

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 975 of 2019

IN THE MATTER OF:

Vikram B. Sanghvi

...Appellant

Vs

Bank of Baroda & Anr.

....Respondents

Present:

For Appellant: Mr. Rajiv Ranjan, Sr. Adovcate with Mr. Rajendra Beniwal, Ms. Sonal Kumar Singh, Mr. Kumar Sumit, Mr. Chirag Gupta, Mr. Ashutosh Hagar and Ms. Bano Deshwal, Advocates.

For Respondents: Mr. Arun Khatri, Mr. Amit Knnor and Mr. Sushant Chauhan, Advocates for R-1.

Mr. Milind Garg, Advocate for R-2.

ORDER

02.12.2019: 'Bank of Baroda' (Financial Creditor filed application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s Sanghvi Forging & Engineering Limited' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, by impugned order dated 30th August, 2019 admitted the application giving rise to the present appeal.

2. Earlier when the matter was taken up, learned counsel appearing on behalf of 'Vikram B. Sanghvi' submitted that the Committee of Creditors was not constituted and the Appellant is ready to reach settlement with the Bank of Baroda and therefore requested to issue limited notice on Respondents to enable the Appellate Tribunal to exercise its inherent powers under Rule 11 of

the NCLAT Rules, 2016. Notice was issued on Respondents and by interim order dated 20th September, 2019, Interim Resolution Professional was while allowed to function to ensure that the company remains a going concern, passed interim order directing the Interim Resolution Professional to not to make any publication calling for claims, if not yet published and not to constitute Committee of Creditors, if not yet constituted.

3. Learned counsel for the Appellant submits that the Appellant has reached One Time Settlement with Bank of Baroda and State Bank of India (Consortium of Banks) and produced the Terms of Settlement. From the additional affidavit filed on behalf of Bank of Baroda, it appears that the Banks have agreed for One Time Settlement in terms of settlement dated 26th September, 2019. However, as the Appellant was facing issues with vendors, customers and employees and shown its inability to pay total amount within specified period, it modified one of the condition of payment in the Terms of Settlement dated 26th September, 2019 and as approved by Recovery Department, Mumbai, Bank of Baroda Terms dated 21st November, 2019, relevant of which reads as follows:-

<i>Existing Condition</i>	<i>Modified Condition</i>
<i>NCLT withdrawal application will be moved only after receipt of the remaining balance in No Lien Account with SBI.</i>	<i>NCLT withdrawal application will be moved after receipt of the 10% of OTS amount i.e. Rs.7.5 crores in No Lien Account with SBI.</i>

4. It is also accepted by Mr. Amit Kumar learned counsel for Bank of Baroda.

5. Mr. Milind Garg, learned counsel for the Interim Resolution Professional submits that no publication was made by the time the interim order was passed by this Appellate Tribunal and Committee of Creditors has been constituted. As we find that the One Time Settlement will come into effect on 31st December, 2019, we are not passing any order in terms of Rule 11 of the NCLAT Rules, 2016. However, in the interest of the Corporate Debtor, Financial Creditors, Employees and other lenders, we are passing the following order:-

The interim order passed by this Appellate Tribunal on 20th September, 2019, so far it relates to direction to Interim Resolution Professional, read to the extent quoted below:-

“Until further orders, the ‘Interim Resolution Professional’ will not make any publication, calling for claims, if not yet published and will not constitute ‘Committee of Creditors’, if not yet constituted.”

shall stand vacated from 4th January, 2020, if the amount in terms of the amended Terms of Settlement is not paid by 31st December, 2019. If the Appellant pays the amount by 31st December, 2019 in terms of the settlement dated 26th September, 2019 as modified on 21st November, 2019, the Applicant – ‘Bank of Baroda’ may move application before the Adjudicating Authority (National Company Law Tribunal) Ahmedabad Bench for withdrawal of application under Section 7 and the Adjudicating Authority will pass appropriate order exercising its inherent power under Rule 11 of the NCLT Rules, 2016, in terms of decision of Hon’ble Supreme Court in ‘*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*’, Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73. It will also determine the issue relating to payment of dues to the Interim Resolution Professional, who is to continue till final order is passed by the Adjudicating Authority and will ensure that the Corporate Debtor remains a going concern.

However, we make it clear that if the amount is not paid in terms of the Terms of Settlement dated 26th September, 2019 as modified on 21st November, 2019, the interim order shall stand vacated. The Interim Resolution Professional will make publication in the Newspaper and constitute the Committee of Creditors after collating the claims.

6. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

am/sk