

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 83 of 2019

IN THE MATTER OF:

Rajeev Anand

...Appellant

Versus

Sapan Mohan Garg (HUF)

...Respondent

Present:

For Appellant : **Mr. Muneesh Malhotra, Mr. Rajat Bhardwaj, Ms. Manpreet Kaur, Advocates along with Ex-Management**

For Respondent 1 : **Ms. Stuti Vatsa, Advocate**

ORDER

30.01.2019 The Appellant has challenged the order dated 2nd January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench admitting the application u/s 7 of Insolvency & Bankruptcy Code (I&B) filed by Respondent-Sapan Mohan Garg (HUF).

Learned Counsel appearing on behalf of the Appellant referring a compromise reached between the parties on 28th December, 2018 submitted that the parties had settled the claim. The application u/s 7 was not maintainable as on the date of admission i.e. 02.01.2019 there was no debt payable in the eye of law or in fact. It is further submitted that the Counsel could not bring the matter of settlement to the notice of the Adjudicating

Authority because of the intervening winter vacations and the order was passed on the reopening date. The Respondent- Sapan Mohan Garg (HUF) (Financial Creditor) has appeared and accepted that they have settled the claim on 28.12.2018 and, therefore, the application as on 02.01.2019 was not maintainable.

'Resolution Professional' Ms. Preeti Jaiswal has appeared in person. She submits that she has incurred cost of Rs. 31,300/- towards publication of announcement and advocacy. This apart she quoted fee of Rs. 5 lacs per month which was approved by the 'Financial Creditor' (first Respondent. She further submits that the Committee of Creditors has not yet been constituted. Thus, we find that her fee and cost cannot be ascertained or approved by the 'Committee of Creditors'. However, it is accepted that she has worked for about 15 days.

Mr. Kapil Santhal, Mr. Hashmat Nabi, Mr. Shubham Goyal and Mr. Manish Khurana, Advocates appeared on behalf of other creditors and wanted to file affidavit stating that they have also filed the claim pursuant to the notice. Mr. Hashmat Nabi, learned Counsel for the Punjab National Bank submitted that the Bank has also filed an application under Insolvency and Bankruptcy Code (I&B) which was adjourned for 5th February, 2019.

The 'Resolution Professional' Ms. Preeti Jaiswal submitted that the bank has not filed any claim before the Resolution Professional in spite of notice to them and in spite of the details of the claim.

The Hon'ble Supreme Court in its judgement dated 25th January, (Swiss case), 2019 observed as under: -

“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 101 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.”

From the aforesaid, it is clear that even before the constitution of the ‘Committee of Creditors’, the party can settle the matter with the ‘Operational Creditor’ or the ‘Financial Creditor’. This apart, we have already noticed that the matter has already been settled between the first Respondent (Financial Creditor)

and the 'Corporate Debtor' on 28.12.2018 and thereby the application u/s 7 was not maintainable on 22.01.2019.

From the record, we find that there was pre-existing dispute. We accordingly hold that the application u/s 7 preferred by the Respondent- Sapan Mohan Garg (HUF) was not maintainable even on this count. We accordingly set aside the impugned order.

In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Sapan Mohan Garg (HUF) Respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

Taking into consideration the cost incurred by the 'Resolution Professional' and that she has worked for about 15 days, we determine her fee at Rs. 2.5 lacs for 15 days and Rs. 32,000/- (rounded off towards cost), the total sum of Rs. 2,82,000/- to be paid by the 'Corporate Debtor' to the 'Resolution Professional' within 30 days. So far as other creditors are concerned we are not expressing any opinion.

The appeal is allowed with aforesaid observation and direction. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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