

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

I.A. No. 3435 of 2019

IN

Company Appeal (AT) (Insolvency) No. 1145 of 2019

IN THE MATTER OF:

Jitendra Jain

...Appellant

Vs.

Nuvoco Vistas Corporation Ltd. & Anr.

...Respondents

**Present: For Appellant: - Mr. Rahul Chitnis, Ms, Mitali Gupta,
Mr. Nitin Mishra, Advocates.**

**For Respondents: - Mr. Jayesh Desai and Mr. Aaditya A.
Pande, Advocate for R.P.**

Mr. Gaurav Bahl, Advocate for R-1.

Mr. Rajive R. Raj, Advocate.

O R D E R

19.11.2019— The Respondent- 'Nuvoco Vistas Corporation Limited'- ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'Neev Infrastructure Private Limited'- ('Corporate Debtor'). The application was admitted by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai on 23rd September, 2019. After admission of the application but before constitution of the 'Committee of Creditors', the parties reached settlement on 1st October, 2019.

Contd/-.....

2. It was brought to the notice of the Adjudicating Authority with prayer to allow the Applicant- ('Operational Creditor') to withdraw the application under Section 9. However, the Adjudicating Authority dismissed the Miscellaneous Application which was preferred by the parties as withdrawn.

3. Learned counsel for the Appellant submits that the Miscellaneous Application was filed through the 'Interim Resolution Professional' in view of the settlement reached by the parties. However, the 'Interim Resolution Professional' for reasons best known to him has withdrawn the same and the Adjudicating Authority by impugned order dated 23rd September, 2019 has not recorded the reasons for withdrawal.

4. Learned counsel for the Appellant relied on the decision of the Hon'ble Supreme Court in **"Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018"** to suggest that the Adjudicating Authority had inherent power under Rule 11 of the NCLT Rules, 2016 to allow the 'Operational Creditor' to withdraw the application under Section 9.

5. Mr. Gaurav Bahl, learned counsel appears on behalf of the Respondent- 'Nuvoco Vistas Corporation Limited'- ('Operational Creditor')

also agreed that the 'Terms of Settlement' was reached on 1st October, 2019 and for the said reason application was moved for withdrawal of the application under Section 9.

6. Mr. Jayesh Desai, learned counsel appearing on behalf of the 'Interim Resolution Professional' accepts that the 'Committee of Creditors' was constituted much after the settlement and application filed for withdrawal of the application. However, no reply has been given as to why Miscellaneous Application for withdrawal of the application was filed by the 'Interim Resolution Professional'.

7. From the record we find that non-judicial stamp paper was purchased by the parties on 23rd August, 2019 i.e. prior to the admission of the application under Section 9 and the parties reached settlement agreement on 1st October, 2019. Therefore, we find that there was a genuine step taken by the parties to settle the claim.

8. It is informed that the Appellant has already paid the amount in favour of the 'Operational Creditor' in terms of the Settlement.

9. Taking into consideration the fact that the 'Interim Resolution Professional' has performed the duty for more than 2 months and has incurred certain cost, we assess fee at Rupees Three Lakhs which

Appellant has agreed to pay in favour of Mr. Arun Kumar Gupta, the 'Interim Resolution Professional'.

10. In view of the aforesaid development and in exercise of powers conferred under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we accept the 'Terms of Settlement' and set aside the 'Corporate Insolvency Resolution Process' and allow the application filed by the 'Operational Creditor' for withdrawal of application under Section 9. The Adjudicating Authority will now close the proceeding. The 'Interim Resolution Professional' on receipt of fee will immediately hand over the records and assets of the 'Corporate Debtor' to the management of the 'Corporate Debtor'. The 'Corporate Debtor' (company) is released from all the rigours of Law and is allowed to function independently through its Board of Directors from immediate effect.

The Appeal is allowed with aforesaid observations and directions. 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)

(Justice Venugopal M)
Member(Judicial)

Ar/g