

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

Company Appeal (AT) (Insolvency) No. 582 of 2022

IN THE MATTER OF:

Mr. Shyam Sundar Patodia

...Appellant

Versus

Mr. Aditya Vikram Verma & Anr.

...Respondents

Present:

For Appellant: Mr. Jayabrata Mukherjee, Mr. Palash Singhai, Mr. Saurav Agrawal, Advocates.

For Respondent: Mr. Aditya Vikram Verma, RP, R-1
Mr. Ashish Choudhury, Mr. Akash Agarwal,
Advocates for R-2

ORDER
(Virtual Mode)

19.07.2022: Heard Learned Counsel for the parties. This Appeal has been filed against the Order dated 24th January, 2022 by which Order, I.A. No. 1113 of 2021 has been dismissed. On an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC in short), 'Corporate Insolvency Resolution Process' (CIRP in short) was initiated by the Order dated 25th November, 2021. The parties appeared before the Adjudicating Authority and filed an Application under Section 12A for withdrawal of the CIRP. The said Application was filed on 17th December, 2021. The IRP has issued Advertisement on 05.12.2021. The Operational Creditor had entered into Settlement consequent to which the Application for withdrawal was filed. Form

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FA signed by the Operational Creditor was filed which was part of the Application. The Adjudicating Authority noticed that in pursuance of the Advertisement, some claims have been submitted. The Adjudicating Authority noticing the aforesaid rejected withdrawal of the Application under Section 12-A of the Code. On the date, when Application was filed for withdrawal, Committee of Creditors (CoC in short) was not constituted.

2. The fact that Advertisement was issued and some claims were received was not a ground which resulted in rejection of Section 12A application. When the Operational Creditor and the Corporate Debtor has entered into Settlement, the Adjudicating Authority could have very well exercised its jurisdiction to permit withdrawal of Application under Section 12-A read with Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016 (CIRP Regulation in short). The Application under Section 12-A was filed prior to constitution of the CoC and was referable to Regulation 30A(1)a hence the Adjudicating Authority could have very well allowed the withdrawal application.

3. Learned Counsel appearing for the Corporate Debtor submits that Appellant shall re-submit all the Bank Drafts in the Escrow Account to enable the Adjudicating Authority to consider the Application afresh in terms of Settlement Agreement which was already filed before the Adjudicating Authority.

4. In view of the aforesaid, we set aside the Order dated 24th January, 2022 and remit the matter to the Adjudicating Authority to pass afresh Order on Section 12-A application taking into consideration the Settlement between the parties.

With these observations, this Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Justice M. Satyanarayana Murthy]
Member (Judicial)

[Mr. Barun Mitra]
Member (Technical)

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