

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

**Company Appeal (AT) (Insolvency) No. 297 of 2017**

**IN THE MATTER OF:**

**Deltronix India Ltd. & Ors.**

**...Appellants**

**Vs.**

**Indiabulls Housing Finance Ltd.**

**...Respondent**

**Present: For Appellants: - Mr. Nesar Ahmad, PCS, Mr. Ashutosh Dubey, Mr. Ramas and Tarun Khanna, Advocates.**

**For Respondent:- Mr. Sumesh Dhawan and Vatsala Kak, Advocates.**

**ORDER**

**01.12.2017-** On the oral request of the learned Company Secretary appearing on behalf of the Appellants- M/s. Deltronix India Ltd. is allowed to be transposed as 2<sup>nd</sup> Respondent. 'Indiabulls Housing Finance Ltd' be treated to be 1<sup>st</sup> Respondent. The appeal will be treated to an appeal preferred by Mr. Kapil Gupta & Anr. Appropriate modification in the cause title be made accordingly.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/uk

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

**Company Appeal (AT) (Insolvency) No. 297 of 2017**

**IN THE MATTER OF:**

**Kapil Gupta & Anr.**

**...Appellants**

**Vs.**

**Indiabulls Housing Finance Ltd. & Anr.**

**...Respondents**

**Present: For Appellants: - Mr. Nesar Ahmad, PCS, Mr. Ashutosh Dubey, Mr. Ramas and Tarun Khanna, Advocates.**

**For Respondents:- Mr. Sumesh Dhawan and Vatsala Kak, Advocates.**

**ORDER**

**01.12.2017-** This appeal has been preferred by Appellants against the order dated 24<sup>th</sup> November, 2017 passed by Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in Company Petition No. (IB)-245(PB)/2017, whereby and whereunder the application preferred by 1<sup>st</sup> Respondent under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of moratorium has been passed and 'Interim Resolution Professional' has been appointed with certain directions.

2. Mr. Nesar Ahmad, Company Secretary appearing on behalf of the

Contd/-.....

Appellants submits that the Appellant has reached a settlement with the 1<sup>st</sup> Respondent ('Financial Creditor') and therefore, the 'Corporate Insolvency Resolution Process' initiated against the 'Corporate Debtor' be set aside.

3. Learned counsel appearing on behalf of the Respondent-'Financial Creditor', while accepting that settlement has been reached, submits that settlement has been reached after the impugned order dated 24<sup>th</sup> November, 2017 was passed and only part payment has been made.

4. It is a settled law that after admission of an application under Section 7 of the 'I&B Code', the 'Financial Creditor' or 'Operational Creditor' or 'Corporate Applicant' cannot withdraw the application even if a settlement has been made. The Adjudicating Authority once initiates the 'Corporate Insolvency Resolution Process', has no jurisdiction to recall the order of admission dated 24<sup>th</sup> November, 2017. In this connection, one may refer to Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is as follows:

***“8. Withdrawal of application. – The Adjudicating Authority may permit withdrawal***

*of the application made under rules 4, 6 or 7, as the case may be, on a request made by the application before its admission.”*

5. In the present case, as we find that there is no illegality or infirmity committed by Adjudicating Authority in admitting the application under Section 7 of the 'I&B Code', we find no ground to interfere with the impugned order. For the said reasons also this Appellate Tribunal has no jurisdiction to accept the settlement reached between the parties to annul the impugned order, though it is open to the Appellants to move before a court of competent jurisdiction for appropriate relief.

6. After the order was dictated, learned Company Secretary appearing on behalf of the Appellants, requested to pass interim order of protection to enable the appellant to move before the Hon'ble Supreme Court but as we are not interfering with the impugned order dated 24<sup>th</sup> November, 2017, the question of granting interim protection does not arise.

7. However, it is needless to say that during the 'Resolution Process', the 'Resolution Professional' is required to ensure that the Company

remains on-going and if so necessary, he may take assistance of the (suspended) Board of Directors. The authorised person of the 'Corporate Debtor', who is authorised to sign the bank cheques may issue cheque only after authorisation of the 'Resolution Professional'. The bank account(s) of the 'Corporate Debtor(s)' can be allowed to be operated for day-to-day functioning of the companies and its projects and for payment of current bills of the suppliers, salaries and wages of the officers, employees'/workmen, electricity and water bills, etc.

8. The appeal is dismissed with the aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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