

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 211 of 2021

In the matter of:

Vandana Rana

....Appellant

Vs.

Sai Com Codes Flexoprint Pvt. Ltd. & Anr.

....Respondents

Present:

Appellant: Mr. Ajit Sharma, Mr. Abhishek Rana and Mr. Anant Mishra, Advocates

**Respondents: Mr. Ankur Singhal, Advocate for R-1.
Mr. Lalit Mohan and Mr. Videh Vaish, Advocates for R-2/ RP
Mr. Deepak Mittal, R-2/RP in person.**

ORDER
(Through Virtual Mode)

18.03.2021: Application filed by Respondent - Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'the I&B Code') came to be admitted by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench in terms of order dated 1st March, 2021, which has been assailed in the instant Appeal on the ground that the impugned order of admission has been passed in *ex-parte* and it is only on receipt of an email from the Interim Resolution Professional (IRP) - Shri Deepak Mittal that the Corporate Debtors learnt about triggering of Corporate Insolvency Resolution Process (CIRP) against it. It is further submitted by Learned Counsel for the Appellant that the Corporate Debtor had paid an amount of Rs.10 lakhs to the Operational Creditor during the pendency of CIRP. It is further submitted that after the Corporate Debtor learnt about the triggering of CIRP at the instance of Respondent – Operational Creditor, the

Appellant executed a Settlement Agreement dated 5th March, 2021 with the Operational Creditor in terms whereof the Operational Creditor agreed to withdraw its Application under Section 9 of the I&B Code and file an application for withdrawal in lieu of the settled consideration. It is further submitted by Mr. Ajit Sharma, learned Counsel for the Appellant that IRP was informed on 7th March, 2021 about this development and to initiate the process for withdrawal of proceedings. However, no action was taken.

2. Mr. Ankur Singhal, Advocate appearing on behalf of Respondent No.1 – Operational Creditor admits the factum of claim of Operational Creditor having been settled and satisfied by the Corporate Debtor in terms of the Settlement Agreement, copy whereof forms part of appeal paper book at page 52. He also draws our attention to the Stamp Paper having been issued on 5th March, 2021 as emerges from the Stamp Paper forming part of appeal paper book at page 51 (A-7).

3. Mr. Lalit Mohan, learned Counsel appearing on behalf of Respondent No.2 (IRP) submits that the Committee of Creditors has been constituted on 16th March, 2021 and only one claim has been received. He does not oppose dropping of CIRP proceedings but claims the fee of IRP and the costs incurred for taking forward the resolution process. Annexure A10 annexed with the appeal paper book at page 73-74 is the claim of IRP on account of his fee and resolution process cost, which has been quantified at Rs.2,66,883/-. Mr. Mohan also claims Rs.20,000/- as his Counsel fee, which be added to the claim on account of resolution expenses, i.e. totalling to Rs.2,86,883/-.

4. On consideration of the submissions made by the learned Counsel for the parties, we find that the impugned order of admission of application of Operational Creditor under Section 9 of the I&B Code has been passed on 1st March, 2021 in *ex parte* as the Corporate Debtor did not contest the Application before the Adjudicating Authority. It is established that immediately after passing of the impugned order, the claim of Operational Creditor was settled and in terms of the Settlement Agreement, which envisaged payment of Rs.13,47,989/- towards full and final settlement of the claim of Operational Creditor, withdrawal application was to be filed before the Adjudicating Authority as a sequel to settlement. It is flabbergasting to find that the Committee of Creditors came to be constituted by the IRP on 16th March, 2021 so hastily though only a single claim was said to have been received by the IRP.

5. Section 21(1) of the I&B Code provides that the Interim Resolution Professional shall constitute a Committee of Creditors after collation of all claims received against the Corporate Debtor and determination of the financial position of the Corporate Debtor. He is to perform duties embodied under Section 18 of the I&B Code, which includes collecting of information relating to the assets, finances and operations of the Corporate Debtor, which has to precede collating of claims and constitution of Committee of Creditors. Learned Counsel for the IRP submits that since there was a single claim that's why the Committee of Creditors came to be constituted so hastily.

6. Without commenting upon the fairness of the procedure adopted in constituting the Committee of Creditors so hastily, in view of the fact that the

Operational Creditor, being the sole claimant is satisfied with the settlement of his claim in terms of the Settlement Agreement executed barely within four days of the passing of the impugned order in *ex parte* demonstrating that it had the capacity and will to settle the Operational Creditor's claim, we find this to be a fit case for accepting the settlement arrived at between the parties. Learned Counsel for the Appellant admits that the amount due and payable to Operational Creditor towards full and final satisfaction of its claim stands paid.

7. In view of these developments, we set-aside the impugned order. Total cost including the fee and CIRP cost is quantified at Rs.2,00,000/- Mr. Ajit Sharma, learned Counsel for the Appellant states that Rs.2,00,000/- has already been paid by the Corporate Debtor to Operational Creditor. Mr. Ankur Singhal, Advocate representing the Operational Creditor undertakes to provide Demand Draft for Rs.2,00,000/- to Mr. Lalit Mohan, learned Counsel for the IRP within five days. The Corporate Debtor is released from the rigour of CIRP. The Appeal is disposed off in aforesaid terms.

8. Copy of this order be communicated to the Adjudicating Authority, who will close the case.

**[Justice Bansi Lal Bhat]
Acting Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

Ash/GC