

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

**Company Appeal (AT) (Insolvency) No. 127 of 2019**

**IN THE MATTER OF:**

Tapan Basu Roy ..... Appellant

Vs

Blue Star Ltd. & Anr. .... Respondents

**Present:**

**For Appellant: Mr. Ankit Jain, Advocate.**

**For Respondents: Mr. Yashvardhan, Advocate for 1<sup>st</sup> Respondent.**

**Mr. Apoorv Shukla, Advocate for 2<sup>nd</sup> Respondent.**

**O R D E R**

**04.07.2019** Blue Star Limited ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) against M/s Westwind Engineers Private Limited ('Corporate Debtor'), which having admitted on 4<sup>th</sup> December, 2018, the present Appeal has been preferred by Mr. Tapan Basu Roy, Director, M/s Westwind Engineers Private Limited ('Corporate Debtor').

2. Earlier, when the matter was taken up on 2<sup>nd</sup> July, 2019, learned counsel for the parties informed that matter is settled. The submissions made by the parties were recorded as follows: -

*"It is informed that the parties have reached settlement on 26<sup>th</sup> June, 2019 before the constitution of the 'Committee of Creditors'. A copy of the 'Terms of*

*Settlement Agreement' has been produced. Learned counsel for the 1<sup>st</sup> Respondent also accepts that the settlement has been reached before the constitution of the 'Committee of Creditors'. However, we find that 2<sup>nd</sup> Respondent (Resolution Professional) is not present. In the circumstances, we adjourn the matter for appearance of the 'Resolution Professional'. The parties will inform the 'Resolution Professional' for his appearance."*

3. Mr. Apoorv Shukla, learned Counsel appears on behalf of the 'Resolution Professional' and submits that the 'Committee of Creditors' have not yet been constituted. He submits that he has already received two claims. Further, according to him, he incurred cost of about Rs.1,40,000/- and is entitled for a fee for about seven months, which comes to around Rs.2,10,000/-, i.e., total Rs.3,50,000/-.

4. Learned Counsel appearing on behalf of the Appellant submits that 'Corporate Debtor' is ready to pay the cost and fee of the 'Resolution Professional', if the 'Corporate Debtor' is allowed to exit from the 'Resolution Process'.

5. Taking into consideration the facts and circumstances of the case, in exercise of powers conferred under Rule 11 of the NCLAT Rules, 2016, we accept the terms of settlement and set-aside the impugned order dated 4<sup>th</sup> December, 2018.

6. So far as the fee and cost of the 'Resolution Professional' is concerned, the 'Corporate Debtor' will pay a sum of Rs.3.5 lakhs in favour of 'Resolution

Professional' within three weeks, failing which, it will be open to the 'Resolution Professional' to bring the same to the notice of this Appellate Tribunal.

7. 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.

8. 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