

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

**Company Appeal (AT) (Insolvency) No. 36 of 2019**

**IN THE MATTER OF:**

**Anil Goel**

**...Appellant**

**Vs**

**2I Capital PCC**

**....Respondent**

**Present:**

**For Appellant: Mr. Kinshuk Chatterjee and Ms. Shivani Kadam,  
Advocates.**

**For Respondent: Ms. Kiran Sharma, CS and Mr. Sumant Batra,  
Advocates.**

**ORDER**

**18.04.2019:** Pursuant to Information Memorandum '2I Capital PCC' (Respondent herein) deposited Rs.3.50 Crores in escrow account with the State Bank of India. However, the resolution plan filed by '2I Capital PCC' having withdrawn before approval of the plan by the Committee of Creditors, the '2I Capital PCC' requested the Resolution Professional to allow it to withdraw Rs.3.50 Crores, which was deposited in the escrow account with the State Bank of India. The Resolution Professional rejected such prayer and forfeited the amount, whereafter the Respondent '2I Capital PCC' moved before the Adjudicating Authority, who in its turn by impugned order dated 26<sup>th</sup> November, 2018 directed the Resolution Professional to release the amount. The Appellant – Resolution Professional has challenged the said order dated 26<sup>th</sup> November, 2018.

2. We have heard learned counsel for the Resolution Professional and learned counsel appearing on behalf of the Respondent - '2I Capital PCC'.

3. From the Minutes of meeting of Committee of Creditors, we find that the Committee of Creditors made one of the condition for submitting resolution plan by depositing of money like earnest money, which reads as follows:-

*“i. Rs.3.50 Crores would be deposited in an Escrow Account to be opened with State Bank of India within 10 days from the conclusion of this meeting. In case the resolution plan is finalized and by COC, the amount of Rs.3.50 Crores would be considered as received against the outstanding loan. Otherwise, the same will be returned to the resolution applicant.”*

4. In the aforesaid background the Information Memorandum which stipulated deposition of earnest money which was deposited by the Resolution Applicants including Respondent - '2I Capital PCC', who deposited Rs.3.50 Crores in the escrow account with the State Bank of India. However, as noticed above, the resolution plan was withdrawn by the Respondent prior to approval of the Committee of Creditor, whereafter it wanted to withdraw the earnest money amount.

5. On bare perusal of the Minutes of the meeting of Committee of Creditors and condition as made for calling for resolution plans, we are of the opinion that the Respondent - '2I Capital PCC' having withdrawn its resolution plan prior to its finalization is entitled for refund of Rs.3.50 Crore in absence of any penal condition of seizure of earnest money. We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

*am/gc*