

In the National Company Law Tribunal
Mumbai Bench.

IA 57/2018 in C.P. (IB)-1211(MB)/2017

Order Under Section 12A of Insolvency & Bankruptcy Code, 2016
Petition Under Section 7 of the Insolvency & Bankruptcy Code, 2016

In the matter of

Devendra Jain : Applicant/ Resolution Professional
And

In the matter of

Bell Finvest India Limited : Financial Creditor
V/s.

V-Tech Elastomers Private Limited : Corporate Debtor

Heard on: 18.02.2019
Order delivered on : 19.02.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Applicant(s) : 1. Mr. Vikramjoti Garewal, Advocate;
2. Mr. Amey Hadwale, Advocate.

For the Respondent(s) : 1. Mr. Vinit J. Mehta;
2. Mr. Subodh S. Lendhe, Advocates, i/b. Pravin Warpe.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. This Application is submitted on 20.08.2018 by the Applicant Mr. Devendra P. Jain (Resolution Professional) seeking an Order u/s.12A and the Prayer is as under, as pointed out by the Ld. Legal Representative, reproduced from this Miscellaneous Application :-

"It was also resolved that if any terms of the settlement will not honor by the Corporate Debtor, application may be filed for the liquidation.

If the application for withdrawal with above conditions could not be accepted by the Hon'ble NCLT for any reason than only option to propose for liquidation of the Corporate Debtor in absence of any Prospective Resolution Applicant."

2. Certain queries were raised to demonstrate that all the compliances have been made, hence an additional Affidavit is filed on 11.01.2019 wherein it was affirmed on oath as under:-

- "1. I say that I had preferred the instant interlocutory application under section 12A read with section 60(5) of the Insolvency & Bankruptcy Code, 2016 ("**Code**").
2. I say that after the Applicant was informed that the Original Applicant and the Corporate Debtor had settled the matter mutually and the settlement deed dated July 13, 2018 was executed between the parties. It is also submitted that on fifth CoC meeting dated August 18, 2018, resolution was passed to initiate settlement under section 12(A) of the Code. Accordingly, the Applicant had moved the instant interlocutory application pending receipt of Form FA from the Applicant. Copy of settlement deed dated July 13, 2018 is annexed here to as **Annexure-I**.
3. I say that the matter came to be heard before the Hon'ble NCLT on Dec. 14.2018 when the parties had certain disagreement in relation with the fact that which party will bear the CIRP costs. Accordingly, I was directed to call a meeting of CoC and take a clear decision on the issue.
4. I say that accordingly, a meeting of CoC members was convened on 26th December 2018 and the Applicant recorded the aforementioned settlement between the parties which was accepted with 100 (Hundred) percent voting share. A copy of minutes of meeting dated December 26, 2018 is annexed hereto as **Annexure – 2**.
5. I say That the Applicant states that the Original Applicant has also signed Form FA authorizing the Applicant to file the present application and giving its assent to the withdrawal of the application being C.P. (I.B.) No.1211/MB/2017 filed by it. A copy of Form FA is annexed hereto as **Annexure – 3**.
6. I say that EOI was published on 12th April 2018 in Free Press Journal & Navshakti newspaper. However, no prospective resolution applicant has shown and registered any interest in the Corporate Debtor till date.
7. I further say that I have received the entire CIRP cost and my fees in the matter and no amount is pending towards CIRP cost and expenses as on date of execution of this additional affidavit"

3. In respect of the Corporate Debtor M/s. V-Tech Elastomers Pvt. Ltd. an Order was passed u/s. 7 of the Insolvency Code dated 22.08.2017 (CP No.1211/IBC/2017) wherein as per the Particulars of Financial Debt amount claimed was Rs.5,72,000/- and with Interest Rs.6,31,624/- as on the date when the requisite Petition was filed. Now it is informed that a Settlement had reached among the parties according to which the Corporate Debtor (V-Tech Elastomers Pvt. Ltd.) has agreed to make a payment of Rs.5,32,350/-. It has been agreed by the Debtor that the Debt is acknowledged and to be paid during the period as agreed upon. Placed on record a schedule of payment as well.

4. A Resolution was passed by Members of CoC on 26.12.2018 attended by the Financial Creditors wherein the provisions of Section 12A of IBC and Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations were discussed and agreed upon that the Financial Creditor (Bell Finvest India Limited) shall submit Form FA so that the Application u/s.12A can be pleaded for requisite Order. In the said Resolution it was agreed upon to pay the Corporate Insolvency Resolution Process cost and the payment to the Resolution Professional. It has also been resolved that there was no requirement of providing any Bank Guarantee.

5. On the question of justification of submission of Section 12A Application, now under consideration, placed reliance on an Order of Hon'ble Supreme Court in SLP No.31557/2018 Order dated 14.12.2018 wherein it was held as under:-

*"UPON hearing the counsel the Court made the following
O R D E R*

The only reason why the withdrawal was not allowed, though agreed to by the Corporate Debtor as well as the Financial Creditor State Bank of India and the Operational Creditor-Respondent No.3, is because Regulation 30A states that withdrawal cannot be permitted after issue of invitation for expression of interest.

According to us, this Regulation has to be read along with the main provision Section 12A which contains no such stipulation.

Accordingly, this stipulation can only be construed as directory depending on the facts of each case.

Accordingly, we allow the Settlement that has been entered into and annul the proceedings.

The Special Leave Petition is disposed of accordingly."

6. Accordingly, the **I.A. 57/2018** in C.P.(IB)-1211/(MB)/2017 filed u/s. 12-A of Insolvency & Bankruptcy Code is **Allowed**. Since the requisite compliance have already been made, therefore, withdrawal is granted and file to be consigned to records.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 19.02.2019
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