

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1354 of 2022

IN THE MATTER OF:

Rafat Ullah Khan Zuberi

....Appellant

Vs.

Alisha Traders & Anr.

....Respondents

Present:

For Appellant: Mr. Saral Sharma, Mr. Neevrat Sharma, Advocates.

**For Respondents: Mr. Dushyant Tiwari and Ms. Supriya Pandita,
Advocates for R-1.**

Mr. Devinder Kumar, IRP in person.

Mr. Ashok Juneja, Advocate for R-2.

O R D E R

05.01.2023: This appeal has been filed against the order passed by the Adjudicating Authority [National Company Law Tribunal, New Delhi Bench (Court-II)] dated 03.11.2022 by which an application filed under Section 9 has been admitted. The Operational Creditor was directed to deposit amount of Rs. 2 lakhs with the IRP to meet the immediate expenses.

2. This appeal was filed challenging this order by the Suspended Director of the Corporate Debtor in which appeal following order was passed by this Tribunal on 11.11.2022 :-

“Learned Counsel for the Appellant submits that the reply was filed to Section 9 Application where sufficient material was shown to proof that the payments have been made to the Operational Creditors as per the documents maintained by the Respondent of all goods accepted. It is submitted that on the date when hearing

took place, Appellant could not connect due to technical glitch and could not participate in the hearing. Submissions need scrutiny.

2. Issue Notice. Learned Counsel accepts notice on behalf of Respondent No.1. IRP is present and accepts notice. No further notice need be issued. Respondents may file Reply within three weeks. Rejoinder, if any, may be filed within two weeks thereafter.

3. Publication has already been made by the IRP. He may proceed to collate the claim. However, no CoC be constituted by the next date.

4. List the Appeal on 19.12.2022.”

3. An application being I.A. No. 45 of 2023 has been filed by the Respondent No.1, the Operational Creditor, seeking certain direction. In the application the settlement agreement dated 24.11.2022 between the parties have been brought on record where the parties have settled their disputes for an amount of Rs. 2 crores, which details are mentioned in the paragraph 6 of the settlement.

4. Parties having settled the matter, Learned Counsel for the Operational Creditor prays that Operational Creditor be permitted to withdraw the application filed under Section 9.

5. It is further submitted that an application under 12 A of the IBC, 2016 was filed before the Adjudicating Authority by the Corporate Debtor and

thereafter by IRP but being some dispute regarding fee and expenses, Form-F was not completed and hence application was withdrawn.

6. In facts of the present case, when the Operational Creditor has settled the matter and prays that he may be permitted to withdraw the application, we see no reason to continue the CIRP process any further.

7. Amount of Rs. 2 lakhs as directed by Adjudicating Authority has already been paid to the IRP on 14.11.2022. With regard to the expenses and fee which are claimed, the Operational Creditor and counsel for the appellant both have raised objection and submitted that there are un-necessary inclusions in the fee and expenses.

8. In view of the aforesaid, we grant liberty to the IRP to file an appropriate application before Adjudicating Authority with regard to the expenses and fee and it is for the Adjudicating Authority to consider the said application after hearing the Operational Creditor and the Corporate Debtor as to whether any further amount is to be paid to the IRP in addition to Rs. 2 lakhs or not.

9. In view of the above, we dispose of this appeal. The CIRP process initiated by impugned order dated 03.11.2022 is set aside.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

sa/nn