

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

**Company Appeal (AT) (Insolvency) No. 208 of 2019**

**IN THE MATTER OF:**

**Mr. Nalin Virji Shah**

**...Appellant**

**Vs.**

**Mr. Satish Sadashiv Rane & Anr.**

**...Respondents**

**Present: For Appellant: - Mr. Jayant Mehta, Advocate.**

**For Respondents: - Ms. Anjali Sharma, Advocate for R2  
(IRP)**

**Mr. Anuj Mirdha, Advocate for R1.**

**O R D E R**

**07.03.2019—** On 1<sup>st</sup> March, 2019, when the matter was taken up, following order was recorded:

**“01.03.2019** *The appeal has been preferred against the order dated 14<sup>th</sup> February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench admitting the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, ‘the I&B Code’) filed by Mr. Satish Sadashiv Rane.*

*2. Learned counsel appearing on behalf of the appellant while raised the question about the status of the respondent and submitted that the*

Contd/-.....

*respondent do not come within the meaning of 'Financial Creditor'. He further submits that the parties have settled the matter on 28<sup>th</sup> February, 2019. It is also informed that the 'Committee of Creditors' have not been constituted.*

3. *Mr. Tushar Gupta, Advocate appears and accepts notice on behalf of Mr. Satish Sadashiv Rane. He also accepts that no 'Committee of Creditors' have been constituted and the parties have settled the matter.*

4. *In the present case as we find that the appeal has been preferred by the 'Corporate Debtor' which is not maintainable in view of the decision of the Hon'ble Supreme Court in "Innoventive Industries Ltd. v. ICICI Bank" - (2018) 1 SCC 407]. Learned counsel for the appellant sought permission to file application for substitution by one of the Directors/Shareholders of the 'Corporate Debtor' and to transpose 'M/s. Shah Group Builders Limited' through IRP as 2<sup>nd</sup> Respondent."*

2. In the present case, the impugned order was passed on 14<sup>th</sup> February, 2019 by the Adjudicating Authority (National Company Law

Tribunal), Mumbai Bench, Mumbai and the parties have settled the matter on 28<sup>th</sup> February, 2019. Copy of 'Terms of Settlement' has also been brought on record.

3. Learned counsel for the Respondent- Mr. Satish Sadashiv Rane, accepts that part of amount has been paid to the Respondent in terms of schedule of payment as mentioned in the 'Terms of Settlement' dated 28<sup>th</sup> February, 2019.

4. Ms. Anjali Sharma, Advocate appearing on behalf of Mr. Praveen, the 'Interim Resolution Professional' also accepts that the 'Committee of Creditors' was not constituted when the parties reached the settlement.

5. In the aforesaid circumstances and as the parties have settled the matter prior to 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 prayer as made on behalf of the Respondent to withdraw the application as was filed by him under Section 7. We, accordingly, set aside the impugned order dated 14<sup>th</sup> February, 2019 passed in CP (IB)- 556/(MB)/2018 and dispose 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 and action, if any, taken by the 'Interim Resolution

Professional' 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 has incurred total cost of Rs. 4,50,000/- towards the fees and cost of 'Resolution Process'. Out of the same, a sum of Rs. 2,00,000/- has already been paid. In the circumstance, we direct the 'Corporate Debtor' to pay the rest of the amount of Rs. 2,50,000/- to the 'Interim Resolution Professional' within three weeks.

8. It is also informed that for the rest of the amount is payable by post-dated cheques issued by the Appellant. The Appellant and the 1<sup>st</sup> Respondent being bound by the 'Terms of Settlement' will ensure that the post-dated cheques are encashed within time, failing which it will be open to the parties to revive the 'Resolution Process'.

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