

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 497 of 2022**

In the matter of:

Shri Milind Rode

....Appellant

Vs.

Shri Nitin Om Kothari

...Respondents

**Interim Resolution Professional/
Resolution Professional M/s. Meta Arch Pvt. Ltd. & Anr.**

For Appellant:

Mr. Anuj Tiwari, Mr. Girijapati Kaushal, Ms. Tuhina Mishra, Mr. Aman Pander, Advocates.

For Respondents:

Mr. Prakhar Tandon, Mr. Nitin Om Kothari, Mr. Agam H Maloo, Advocates for R2.
Ms. Rita Yada, Advocate for OC

ORDER

(Through Virtual Mode)

05.05.2022: This Appeal has been filed against the order dated 08.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II by which the Adjudicating Authority has vacated the interim order dated 10.11.2021.

2. Learned Counsel for the Appellant submits that the Application under Section 9 was admitted on 08.10.2021 and thereafter on 25.10.2021, an Application under Section 12A was filed before the Adjudicating Authority along with Form FA. The CIRP costs was also paid to the IRP. On the Application, which was filed under Section 12A, the Adjudicating Authority passed an interim order on 10.11.2021 directing the Resolution Professional not to constitute the Committee of Creditors (CoC) until further orders.

3. In view of the aforesaid order, CoC was not constituted. However, an Application was filed by a Creditor when his claim was rejected by IRP being IA 2836 of 2021. Both the Applications came before the Adjudicating Authority

on 18.04.2022 when the interim order was vacated with direction to the IRP to perform his duties.

4. We have heard Learned Counsel for the Appellant as well as Learned Counsel for the Operational Creditor and Learned Counsel for the Interim Resolution Professional.

5. The Adjudicating Authority has not passed any order on Section 12A Application which was pending consideration. When the constitution of the CoC was already stayed by the Adjudicating Authority himself and the Application under Section 12A was pending, there was no reason for vacating the interim order on 18.04.2022.

6. We are of the view that this Appeal itself deserves to be disposed of directing the Adjudicating Authority to first decide the Application under Section 12A. The effect and operation of the order dated 18.04.2022 shall remain stayed till the Application under Section 12A is decided by the Adjudicating Authority.

7. Learned Counsel for the IRP submits that the IRP costs and expenses has not yet been paid to him. It shall be open for the Adjudicating Authority to take appropriate decision with regard to fees and costs by passing any further order.

8. With these directions, the Appeal is disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[Shreesha Merla]
Member (Technical)**

Anjali/nn