

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 110
(IB)-294(PB)/2023

IN THE MATTER OF:

Swiss Promotion Private Limited Petitioner/Applicant
Vs.	
Johnson Watch Company Private Limited Respondent

Order u/S. 9 of the Insolvency & Bankruptcy Code, 2016 (CIRP)

Order delivered on 03.06.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

HYBRID HEARING (PHYSICAL & VC)

PRESENT:

For the RP : Adv. Sanjeev Panda and Adv. Sumit Shukla

ORDER

New IA-2850/2024

This is the Progress Report filed by the RP and the same is taken on record subject to just exceptions. Registry is hereby directed to put this report before the Bench at the time of final disposal.

IA-2850/2024 stands disposed of.

New IA-2830/2024

- 1.** This application has been filed by the RP for exclusion of period of 95 days in the CIRP Process. The prayer in this application is as follows:
 - (a) *Pass an order excluding a period of 95-day period between 26.01.2024 to 30.04.2024 from the CIRP of Johnson Watch Company Private Limited for reasons stated in the application; and;*
 - (b) *Pass any such and further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case*
- 2.** Mr. Sumit Shukla, Ld. Counsel for the RP appeared through VC and relied upon Para- 10 to 14 of the application, which read as follows:

10. *Following the filing of the application, the Applicant received an email dated 05.02.2024 from the Operational Creditor. In this communication, the Operational Creditor stated that the list originally attached with the Settlement agreement dated 23.01.2024 was 'inadvertently' attached incorrectly. Subsequently, the Applicant was in receipt of an email communication dated 08.02.2024 from the Operational Creditor wherein the Operational Creditor shared an affidavit dated 07.02.2024 of a shareholder Mr. Manish Madan with the Applicant which inter alia stated that details of the pledged goods were inadvertently wrongly mentioned in the Settlement Agreement.*
11. *Further, the Applicant received an email communication dated 13.02.2024 from the Operational Creditor, in which the Operational Creditor provided an addendum dated 12.02.2024 to the Settlement Agreement dated 23.01.2024, which was executed between the Corporate Debtor through its shareholder and the Operational Creditor. According to the addendum as executed, the Operational Creditor has received a sum of Rs. 1,07,03,727 (One Crore Seven Lakhs Three Thousand Seven Hundred and Twenty-Seven only) as of the current date from Mr. Anil, a shareholder of the Corporate Debtor. Additionally, in terms of the said email communication, the Operational Creditor stated that the security provided with the Settlement Agreement is null and void given the receipt of the payments.*
12. *Subsequently, the Applicant also filed an application bearing I.A. 738/2024 before Hon'ble NCLT seeking directions regarding formation of the committee of creditors in CIRP of the Corporate Debtor given the circumstances. Also, Operational Creditor filed an application under Rule 11 of the NCLT, 2016 for the withdrawal of CIRP in terms of the settlement agreement dated 23.01.2024 (I.A. 790/2024).*
13. *The Applicant received an email dated 24.04.2024, from the Operational Creditor, which stated that due to the Respondents' failure to adhere to the terms of the Settlement Agreement, the settlement had failed between the parties. Accordingly, after apprising this Hon'ble Tribunal on 30.04.2024, this Hon'ble Tribunal, by order dated 30.04.2024, allowed the withdrawal of Interlocutory Application (IBC)/518/2024 and I.A. 790/2024. In the same order dated 30.04.2024, this Hon'ble Tribunal adjudicated I.A. 738/2024 and directed the Applicant to proceed in*

accordance with the law in the CIRP of the Corporate Debtor. A copy of order dated 30.04.2024 passed by this Hon'ble Tribunal is marked and annexed as ANNEXURE 1.

14. The agenda for the exclusion of period for the time spent on litigation due to the settlement between the Operational Creditor and the suspended management was held with the Committee of Creditors in the 1st CoC meeting held on 13.05.2024 wherein, the following can be noted from minutes of the 1st CoC Meeting:

“...The Chairman also updated the members of Committee of Creditors that, the IRP is of the opinion to file an application before Hon'ble NCLT for taking exclusion of period from date of filing Application under section 12A of IBC, 2016 to date of disposal of Application under section 12A of IB Code, 2016. It was deliberated that the present item does not require any voting from the members; therefore, the said item shall not be put up for voting. The members of Committee of Creditors took note of the same.”

A copy of the minutes of the 1st CoC Meeting dated 13.05.2024 is marked and annexed as ANNEXURE -2.

3. In view of the submissions made by the Ld. Counsel for the RP and for the reasons mentioned above, we are inclined to grant the exclusion of 95 days in the CIRP process as prayed in the application.
4. With this, the present **IA-2830/2024** stands **allowed** and **disposed of**.

New IA-2874/2024

Mr. Sumit Shukla, Ld. Counsel for the RP/Applicant in this IA appeared through VC.

Notice of this application be issued to the Respondent(s)/Non-applicant(s) returnable by 01.07.2024.

List the matter **on 01.07.2024**.

Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-
(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)

Shubham Pandya – 03.06.2024