

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 101
(IB)-1343(PB)/2019

IN THE MATTER OF:

Prop. R.S Infratech Applicant/petitioner
Vs.
Tulsiani Construction and Developers Pvt. Ltd. Respondent

Order under Section 9 of Insolvency & Bankruptcy Code, 2016

Order delivered on 11.09.2019

Coram:

CHIEF JUSTICE (RTD.) M. M. KUMAR
HON'BLE PRESIDENT

SH. S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner: -

For the Respondent(s): Mr. Gaurav Mitra & Mr. Simran Jyot Singh, Advs.

ORDER

Ld. Counsel for the corporate debtor has stated that in some of the matter settlement has been reached and in others there is no settlement. According to the observations made by the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. v. Union Bank of India & Ors.* (Civil Appeal No. 99/2018 decided on 25.01.2019), the Corporate Insolvency Resolution Process is a collective process and in essence is a process in *rem*. Any individual settlement leaving the rest of the other financial creditors before the Tribunal would not be appreciable as such a settlement may fall within the provisions of preferential transaction. Even the order passed by the Court which amounts to preferential transaction would be avoidable as per the proviso to Section 43(3). Aforesaid proviso specifies that any transfer made in pursuance of an order of a Court



shall not preclude such transfer to be deemed as giving of preference by the Corporate Debtor. In essence no individualistic transaction can be entered into by the Corporate Debtor to prefer one creditor over the other and the claims of all the Financial Creditors/Operational Creditors have to be satisfied to invoke the provisions of Rule 11 of NCLT Rules which give inherent power to the Tribunal to accept any settlement as is observed in the judgment rendered in the case of in the case of *Swiss Ribbons Pvt. Ltd. & Anr. v. Union Bank of India & Ors.* (Civil Appeal No. 99/2018 decided on 25.01.2019).

On 21.08.2019 we had granted time in this group of cases to the Corporate Debtor to file a joint reply keeping in view the judgement of the Hon'ble Supreme Court in the case of *Pioneer Urban Land & Infrastructure Pvt. Ltd. v. Union of India* decided on 09.08.2019. However, no reply has been filed as yet. We give one last opportunity to file reply within a week failing which it will be deemed that no reply is necessary and the arguments shall proceed on merit. No further opportunity shall be granted.

List for arguments on 23.09.2019.



(M.M. KUMAR)
PRESIDENT



(S.K MOHAPATRA)
MEMBER (TECHNICAL)