

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 950 of 2021

IN THE MATTER OF:

Mritunjay Kumar
Member of the Suspended Board of Director
Unibera Developers Pvt. Ltd. ...Appellant

Versus

Propertree Real Estate Solutions Pvt. Ltd. & Anr. ...Respondents

Present:

**For Appellant: Mr. Abhishek Anand and Mr. Kunal Godhwani,
Advocates.**

For Respondents: Mr. Gautam Singhal, Advocate for R-1.
**Mr. Gaurav Mittra, Mr. Amar Vivek, Mr. Shalya
Agarwal, Mr. Aditya Gauri, Advocates for R-2.**
**Mr. Arvind Shukla and Mr. Saket Shubham,
Advocates for Intervenor.**

With

Company Appeal (AT) (Insolvency) No. 1023 of 2021

IN THE MATTER OF:

Mritunjay Kumar
Member of the Suspended Board of Director
Unibera Developers Pvt. Ltd. ...Appellant

Versus

Propertree Real Estate Solutions Pvt. Ltd. & Anr. ...Respondents

Present:

**For Appellant: Mr. Abhishek Anand and Mr. Kunal Godhwani,
Advocates.**

For Respondents: Mr. Gautam Singhal, Advocate for R-1.
**Mr. Gaurav Mittra, Mr. Amar Vivek, Mr. Shalya
Agarwal, Mr. Aditya Gauri, Advocates for R-2.**
**Mr. Akash Sinha, Mr. Arvind Shukla and Mr. Saket
Shubham, Advocates for Intervenor.**

ORDER
(Virtual Mode)

08.02.2022: Heard Shri Abhishek Anand, learned counsel for the Appellant, Shri Gaurav Mittra, learned counsel appearing for Respondent No.2 – Resolution Professional and Mr. Gautam Singhal, learned counsel appearing for Respondent No.1.

2. One of the Member of Suspended Members has filed these two Appeals against the orders dated 12.11.2021 and order dated 01.12.2021, respectively. The CIRP proceedings were initiated by order dated 12.11.2021 on application filed by Respondent No. 1 – ‘Propertree Real Estate Solutions Pvt. Ltd.’. The Company Appeal (AT) (Ins.) No. 950 of 2021 has been filed by suspended Director challenging the order initiating the CIRP proceeding.

3. The Company Appeal (AT) (Ins) No. 1023 of 2031 has been filed against order dated 01.12.2021. The case of the Appellant in Company Appeal (AT) (Ins.) No. 1023 of 2021 is that there was settlement entered between the Corporate Debtor and the Operational Creditor and email dated 24.11.2021 was issued to the IRP regarding the fee and expenses and again on 25.11.2021 an email was sent. In the email dated 25.11.2021, a request was made to the IRP that the matter has been settled and he is requested to not constitute the Committee of Creditors. He was also requested to send details of the CIRP cost as on the date including the fee and expenses. It was also communicated that an amount Rs.2 Lakhs drawn on IDBI Bank dated 22.11.2021 bearing number 796335 has already been paid to the IRP in terms of order passed by

the NCLT. The IRP replied by its email dated 25.11.2021 wherein it communicated a total cost of Rs.31,01,484/-. After receiving the said email, the Corporate Debtor as well as the Operational Creditor jointly filed an application under Rule 11 of the NCLT Rules, 2016 seeking withdrawal of the Company Petition. The said application was filed on 25.11.2021. The IRP subsequently constituted the Committee of Creditors on 30.11.2021. When the application came for consideration before the Adjudicating Authority on 01.12.2021, the Adjudicating Authority rejected the application observing that Section 12A of the IBC makes it mandatory for the Applicant to file the withdrawal application before this Adjudicating Authority with the approval of CoC. Further it was observed that Regulation 30A(a) makes it mandatory for Applicant to move withdrawal application through IRP. On these grounds the Application was rejected.

4. Learned counsel for the Appellant challenging the order dated 01.12.2021 submits that in the present case the Corporate Debtor and the Operational Creditor were compelled to file an application before the Adjudicating Authority under Rule 11 of the NCLT Rules, 2016 because the IRP has claimed a cost of Rs.31,01,484/- for a period of 15 days it was an astronomical figure and IRP was not ready to file an application without the said cost is paid. This was the reason due to which the Operational Creditor and the Corporate Debtor has filed Application.

5. We have looked into the emails referred to by learned counsel for the Appellant and email sent by the IRP which have been brought on record at page 64 and 65 of the Company Appeal (AT)(Ins) No.1023 of 2021. Law is well

settled that when application for withdrawal is filed before constitution of the Committee of Creditors, the approval of the Committee of Creditors is not required as contemplated in Section 12A. Present is a case where on 25.11.2021 although email was sent to the IRP by the Operational Creditor and the Corporate Debtor, application for withdrawal was not filed by the IRP. The present is case which clearly give the reason for exercise of inherent powers under Rule 11 to be exercised by the NCLT to entertain the application for withdrawal without it being filed through the IRP. When the parties have settled and Committee of Creditors was not constituted till 25.11.2021, when application was filed before the Adjudicating Authority, it could have considered the application since requirement of Section 12A was not attracted by that time.

6. We, thus, are of the view that in view of the Operational Creditor and the Corporate Debtor having settled on 25.11.2021, which is also admitted before us, we see no reason for the CIRP proceedings not having withdrawn by the Adjudicating Authority, in exercise of its jurisdiction.

7. Now coming to the cost which may be entitle to IRP/RP, we notice our order dated 07.12.2021 when following interim order was passed by this Tribunal:

“O R D E R

07.12.2021: *Learned Counsel for the Appellant submits that in the present case CIRP proceedings were initiated on 12.11.2021 against which an Appeal*

being Company Appeal (AT) (Ins) No. 950 of 2021 was filed in which this Tribunal issued notice on 22.11.2021. It is submitted that on 25.11.2021, Appellant and Respondent No. 1 entered a settlement and executed Memorandum of Settlement which was informed to the IRP on the same date. However, the IRP hurriedly constituted the CoC on 30.11.2021. A Joint Application has been filed by the parties before the Adjudicating Authority about the settlement seeking permission of the Adjudicating Authority to settle the matter, which has been rejected by the impugned order. Learned Counsel for the Appellant also submitted that IRP intimated the parties about cost of 31 Lakhs and had insisted for deposit of the cost before the application can be filed by the IRP.

Issue Notice. Notice is accepted by Mr. Gautam Singhal, Advocate on behalf of Respondent No. 1. Ms. Shalya Agarwal, Advocate accepts notice on behalf of Respondent No. 2. No further notice needs to be issued on any of the Respondent.

Let reply be filed by the Respondents within two weeks. Rejoinder may be filed within further two weeks' time.

Shri Shubham Saket, Learned Counsel submits that he may be permitted to file Impleadment Application on behalf of the Home Buyers. He may do so within two weeks.

List the Appeal on 11th January, 2022.

In the meantime, we direct that in pursuance of insolvency resolution process initiated on 12.11.2021

no further proceedings shall take place and IRP shall not proceed any further in the matter.”

8. When this Tribunal on 07.12.2021 has stayed the entire CIRP, there was no question of incurring any cost or claiming any fee after 07.12.2021. In view of the accepted fact that fee amounting to Rs.2 Lakhs has already been paid to the IRP, that should suffice towards payment of fee. With regard to expenses till 07.12.2021, on submission of proper bills said bills shall be paid by the Corporate Debtor. IRP may submit the necessary bills to the Corporate Debtor for payment of necessary bills till 07.12.2021.

9. In above view of the matter, Company Appeal (AT) (Ins) No. 1023 of 2021 is allowed. The settlement entered between the parties in terms of application filed on 25.11.2021 is accepted and the result is that CIRP stood withdrawn.

10. In view of order passed above, Company Appeal (AT) (Ins) No. 950 of 2021 has become infructuous. It goes without saying that the parties will be bound by the settlement entered on 25.11.2021. Learned counsel for the parties submit that they will abide by the settlement. Order accordingly.

[Justice Ashok Bhushan]
Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

Archana/nn