

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal(AT)(Insolvency) No. 59 of 2019

IN THE MATTER OF:

Mr. S. Venkatasubramaniam

...Appellant

Vs

Ms. Anitha Kumar & Anr.

....Respondents

Present:

For Appellant: Ms. Anannya Ghosh, Advocates

For Respondents: Mr. Arun Mohan, Mr. K.V. Balakrishnan and Ms. Prashanti, Advocates.

ORDER

11.02.2019 Mr. Anita Kumaran and Mr. K. Kumaran (“Financial Creditors”) have filed an application under Section 7 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) for initiation of ‘Corporate Insolvency Resolution Process’ against M/s K.G.S. Developers Ltd (‘Corporate Debtor’). The application having admitted on 3rd January, 2019, Mr. Venkatasubramaniam, one of the Directors (Appellant herein) has preferred this Appeal against the said order.

2. Earlier when the matter was take up, this Appellate Tribunal noticed the submissions made on behalf of the Appellant that the Respondent Nos. 1 & 2 do not come within the meaning of “Financial Creditor”. Subsequently, on 8th February, 2019 when Respondent Nos. 1 & 2 appeared, learned Counsels for both the parties submitted that they have already settled the claims and ‘Terms of Settlement’ will be brought on record on the next date.

Today, an Interlocutory Application has been filed in the Court stating that the 'Terms of Settlement' has been reached on 7th February, 2019. A copy of 'Terms of Settlement' dated 7th February, 2019 has also been filed. The office is directed to keep Interlocutory Application and 'Terms of Settlement' in the records of file.

3. Learned Counsel appearing on behalf of the Appellant submits that before the constitution of Committee of Creditors, settlement has been reached. It is also accepted by the learned Counsel appearing on behalf of Respondent Nos. 1 & 2. It is stated that Interim Resolution Professional, though appointed, has not taken any step for constitution of Committee of Creditors.

4. In view of the fact that the parties have settled the matter by settlement, Memorandum of Compromise dated 7th February, 2019 has been signed prior to the constitution of Committee of Creditors and in view of the decision of the Hon'ble Supreme Court in "**Swiss Ribbons Pvt. Ltd & Anr. Vs. Union of India & Ors**" in Writ Petition(C) No. 99 of 2018 at paragraph 52 therein, we allow the settlement and set aside the impugned order dated 3rd January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, Chennai in CP/678/IB/2018.

5. In effect, order passed by the Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, taken by the 'Interim Resolution Professional', including the advertisement, if any, 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. 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.

6. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', if appointed, and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned as per the decision of the Committee of Creditors after adjusting the amount already paid, if any.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/Gc