

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

**Company Appeal (AT) (Insolvency) No. 572 of 2019**

**IN THE MATTER OF:**

Rajan Gupta ..... Appellant

Vs

Ashok Kumar Sharma & Anr. .... Respondents

**Present:**

**For Appellant: Ms. Anjali Jain, Advocate.**

**For Respondent: Mr. Sagar Aggarwal, Advocate for Respondent No.1.**

**Ms. Divyagattani, Advocate with Mr. Vivek Raheja, Respondent No.2.**

**ORDER**

**30.05.2019** This Appeal has been preferred by Rajan Gupta, Director/ Shareholder of Bhola Baba EXIM Pvt. Ltd. against order dated 16<sup>th</sup> May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench admitting application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) filed by Respondent-Ashok Kumar Sharma, Proprietor, Alloysmin Industries.

2. On 27<sup>th</sup> May, 2019, when the matter was taken up, learned Counsel for the Appellant submitted that the parties have reached settlement on 22<sup>nd</sup> May, 2019 and enclosed the Settlement Agreement at Page-50. A Draft of Rs.13,22,927/- in terms of such settlement was also brought and it was informed that the 'Committee of Creditors' has not been constituted. We

adjourned the matter allowing the Counsel for the Respondent ('Operational Creditor') to file affidavit and to inform the 'Interim Resolution Professional'.

3. Pursuant to earlier order an affidavit has been filed by 1<sup>st</sup> Respondent ('Operational Creditor') admitting that the parties reached settlement on 22<sup>nd</sup> May, 2019, that was prior to the constitution of the 'Committee of Creditors'. Mr. Vivek Raheja, 'Interim Resolution Professional' along with Ms. Divyagattani, Advocate has appeared. It is accepted that the 'Committee of Creditors' has not yet been constituted. It is informed that the 'Interim Resolution Professional' has already performed duty for more than 10 days and incurred cost of Rs.12,000/-.

4. Taking into consideration the facts and circumstances of the case, we allow the settlement.

5. Learned Counsel for the Appellant has handed over a draft of Punjab National Bank, Vazirpur (Ashok Vihar) Delhi Branch, bearing No.365883 dated 22<sup>nd</sup> May, 2019 for a sum of Rs.13,22,927/- issued in the name of Alloysmin Industries to Counsel for the Respondent for onward transmission to 'Operational Creditor'.

6. In the facts and circumstances, we assess the fee and cost of the 'Interim Resolution Professional' at Rs.1,22,000/-. The Appellant will hand over a cheque to the 'Interim Resolution Professional' in the course of the day.

7. In view of the aforesaid development, we set-aside the impugned order dated 16<sup>th</sup> May, 2019 and allow Respondent No.1 to withdraw the application

under Section 9, which stands disposed of as withdrawn. The Adjudicating Authority will close the proceedings.

8. In effect, order(s), 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, if any, 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 appellant '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.

9. The appeal is allowed with aforesaid observations. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice A.I.S. Cheema]  
Member (Judicial)

[Kanthi Narahari]  
Member (Technical)

Ash/GC