

THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH – I,  
MUMBAI

MA 1421/2018  
IN CP (IB)-1309/MB/2017

CORAM : SHRI V.P. SINGH, MEMBER (J)  
SHRI RAVIKUMAR DURAISAMY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON 29.11.2018

NAME OF THE PARTIES: FEDERAL BANK LTD.

v/s  
TRIO FAB (I) PVT. LTD.

SECTION 7 OF INSOLVENCY & BANKRUPTCY CODE, 2016

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ORDER

35. MA 1421/2018 IN CP (IB)-1309/MB/2017

MA 1421/2018 has been filed by the Financial Creditor Federal Bank Ltd under Section 12A of the Insolvency and Bankruptcy Code, 2016 seeking (i) permission to withdraw the Petition under Section 12A of the IBC, 2016 without prejudice to also reserving the applicant bank's right as a secured creditor to realise the balance debt due outstanding under the loan account from M/s. Trio Fab (India) Pvt Ltd by initiating appropriate legal action/s and recovery measures, (ii) directions to the Corporate Debtor to pay the CIRP expenses of Rs.16,58,747.

Resolution Professional has filed separate MA 1379/2018 seeking the same prayer under Section 12A for withdrawal of the Petition. Resolution professional has annexed a copy of the CoC minutes dated 6.11.2018 wherein it is stated that "representative of the Federal Bank gave their consent to the Resolution professional to go ahead and file the application in Form FA before the Adjudicating Authority if the undersigned believes that the Form FA is in accordance with the provisions of IBC, 2016.

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It is also stated in the minutes that 100% quorum was present in the said CoC meeting. It is pertinent to mention that Federal Bank is the sole financial creditor who has 100% voting share in CoC. In this, Federal Bank moved the application for withdrawing the Petition and prior to this, RP has moved the application for withdrawing the Petition under Section 12A of the Code.

In this case, Hon'ble NCLAT has passed an order on 13.11.2018 in Company Appeal (AT)(Insolvency) No.242 of 2018, wherein it is held that Regulation 30A cannot override the substantive provisions of Section 12A according to which the applicant can only move application for withdrawal of the application before the Adjudicating Authority and not by the Resolution Professional.

In compliance of the above order, Federal Bank has filed this application for withdrawal of the Petition. It is further stated in the order of Hon'ble NCLAT dated 13.11.2018 that if the application for withdrawal is filed by the applicant in the present case, in such case the Adjudicating Authority will decide the case in accordance with the provisions of Section 12A.

It is necessary to reiterate the provision of Section 12A which is as follows:

Section 12A provides that: "The Adjudicating Authority may allow the withdrawal of application admitted under Section 7 or Section 10 or Section 10, on an application made by the applicant with the approval of 90%, voting share of the Committee of creditors, in such manner as may be specified."

In this case, admittedly, the resolution for permitting the withdrawal of the petition has been passed with the vote share of 100%, therefore, the condition provided in statutory provision of Section 12A is satisfied. However, Regulation 30A(4) of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016 provides that "where the application is approved by the CoC with 90% vote share, the Resolution Professional shall submit the application under sub-section (1) to the Adjudicating Authority on behalf of the applicant within three days of such approval". Regulation 30A (1) provides that "an application for withdrawal under Section 12A shall be submitted to the Interim Resolution Professional or the Resolution Professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under Regulation 36A".

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It appears that Regulation 30A(1) specifically provides that the withdrawal permission can only be given before issue of invitation for expression of interest under Regulation 36A but Section 12A of the Code does not impose such restriction for withdrawing the petition.

It is pertinent to mentioned that IBBI (IRP for Corporate Persons), the third amendment Regulation, 2018 is effective with effect from 3.7.2018 and it is specifically mentioned that it shall apply to CIRP commencing on or after 3.7.2018. In this case, undisputedly, the CIRP has been started by an order dated 18.5.2018, therefore, Regulation 30A is not applicable in this case. As per the provision of Section 12A condition was only that the application for withdrawal can be permitted only if the CoC with vote share of 90% has passed the resolution. Section 12A has been inserted by Act No.26 of 2018 with effect from 6.6.2018 but it is clarificatory in nature and which has come into force as per the directions of Hon'ble Supreme Court, therefore, we are of the considered opinion that Section 12A will be applicable in this case. Conditions laid down in Section 12A are satisfied because application for withdrawal has been supported with 100% voting share of CoC. Therefore, application filed by Federal Bank deserves to be allowed.

MA 1421/2018 is accordingly disposed of and Petition No CP (IB)-1309/MB/2017 is dismissed as withdrawn.

Sd/-

RAVIKUMAR DURAISAMY  
Member (Technical)

Sd/-

V. P. SINGH  
Member (Judicial)