

In the National Company Law Tribunal, Jaipur

IA No. 69/JPR/2018

Diary No. 499/2018

IA No. 47/JPR/2018

IA No. 13/JPR/2018

IB-583/ND/2017

TA No. 38/2018

UNDER SECTION 9 OF IBC, 2016
UUNDER SECTION 12 A OF IBC, 2016

In the matter of:

M/s. J.J. Plastalloy Pvt. Ltd. Applicant/Petitioners
VS.

M/s Smaleshwari Packaging Pvt. Ltd.Respondent

Order delivered on 15.11.2018

Coram: Shri R. Varadharajan, Member (Judicial)

For Petitioner (s) : Nitesh Shrivastva, Adv. for RP

For Respondent(s) : Manjeet Kaur, Adv. for RFC

ORDER

Learned RP is present and represents that an application IA No. 47/JPR/2018 has been moved under Section 12A of Insolvency and Bankruptcy Code, 2016 in view of the settlement which has been arrived at as between the Operational Creditor and the Corporate Debtor and also duly ratified by the CoC in its third CoC meeting held on 18.09.2018. Learned RP also represents that the necessary Form- FA has been annexed at page No. 52 of the typed set of the application. It is further representation of learned RP that a bank guarantee in terms of Clause-5 of the said form towards the estimated cost incurred for purpose



of regulation 31(c) & (d) till the date of application has also been enclosed to his satisfaction and in the circumstances prays in this application of withdrawal of the application filed under Section-9 and as admitted by this Tribunal on 13.06.2018 be allowed.

Learned counsel appearing for Rajasthan Financial Corporation being the only Financial Creditor also represents that the Financial Creditor has no objection in the above application being allowed. The above application, however, is being opposed by the erstwhile IRP namely Mr. Raj Kamal Sarogi, who was appointed by this Tribunal at the time of initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor on 14.06.2018 on the grounds that the fees as payable to him to the extent of Rs. 6,45,161/- has not been paid in full and in Form- FA in relation to his fees, even though to be considered as Insolvency process costs has not been factored in and unless the fees claimed to the extent of Rs. 6,45,161/- is secured, this application seeking for withdrawal should not be permitted in effect.

Learned counsel for the Financial Creditor however, represents that the CoC has duly ratified all the expenses as claimed by the erstwhile IRP, the details of which have been given in Annexure- B Page No. 26 of the application as filed by the erstwhile IRP vide Diary No. 367/2018. It is also pointed out by learned counsel for the Financial Creditor that as against the claim of Rs. 12 Lakh made by Operational Creditor, the fees which is charged by the erstwhile IRP is to the

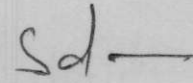


extent of Rs. 6,45,161/- almost 50 per cent of the claim as made by the Operational Creditor.

However, this Tribunal is not in a position to appreciate the said contention of learned counsel for Financial Creditor as the Corporate Insolvency Resolution Process was initiated for the benefit of the general body of creditors including the Financial Creditor. It is also further pointed out by learned counsel for the Financial Creditor that the fee of Rs. 6,45,161/- also includes payment to one M/s P.C. Jain and company (Company Secretaries) and that the IRP is a part of said PC Jain and Company (Company Secretaries) and that amount which has been claimed is to the extent of Rs. 1,00,000/- per month towards secretarial service. In relation to the same this Tribunal is in concord with the representation of learned counsel for the Financial Creditor as out of the total fee of Rs. 6,45,161/- claimed in which has been included in relation to the fees which is payable for secretarial services to one M/s PC Jain and Company (Company Secretaries) the RP being a partner therein should be excluded. Further going through the minutes of first CoC as well as the tabulation which has been shown by Learned counsel for the Financial Creditor, it is seen that up-till conclusion of the first CoC meeting a sum of Rs. 1 lakh was claimed by the IRP. Taking into consideration the said calculation and also considering the fact that the learned IRP has acted for a period of 78 days and extrapolating the fee of Rs. 1 lakh which has been claimed for the first 30 days, fees for 78 days comes to Rs. 2,60,000/- of which this Tribunal is of the view reasonable and that the erstwhile IRP is entitled to.

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Subject to the payment of above fees of Rs. 2,60,000/- by the CoC or by the Operational Creditor under whose instigation this petition was filed and who seeks to withdraw this petition we allow this application. It is represented by learned counsel for the parties that already the expenses have been full ratified and paid and that only the fees to the IRP remains unpaid. Order in relation to payment of cost to be complied with on or before 30th November, 2018.



(R. Varadharajan)
Member (Judicial)