

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

Company Appeal (AT) (Insolvency) No. 641 of 2022

IN THE MATTER OF:

Tapan Kumar Agarwala & Anr.

...Appellants

Versus

Khaitan Rice Mill Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellants: Mr. Abhijeet Sinha, Mr. Uday Gupta, Ms. Shivani M. Lal, Mr. Vikas Bansal, Mr. M.K. Tripathi and Mr. Rachit Mittal, Advocates.

For Respondents: Mr. Kumarjit Banerjee, Ms. Sanchari Chakraborty, Advocates for R-1.

Ms. Priyanka Ajitsaria, Advocate for R-2.

ORDER

18.08.2022: Heard learned counsel for the parties. This Appeal has been filed against order dated 20.05.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench-1, Kolkata by which order an application filed by the Respondent – Operational Creditor under Section 9 has been admitted.

2. Appeal was first heard on 03.06.2022, on which date following order was passed:

**“ORDER
(Virtual Mode)**

03.06.2022: Heard Learned Counsel for the Appellant and Learned Counsel Mr. Kumarjit Banerjee for the Respondent.

Cont'd.../

This appeal has been filed against the Order dated 20th May, 2022 by which Order the application under Section 9 filed by the Respondent has been admitted. The Application was filed for claiming a debt of Rs. 25,77,322/-. Learned Counsel for the Appellant submitted that Counsel could not appear before the Adjudicating Authority on last several days. He submits that there was correspondence regarding settlement of accounts and admission of the debt referred to in the order was with regard to said correspondence. He further submits that he is ready to submit entire amount which was claimed by the Operational Creditor in the application i.e. the amount of Rs. 25,77,322/- within two days from today. 2 Comp. App. (AT) (Ins.) No. 641 of 2022.

Let Reply be file within two weeks. Rejoinder, if any, may be filed within two weeks, thereafter.

List this matter on 18th July, 2022.

In pursuance of the Impugned Order the IRP shall not constitute the CoC. Corporate Debtor shall be allowed to run as a going concern.”

3. Further, this Court on 10.08.2022 directed to make payment of the interest also @ 9%.

4. Today when the case was taken up, learned counsel for the parties, Appellant and Respondent No.1, submits that payment of interest has also been made.

5. Learned counsel for the IRP submits that in pursuance of the order of the Adjudicating Authority an amount of Rs.3 lakhs has been received by the IRP.

6. Learned counsel for the parties submits that in view of the settlement between the parties and payment of the entire debt of the Operational Creditor, Operational Creditor be permitted to withdraw the application under Section 9.

7. We on 03.06.2022 has already directed the IRP to not constitute the CoC. In facts of the present case, especially when entire debt has been paid, we permit the Operational Creditor to withdraw application under Section 9. Consequently, order dated 20.05.202 stands withdrawn. We make it clear that this order shall confine to the Section 9 application in this Appeal and shall have no effect on other proceedings pending between the parties. We further direct the Appellant to make payment of an amount of Rs.1.5 Lakh in addition to Rs.3 Lakhs already paid to the IRP towards expenses, within a week.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Archana/nn