dhiraj Prabhu, who is present in person. It will also be open to the Appellant to prepone the payment by way of Draft and may take back the post-dated cheques.

8. So far as fees of the 'Interim Resolution Professional' is concerned, we assess fee at Rupees One Lakh per month. He having worked for about 2 ½ months, will be paid a sum of Rs. 2,50,000/- towards fee.

9. So far as the 'Corporate Insolvency Resolution Process Cost' is concerned, as the 'Interim Resolution Professional' has made publication, taken time to constitute the 'Committee of Creditors' by informing them and engaged Lawyers, we assess another sum of Rupees One Lakh for payment towards the 'Corporate Insolvency Resolution Process Cost' in favour of the 'Interim Resolution Professional'. The total cost of Rs.2,50,000/- towards fee plus Rs.1,00,000/- towards the 'Corporate Insolvency Resolution Process Cost' i.e. Rs.3,50,000/- will be paid by Mr. Dhiraj Prabhu/ Corporate Debtor within three weeks.

10. However, if the expenses towards the publication etc. are more, the bill should be forwarded to the Appellant/ 'Corporate Debtor' who will pay the rest.

11. The impugned order dated 27<sup>th</sup> November, 2019 is set aside. The 'Corporate Debtor'- 'M/s. Skyline Construction & Housing Pvt. Ltd.' is released from the rigours of 'Corporate Insolvency Resolution Process'. The 'Interim Resolution Professional' will handover the records and assets of the 'Corporate Debtor' to the Promoters.

The Appeal is allowed with aforesaid observations and directions.

No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

(Shreesha Merla)  
Member(Technical)

Ar/Rr