

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1087 of 2021

IN THE MATTER OF:

Anil Soni

....Appellant

Vs.

KM Fincorp LLP & Anr.

....Respondents

Present:

For Appellant: Mr. Vipul Ganda and Ms. Amodini Raina, Advocates.

For Respondents: Mr. Nilesh Deep, Advocate for R-1.

O R D E R

06.09.2022: Heard Counsels for the parties.

This Appeal has been filed against the order dated 30.11.2021 passed by the National Company Law Tribunal, New Delhi, Court No. IV by which Section 9 application filed by Respondent No. 1 'KM Fincorp LLP' has been admitted. The application under Section 9 was filed by the Operational Creditor claiming an amount of Rs. 10,40,800/-.

It appears that after passing of the order by the Adjudicating Authority admitting Section 9 application some settlements talks were held between the parties and an application was filed by Operational Creditor praying for withdrawal of the Section 9 application stating that Operational Creditor has received the amount from the Corporate Debtor. Subsequently, when the

application was listed the application was dismissed for non-prosecution. Aggrieved against the order initiating the CIRP this Appeal has been filed.

Mr. Vipul Ganda, Learned Senior Counsel for the Appellant submits that the Operational Creditor has received the entire amount and they have informed the IRP as well as the Corporate Debtor that an appropriate application shall be filed for withdrawal of the application.

The Appeal has been filed where the Appellant has come up with the case that in addition to payment of Rs. 10,40,800/- certain more amount has been paid by the Appellant to the Corporate Debtor. Learned Counsel for the Respondent refuting the submission of the Appellant contends that no further amount was paid apart from Rs. 10,40,800/-. He submits that the Operational Creditor were entitled for some more amount and no settlement has been entered between the parties and the Appellant is forcing the Operational Creditor to settle in this Appeal which the Respondent are not ready to settle.

Learned Counsel for the Appellant after obtaining instructions submitted that the Demand Draft of Rs. 5 lakhs in the name of Operational Creditor shall be handed over to the Counsel appearing for the Operational Creditor within two weeks from today.

We have considered the submissions of the parties and perused the record. The amount for which the application was filed having already received by the Operational Creditor and appellant have also agreed to pay further

amount of Rs. 5 lakhs, we are of the view that no purpose shall be served in proceeding with Section 9 application any further. We had already by our interim order dated 23.12.2021 has stayed the further action in pursuance of the Impugned Order.

Recording the aforesaid, we set aside the impugned order dated 30.11.2021 and allow the appeal subject to the directions as made above.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

sa/nn