NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 200 of 2023

IN THE MATTER OF:

Ritu Agarwal

...Appellant

Versus

Dinesh Kumar,
Interim Resolution Professional Lumata Digital India Pvt. Ltd. & Anr. **...Respondents**

Present:

For Appellant:	Mr. Krishnendu Datta, Sr. Advocate with Mr. Karan Malhotra, Mr.Tushan Goel, Ms. Neha Aggarwal and P. Mishra, Advocates
For Respondent:	Mr. Dhruv Gupta, Advocate for Intervenor Mr. Samudra Sarangi, Ms. Abhilasha Khanna, Advocates for R-2

O R D E R

22.03.2023: Heard Learned Counsel for the parties.

2. This is an Appeal filed against an Order passed by the Adjudicating Authority dated 14.02.2023 by which Order a Section 9 Application of I&B Code, 2016 filed by the Operational Creditor-Respondent No. 2 has been admitted.

3. In this Appeal, an I.A. No. 1121 of 2023 has been filed where settlement between the Operational Creditor and the Corporate Debtor has been brought on record dated 21.02.2023. It is further stated that dispute was settled for final and full payment of Rs. 30 Lakhs which has been paid.

4. Learned Counsel for Respondent No. 2 also accepts that the payment has been received and Operational Creditors has no dues to claim.

5. Two applications for intervention have been filed being I.A. No. 1083 of 2023 and I.A. No. 1038 of 2023. I.A. No. 1083 of 2023 has been filed by another Operational Creditor stating that he has claim against the Corporate Debtor. Another I.A. No. 1038 of 2023 has been filed by the employees claiming that they have claim including gratuity and salary dues against the Corporate Debtor and in event the parties be permitted to settle the dispute, the claims of the other Operational Creditor and the Employees will go unconsidered. It is submitted by Interveners who has filed these two applications that the settlement be not permitted.

6. Learned Counsel for the Appellant submits that in the present case, the Committee of Creditors has not yet been constituted and in view of the Judgement of the Hon'ble Supreme Court dated 22.09.2022 in Civil Appeal No. 4911 of 2021 in the case of **"Ashok G Rajani Vs. Beacon Trusteeship Ltd. & Ors."** the court in its exercise of inherent power under Rule 11 can permit withdrawal of application. Learned Counsel for the Appellant has referred to paragraphs 24, 30 and 32 which is as follows:

> *"24. Section 12A of the IBC clearly permits withdrawal of an application under Section 7 of the IBC that has been admitted on an application made by the applicant. The question of approval of the Committee of Creditors by the requisite percentage of votes, can only arise after the Committee of Creditors is constituted. Before the*

Committee of Creditors is constituted, there is, in our view, no bar to withdrawal by the applicant of an application admitted under Section 7 of the IBC.

………

30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement.

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32. The application for settlement under Section 12A of the IBC is pending before the Adjudicating Authority (NCLT). The NCLAT has stayed the constitution of the Committee of Creditors. The order impugned is only an interim order which does not call for interference. In an appeal under Section 62 of the IBC, there is no question of law which requires determination by this Court. The appeal is, accordingly, dismissed. The NCLT is directed to take up the settlement application and decide the same in the light of the observations made above."

7. Learned Counsel for the Intervener submits that the question of withdrawal is to be decided in facts of each case after considering the claims of all stakeholders.

8. Learned Counsel for the Appellant submits that in case of intervener who claims to be operational creditor, he had filed a Section 9 Application which was withdrawn by him and for the employees' dues, they are at liberty to seek statutory remedy for gratuity and other dues in accordance with law. It is submitted that there are no financial creditors in the Corporate Debtor.

9. In the facts of the present case, we are of the view that when Operational Creditor has received the entire payment and no dues are there to prosecute further there is no purpose in continuing the Corporate Insolvency Resolution Process. In so far as the interventions are concerned, they are free to take statutory remedy against the Corporate Debtor for their dues.

10. In view of the above, we take the settlement on record between the parties and close the Corporate Insolvency Resolution Process, set aside the impugned order dated 14.02.2023. We make it clear that the interveners are free to agitate their claims in accordance with law.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Basant/nn