

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 958 of 2021**

In the matter of:

Asif Abdullah Dalwai

....Appellant

Vs.

**Arun Bagaria, Interim Resolution Professional of
Windals Auto Pvt. Ltd. & Anr.**

...Respondent

**For Appellant: Ms. Prachi Johri and Lakshya Sachdeva,
Advocates**

**For Respondent: Mr. Arun Bagaria, IRP in person
Mr. H.P. Kar, Intervener**

ORDER

(Virtual Mode)

11.01.2022: Heard Learned Counsel for the Appellant as well as Resolution Professional appearing in person and Learned Counsel for the Intervener.

2. This Appeal has been filed against the Judgment and Order dated 30th September, 2021 passed by Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-IV) in IA-1952/2021 in CP(IB)-3221(MB)/2019 by which Order, the Adjudicating Authority dismissed the Application and directed the IRP to get withdrawal of CIRP approved from the Committee of Creditors and thus the Appellant is aggrieved by the said Order.

3. Learned Counsel for the Appellant submits that in the present case by Order dated 2nd August, 2021 in CP (IB) No. 3221/MB-IV/2019, Corporate

Debtor was admitted into Insolvency and public announcement was made on 07th August, 2021. On 24 August, 2021, an Application being I.A. No. 1952/2021 was filed for withdrawal of the CIRP under Section 12A of Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'Code') by the IRP before the Adjudicating Authority along with Form-FA. The Application of withdrawal was listed on 06.09.2021 but due to paucity of time the matter could not be heard. On 24.09.2021 CoC was constituted and first meeting of COC was held on 29.09.2021.

4. The Submission of Learned Counsel for the Appellant is that when the Application was filed prior to constitution of CoC there was no requirement for approval of the CoC. Learned Counsel for the Intervener submits that there are huge claim of Financial Creditors and hence the matter need to be sent back to the CoC for its consent.

5. Resolution Professional has also filed Status Report where the dates on which the Application was filed i.e. 14th August, 2021 and Constitution of CoC is on 24.09.2021 has been stated.

6. This Tribunal has already delivered a Judgment on 07th January, 2022 in Company Appeal (AT) ins. No. 892 of 2021 in the matter of '**M/s Ashish Ispat Pvt. Ltd. Vs Primuss Pipes And Tubes Ltd.**' holding that when the Application under Section 12A of the Code has been filed prior to Constitution of CoC there is no requirement of obtaining consent of the CoC as required by Section 12A of the Code. The issue which has been raised is fully covered by the Judgment of this Tribunal delivered on 07.01.2022. In

view of the aforesaid, we are of the view that the Order passed by Adjudicating Authority directing withdrawal application be placed before the CoC is uncalled for. We set aside the Order dated 30th September, 2021 and direct that the Application filed by IRP under Section 12A of the Code be considered and appropriate order be passed by the Adjudicating Authority at the earliest.

7. With the above observations, the Appeal is allowed. It is open for the Financial Creditors to file Application under Section 7 of the IBC if so advised.

8. We having set aside the Order dated 30th September, 2021, we are of the view that till the NCLT passes order under section 12A application, no further steps be taken in the CIRP Process.

[Justice Ashok Bhushan]
Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

Basant/nn