

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 649 of 2019

IN THE MATTER OF:

Navin Heavy Lifter & Anr. Appellants

Vs

Canbuild Precast Solutions Pvt. Ltd. Respondent

Present:

For Appellants: Mr. Pankat Jain, Advocate for Resolution Professional.

Ms. Kriti Gupta, Advocate for Operational Creditor.

For Respondent:

ORDER

12.07.2019 Navin Heavy Lifter ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as I&B Code) against Canbuild Precast Solutions (India) Pvt. Ltd., which was admitted on 19th April, 2018. In the said case, application under Section 12A read with Regulation 30A of the Corporate Insolvency Resolution Process Regulation 2016 was filed, which was considered by the 'Committee of Creditors', which has approved the plan with 100% voting shares. Thereafter, the matter was placed before the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III along with application of Navin Heavy Lifter ('Operational Creditor') for withdrawal of the application in view of the settlement under Section 12A. The said application was rejected by the Adjudicating Authority by impugned order dated 9th May, 2019 on the ground that the 'Corporate Insolvency Resolution Process' was initiated prior to insertion of Section 12A.

2. Similar issue fell for consideration before the Hon'ble Supreme Court in **Brilliant Alloys Private Limited vs. Mr. S. Rajagopal & Ors. – Special Leave Petition (Civil) No.31557/2018**. In the said case, the Hon'ble Supreme Court by order dated 14th December, 2018 observed and ordered as follows: -

“The only reason why the withdrawal was not allowed, though agreed to by the Corporate Debtor as well as the Financial Creditor State Bank of India and the Operational Creditor-Respondent No.3, is because Regulation 30A states that withdrawal cannot be permitted after issue of invitation for expression of interest.

According to us, this Regulation has to be read along with the main provision Section 12A which contains no such stipulation.

Accordingly, this stipulation can only be construed as directory depending on the facts of each case.

Accordingly, we allow the Settlement that has been entered into and annul the proceedings.

The Special Leave Petition is disposed of accordingly.”

3. The case of the 1st Appellant-‘Operational Creditor’ and 2nd Appellant-‘Resolution Professional’ being covered by the decision of the Hon'ble Supreme Court in **Brilliant Alloys Private Limited** (supra), the impugned order dated 9th May, 2019 is set aside. The application under Section 12A approved with 100% voting share by the ‘Committee of Creditors’ is accepted and the application under Section 10 filed by Navin Heavy Lifter (‘Operational Creditor’) 1st Appellant herein is dismissed as withdrawn.

4. In the result, 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 7 of the I&B Code is disposed of as withdrawn. The Adjudicating Authority will now close the proceeding. The Respondents Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

5. So far as the fee and cost of the 'Resolution Professional' is concerned, the Adjudicating Authority will decide the claim and fee and cost incurred by the 'Resolution Professional', which will be paid by the 'Corporate Debtor' (Canbuild Precast Solutions Pvt. Ltd.) within two weeks from the date of the decision.

6. 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)

Ash/GC