

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 06 of 2020

IN THE MATTER OF:

A. R. Raamesh

...Appellant

Vs

Swaminathan Venkatraman, IRP & Anr.

....Respondents

Present:

For Appellant: Mr. P. Venkatesam, Advocate.

For Respondents: Mr. Siddharth Panda, Advocate for R-1.

Mr. S. K. Sarkar, Advocate for R-2.

ORDER

29.01.2020: Heard learned counsel for the parties. It emerges from the impugned order dated 11th December, 2019 that after admission of the application of Respondent Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'), the Interim Resolution Professional had been appointed. However, it is admitted by learned counsel for the Respondent – Interim Resolution Professional that the publication of announcement has not been made nor Committee of Creditors had been constituted when the impugned order came to be passed. It is further submitted that even as of now the Committee of Creditors has not been constituted.

2. In the given circumstances, once it was represented before the Adjudicating Authority (National Company Law Tribunal), Division Bench – I,

Chennai that the matter has been amicably settled between the Operational Creditor and the Corporate Debtor prior to constitution of Committee of Creditors, the Adjudicating Authority should have taken recourse to Regulation 30A(1)(a) governing withdrawal of application falling within the ambit of Section 12A of the I&B Code.

3. It appears that the Learned Adjudicating Authority, in utter disregard to the provisions of the Law and probably under misconception that such recourse was impermissible because the resolution process had been initiated, declined to entertain the prayer for withdrawal of application in terms of the Settlement and on the contrary asked for making public announcement for inviting claims. This view cannot be supported.

4. However, it appears that the Appellant had not approached the Adjudicating Authority in the prescribed format in terms of Regulation 30A(1)(a).

5. Having regard to the facts and circumstances of the case, we dispose of this appeal with direction to the Appellant to approach the Adjudicating Authority with application for withdrawal in terms of settlement in the prescribed format falling across the ambit of Regulation 30A(1)(a). This may be done within two weeks.

5. We make it clear that in the event of such application not being filed before the Adjudicating Authority, the Corporate Insolvency Resolution Process shall be carried forward.

6. The appeal is disposed of with aforesaid observations and directions.

[Justice Bansi Lal Bhat]
Member (Judicial)

[V. P. Singh]
Member (Technical)

[Shreesha Merla]
Member (Technical)

am/nn