

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 428 of 2022

IN THE MATTER OF:

**Santasha Real Estate Pvt. Ltd.
Through Its Authorized Representative
/One of its Director**

...Appellant

Vs.

Vani Advertising & Anr.

...Respondent

Present:

**For Appellant : Mr. Prince Jain and Mr. Siddharth Jangid,
Advocates**

For Respondents : Mr. Gunajan Mittal, IRP/R2

O R D E R
(Virtual Mode)

22.07.2022 : Heard Learned counsel for the parties.

Learned counsel for the Appellant submits that a settlement has been arrived at vide 'Settlement Agreement' dated 13.05.2022 between the Appellant-Santasha Real Estate Pvt Ltd through one its 'Director' 'Mr. Mohit Gupta' and the Respondent No.1- M/s. Vani Adverstising through 'sole proprietor' 'Mr. Vinay Kumar'.

As per I.A No. 2348 of 2022 vide Clause No.6 (C) the parties have agreed to settle their dispute at full and final payment of Rs. 20 Lakhs appearing at page 14 of the above IA.

The 'Settlement Agreement' vide clause 12 provides as follows towards payments of the claim and expenses of 'Interim Resolution Professional' (IRP):

“Clause 12- That it has been also agreed between the parties that the first party will bear the claim and expense of IRP to the tune of Rs. 25,000/- directly payable to the IRP. Any amount due towards the IRP over and above Rs. 25,000/- shall be paid by the second party directly to the IRP.”

It has been brought to our notice by the Ld counsel for the Appellant that the Appellant has paid the entire sum of Rs. 20 Lakhs to the Operational Creditor / Respondent No.1 within prescribed time, however the Respondent No.1 is not complying with the terms of settlement and is not taking necessary action for filing a withdrawal application through the IRP.

The IRP/ Respondent No.2 has also confirmed the same that they have not yet received the necessary application from the Operational Creditor/R1 to progress the matter for withdrawal of application as also their fees are still due.

Ld. Counsel for the Respondent No.1 didn't controvert with the submissions.

Section 12A of the I&B Code r/w Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 provides for the provisions and mechanism for the withdrawal of application and the same are reproduced below for ease of convenience:

“Section 12A- Withdrawal of application admitted under section 7, 9 or 10.

12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.”

Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016:

“30 A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under

regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of subregulation (1);
or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under subregulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.]”

Accordingly, after hearing the parties, we observe it prudent to remand back the matter to the Adjudicating Authority for taking necessary action for withdrawal of application in accordance with the provision of law as it also involves the determination and payment of fees to IRP. It is also a settled law that provision of the Code is not to be used as a means for chasing of payments *(The Hon’ble Supreme Court in Civil Appeal No.9597 of 2018, Transmission Corporation of Andhra Pradesh limited Vs. Equipment Conductors and Cables Limited - para 15)*. The object of the Code is to improve ease of doing business.

Hence, we are remanding back the matter to the Adjudicating Authority to dispose of the case within a period of eight weeks and till then the order passed by this Tribunal dated 21.04.2022 will remain in force.

With these observations and directions, IA No. 2348 of 2022 & CA(AT)(Ins) No. 428 of 2022 is disposed of. No order as to costs.

[Justice Rakesh Kumar]
Member (Judicial)

(Dr. Ashok Kumar Mishra)
Member(Technical)

Raushan/GC