

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

Company Appeal (AT) (Insolvency) No.165 & 166 of 2023

IN THE MATTER OF:

Vikas Goel

...Appellant

Versus

Ashika Credit Capital Ltd. & Anr.

...Respondents

Present:

**For Appellant: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva and
Mr. Prakhar Mithal, Advocates.**

For Respondents: Mr. Deepak Vohra, Advocate for R-1.

Ms. Tanisha Kaushal, Advocate for R-2.

**Ms. Pooja Mahajan, Mr. Savar Mahajan, Ms.
Shreya Mahalwar and Ms. Vinita Sashidharan,
Advocates for R-3.**

ORDER

20.02.2023: Heard learned counsel for the Appellant – Suspended Director of the Corporate Debtor, learned counsel for the Financial Creditor as well as learned counsel for the Interim Resolution Professional (IRP).

2. In this Appeal two orders are under challenge. First order dated 11.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, Court-II by which order Section 7 application filed by the Financial Creditor (Respondent No.1 herein) has been admitted. The second order is dated 03.02.2023 on which date the Adjudicating Authority permitted to withdraw the application filed by the Financial Creditor for withdrawal of the proceedings and the application was dismissed as withdrawn.

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3. The brief facts of the case are that the Section 7 application was filed by the Financial Creditor claiming an amount of Rs.2,48,82,875/-. The case of the Corporate Debtor is that after admission order was passed, they and the Financial Creditor have settled the matter on 02.02.2023, and no dues certificate was issued by the Financial Creditor on 02.02.2023, and on the same date application was filed by the Financial Creditor for withdrawal of proceedings under Section 7, which came before the Adjudicating Authority on 03.02.2023, on which date the Adjudicating Authority permitted withdrawal of the application and permitted filing of application through IRP. On 03.02.2023, IRP was approached by an email at 05:44 pm with detailed letter. However, the IRP had some confusion regarding finalisation of settlement with the Financial Creditor, hence, CoC was constituted at 08:00 PM on the same day.

4. The submission of learned counsel for the Appellant is that settlement amount has already been paid on 02.02.2023 by Bank Drafts which amount has already been received by the Financial Creditor.

5. Learned counsel for the Financial Creditor submits that the parties having settled they do not want to proceed with the Section 7 proceeding.

6. Learned counsel for the IRP submits that parties having settled, the IRP has no objection in closing the matter provided his fee and expenses are paid. It is submitted that Rs.2 Lakhs has already been paid to the IRP as per order dated 11.01.2023. Appellant undertakes to make payment of reasonable

expenses which has been incurred by the IRP. We notice that in the present case an application to withdraw Section 7 application was filed on 02.03.2023 i.e. before the constitution of CoC, and the Adjudicating Authority could have exercised its inherent jurisdiction to permit withdrawal.

7. We direct that the IRP shall communicate the expenses to the Appellant within three days who shall make the payment within two weeks thereafter.

8. In view of the aforesaid, the impugned order dated 11.01.2023 is set aside and Corporate Debtor is kept out of the rigour of the CIRP.

9. Learned counsel for the Appellant submits that a joint application has been filed before the Adjudicating Authority, which application shall be withdrawn and the Adjudicating Authority be communicated of this order within three days from today.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Archana/nn