

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

**Company Appeal (AT) (Insolvency) No. 677 of 2023**

**IN THE MATTER OF:**

**Prakash Assar**

**...Appellant**

**Versus**

**Meena Sakariya & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Abhinav Agrawal, Advocate.**

**For Respondents: Mr. Anoop Prakash Awasthi, Advocate for R-2 (RP).**

**ORDER**

**24.05.2023:** Heard learned counsel for the parties. This Appeal has been filed against the order dated 12.05.2023 by which the Section 9 application filed by the Operational Creditor has been admitted. The Appellant is Suspended Director of the Corporate Debtor.

2. It is submitted by learned counsel for the Appellant that even prior to filing of the Section 9 application MOU was entered between the parties on 05.09.2019, under which MOU payment of Rs.11,53,544/- was made. It is submitted that after filing of the application also Corporate Debtor has made payment of Rs.6,00,000/-. It is submitted that the Appellant is ready to settle with the Operational Creditor and an opportunity be given to the Corporate Debtor to make settlement.

3. We have considered the submissions of learned counsel for the parties and perused the record.

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4. Section 9 application was filed by the Operational Creditor claiming an amount of Rs.1,60,82,805/-. The fact that even prior to filing of the application an MOU was entered between the parties which was not honoured by the Corporate Debtor, clearly indicate that the Corporate Debtor is unable to pay the dues. After filing of the application, only Rs.6 Lakhs, as claimed by the Appellant, does not in any manner mitigate the amount of debt and default. Present is a case where debt and default are clearly proved, hence, the Adjudicating Authority committed no error in admitting Section 9 application.

5. Insofar as submission of learned counsel for the Appellant that Corporate Debtor is still willing to settle the matter, it is open for the Appellant to enter into settlement with the Operational Creditor and file appropriate application under Section 12A before the Adjudicating Authority, which may be considered and decided by the Adjudicating Authority in accordance with law. For enabling the Appellant to settle the matter, we allow 30 days' time during which period the IRP shall not constitute the CoC, if not already constituted. However, after 30 days in event no settlement is reached, the IRP shall proceed to constitute the CoC and continue CIRP process in accordance with law. Subject to above, the Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

*Archana/nn*