

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 1059/2018

in

TCP No. 892/IBC/NCLT/MB/MAH/2017

Under Section 12A of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Mr. Prabhakar Bhat

..... Resolution Professional
(Applicant)

In

Prime Products

..... Operational Creditor

v.

M/s. Eco Rich Cosmetics India Private Limited

..... Corporate Debtor
(Respondent)

Order Pronounced on : 22.10.2018

Coram :

Hon'ble M. K. Sh rawat, Member (J)

For the Applicant :

- 1) Mr. Abhay Itagi, Advocate – Advocate for the Resolution Professional.
- 2) Mr. Aniruddha M. Bhat, PCS – Authorised Representative for the Operational Creditor.

Per: M. K. Shrawat, Member (J)

ORDER FOR WITHDRAWAL

1. In this case, the Petition U/s. 9 of the Insolvency and Bankruptcy Code, 2016 (**the Code**) filed by the Operational Creditor viz. 'Prime Products' (hereinafter as **Operational Creditor**) against 'M/s. Eco Rich Cosmetics India Private Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 26.04.2018 by this very Bench wherein '**Mr. Prabhakar Bhat (IBBI/IPA-001/IP-P00299/2017-18/10543**' was appointed as Interim Resolution Professional (**IRP**) and also confirmed as Resolution Professional (**RP**) by the Committee of Creditors (**CoC**) in its Meeting held on 31.08.2018.

2. After the Admission of the Petition, the Public Announcement to that effect had been done on 25.07.2018, immediately after the certified copy of the Order has been received by the appointed IRP. Pursuant to the said advertisement there were 2 claims received by the IRP viz. one by the Operational Creditor itself who has initiated the CIRP and another from the Canara Bank as Secured Financial Creditor of the Debtor.
3. Accordingly the IRP has constituted the CoC with only 1 member i.e. Canara Bank and conducted the first meeting on 31.08.2018. In the same meeting the IRP was confirmed as RP.
4. The Learned Advocate for the RP has informed that, during the interregnum period the representative of the Operational Creditor and Debtor had discussions with a view to resolve the disputes. Accordingly it was agreed between the parties that the Debtor will pay ₹ 13,00,000/- towards the full and final settlement of the outstanding dues of the Operational Creditor.
5. It is further informed that the Operational Creditor and the Debtor had entered into an 'Agreement of Settlement of Dues' dated 18.08.2018 wherein it was recorded that the Operational Creditor had accepted a pay order bearing no. 191840 dated 18.08.2018 amounting to ₹ 13,00,000/- drawn on Federal Bank towards the full and final settlement of the dues.
6. It is further submitted that the Operational Creditor has deposited a demand draft bearing no. 565918 dated 23.08.2018 amounting to ₹ 3,00,000/- drawn on Bharat Co-operative Bank (Mumbai) Ltd., Mumbai, favoring Mr. Prabhakar Bhar, towards the expenses incurred by him as IRP / RP.
7. It is further submitted that, in light of abovementioned situations the RP has proposed for the withdrawal of the Insolvency Petition, as per the provisions of S. 12A of the Code, and the resolution was put for voting before CoC.
8. It is informed that the CoC, in the 3rd CoC Meeting held on 10.09.2018, by 100 % voting Share, has accepted the proposal for withdrawal of the Petition. The copy of the voting sheet is annexed with the Application.
9. It is submitted that consequently, the RP has preferred an Miscellaneous Application no. 1059/2018 U/s. 12A of the Code praying for the withdrawal of the Admitted Insolvency Petition bearing no. TCP 892/IBC/NCLT/MB/MAH/2017.

10. The Bench has considered the factual matrix of this case and noticed that the Operational Creditor has settled its claim with the Debtor, admittedly, after Admission of the Petition. The Canara Bank, a Secured Financial Creditor, has consented for the same and as the Canara Bank is a Sole Member of the CoC has also voted in favour of the Withdrawal of the Petition.

11. Further the Bench has also gone through the provisions of S. 12A of the Code, which is reproduced as under :

“12A. The Adjudicating Authority may allow the withdrawal of application under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be prescribed.”

and from going through the above Section it is noticed that, if the CoC, with a 90 % approval, accepts for the withdrawal of the Admitted Petition then the AA may approve the same.

12. In this case, in fact, the CoC, by 100% voting share, have accepted the withdrawal of the Petition filed U/s. 9 of the Code, by the Operational Creditor. Hence, the Bench is of the view that, it would not be appropriate to interfere in the decision of the CoC. Specifically, when the Operational Creditor has settled its dues and the RP has also been paid towards his professional fees.

13. Considering above facts and circumstances, this Bench hereby permits for withdrawal of the Insolvency Petition bearing no. TCP 892/IBC/NCLT/MB/MAH/2017.

14. Accordingly, it is hereby Ordered that, **the Petition bearing no. TCP 892/IBC/NCLT/MB/MAH/2017 is disposed-of as Withdrawn.** Consequently, the RP is discharged from his duties from the date of this Order. The RP is further directed to dissolve the CoC by communicating this Order. The RP shall also communicate this Order to the IBBI, New Delhi for its Records.

15. Ordered Accordingly. The Miscellaneous Application no. 1059/2018 U/s. 12A of the Code is also disposed-of as allowed. Both, the Petition and Application shall be consigned to Records.

Dated : 22.10.2018

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash