

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 100 of 2019

IN THE MATTER OF:

Mr. Sunil Ghorawat

...Appellant

Vs.

M/s. Arvind Envisol Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. R.K Gupta and Mr. Vikas Lekra, Advocates.

**For Respondents: - Mr. Abhijeet Sinha, Mr. Vikrant Singh, Mr. S.N. Samith, Advocates for R-1.
Mr. Krunal Kghatriya, Advocate.**

Mr. Swapnil Gupta and Ms. Ankita Sinha, Advocates.

ORDER

01.03.2019— This appeal has been preferred by Mr. Sunil Ghorawat, Director of 'M/s. Earth Water Limited'- ('Corporate Debtor'), against the order dated 15th January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV). By the impugned order, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 preferred by the Respondent- 'M/s. Arvind Envisol Limited' has been admitted, order of 'Moratorium' has been passed and 'Interim Resolution Professional' has been appointed.

2. Learned counsel appearing on behalf of the Appellant submits that the impugned order was passed *ex parte* without giving any notice to the

‘Corporate Debtor’. However, the same has been controverted by learned counsel appearing on behalf of Respondent- ‘M/s. Arvind Envisol Limited’.

3. Learned counsel for the Appellant next contended that the ‘Committee of Creditors’ have not yet been constituted and in the meantime, the parties have reached settlement. Two drafts for Rs. 52,23,500/- and Rs. 10,18,583/- both dated 8th February, 2019 issued by the Union Bank of India, Sushant Lok, in the name of ‘Arvind Envisol Ltd.’ are being handed over to Mr. Kunal, the authorised representative of ‘M/s. Arvind Envisol Limited’.

4. Learned counsel appearing on behalf of the Respondent and Mr. Mukesh Kumar Grover, the ‘Resolution Professional’, accept that the ‘Committee of Creditors’ have not been constituted. Mr. Mukesh Grover, ‘Resolution Professional’ further submits that he has already incurred cost of Rs. 35,000/- towards its ‘Corporate Insolvency Resolution Process’ and he is entitled for fee of Rs. 2,00,000/- i.e. total Rs. 2,35,000/-.

5. Having heard learned counsel for the parties and following the decision of the Hon’ble Supreme Court in **“Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.— 2019 SCC OnLine SC 73”** (at para 52) as we find that the parties have reached settlement prior to constitution of the ‘Committee of Creditors’, we set aside the impugned order dated 15th January, 2019.

6. In effect, order (s), passed by the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim 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 Respondent under Section 9 of the I&B Code, 2016 is dismissed as withdrawn. 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. 'M/s. Earth Water Limited'- ('Corporate Debtor'), will pay the fee and cost of Rs. 2,35,000/- in favour of the 'Interim Resolution Professional'- Mr. Mukesh Grover, within four weeks. The appeal is allowed with aforesaid observation. 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)

Ar/g