

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

24

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.09.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.746/2019 in CP(IB) No.581/9/HDB/2018
NAME OF THE COMPANY	GE Godavari Engineering Ltd
NAME OF THE PETITIONER(S)	Madras Steels & Tubes
NAME OF THE RESPONDENT(S)	GE Godavari Engineering Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

B. N. J. Bhuma

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nagabhushan@jmi.ac.in

nijl

tel: 9849995678

ORDER

Orders passed vide separate orders.

IA No.746/2019, is allowed.


Member (T)


Member (J)

Pavani

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 746/2019
In
CP(IB) No. 581/9/HDB/2018
U/S.12 A of IBC, 2016

IN THE MATTER OF :

MR. B NAGA BHUSHAN

Resolution Professional for **GE Godavari Engineering Ltd**

R/o: Plot 136 and 137, M.No. Nil,
Maitrinagar Phase 2, Road No.3, Miyapur,
Landmark: Near Reliance Fresh Hyderabad,
Telangana- 500 049.

And on behalf of

Madras Steels and Tubes

R/o: Megh Synergy, 45 Halls Road,
Telecom Quarters, Kilpauk,
Chennai- 600 010 Tamil Nadu.

... Applicant

Order pronounced on 03.09.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Counsels / parties present:

For the Applicant: Shri B.Naga Bhushan, RP



**Per: Hon'ble Shri Narender Kumar Bhola, Member
(Technical)**

ORDER

1. This application is filed by the Applicant/Resolution Professional under section 12A of IBC, 2016 R/w Regulation 30A of the IBBI (herein referred to as code) seeking permission for withdrawal of company petition CP(IB) No.581/9/HDB/2019 which is filed under section 9 of the code.
2. The averments in the application in brief are that this Adjudicating Authority by order dated 04.01.2019 admitted the Application in CP (IB) No. 581/9/HDB/2019, filed by Operational Creditor M/s. Madras Steels and Tubes , under section 9 of the Code R/W Rule 6 of the IBC,2016 and appointed Mr.Kedarram Ramratan Laddha, as IRP. Further the Tribunal vide order dated 05.04.2019 appointed Mr.Naga Bhushan as RP for the corporate debtor replacing the IRP.
3. The Applicant averred that during the meeting of Committee of Creditors on 26th July 2019, the Directors of Corporate Debtor informed that they had settled their dues with Madras Steel & Tubes Ltd (operational creditor). The Directors further informed the Committee that Madras Steel & Tubes would be submitting the Form FA for withdrawal of the application.
4. The applicant averred that the Director of Corporate Debtor submitted the Form FA Application for Withdrawal of Corporate Insolvency Resolution Process duly signed by the Proprietor of the operational creditor i.e Madras Steel and Tubes. The Form FA is annexed to the application here with as Annexure-IV.

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5. It is also averred that the Director of the company submitted No Objection Certificate issued by the sole member of COC and Financial Creditor State Bank of India, conveying its no objection for withdrawal of the application by the operational creditor i.e Madras Steel and Tubes. The No Objection Certificate is annexed to the application here with as Annexure V.
6. It is averred that the Director further informed the Committee that the applicant paid all the estimated expenses incurred/ to be incurred towards Insolvency resolution process cost till the date of application to the SBI. The Director informed that the last payment of the estimated expenses for Rs.5,80,000/- was paid through DD. The Director of the Company has also expressed his intention to pay the other operational creditors also and expressed the desire to run the company as a going concern.
7. The Resolution Professional informed the Committee of Creditors that all the CIRP expenses are borne by the Financial Creditor and sole member of the committee. The details of estimated expenses towards Insolvency Resolution Process Cost for Rs 12,40,000/- (Rupees twelve lac forty thousand only) was placed before the committee. The Resolution Professional requested the Bank to confirm reimbursement of all the CIRP expenses by the applicant. The Bank Representative confirmed the receipt including the balance payment of Rs.5,80,000/-.
8. RP states that he has placed Form FA before the COC for its approval and the COC approved the withdrawal application with 100% voting share and there by *subject to the approval of the Tribunal* RP filed application on behalf of the Committee of Creditors under Sec 12A of the IBC,

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praying this Hon'ble Adjudicating Authority to approve the withdrawal of the Petition CP(IB) No. 581/9/HDB/2019.

9. We have heard the Resolution Professional/applicant herein.

The Application is filed under Section 12 A of the Code, which is a newly added provision in the code. Sec 12A of the Code read as follows:

"The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety percent voting share of the committee of creditors, in such manner as may be prescribed".

10. It is clear from section 12 A of the Code that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10 on an application filed by the applicant with the approval of 90% voting share of the Committee of Creditors. Thus it is clear if 90% voting share of Committee of Creditors approves application for withdrawal then Adjudicating Authority may allow withdrawal of the application admitted under section 7 or section 9 or section 10 of the Code.

11. The regulation 30A of I&B(Corporate Insolvency Resolution Process), 2016, deals with Withdrawal of application. It reads as follows:

- a. An application for withdrawal under section 12 A 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 36 A.
- b. The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses© and (d) of regulation 31 till the date of application.

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- c. The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.
 - d. Where the application is approved by the Committee of creditors with ninety percent voting share, the Resolution Professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.
 - e. The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).
12. Regulations 30A provides for the procedure for withdrawal of application filed under section 12 A of the code.
13. The application for withdrawal under section 12 A of the code shall be submitted to the IRP or RP as the case maybe in Form FA of the schedule before issue of invitation for expression of interest and further to be accompanied by a bank guarantee towards estimated cost. On 24.08.2019 Applicant filed withdrawal application in Form FA. The COC discussed the same. The COC approved the withdrawal.
14. It is the case of applicant/RP that Committee of Creditors with 100% voting share approved the withdrawal application. The minutes of the meeting of Committee of Creditors dated 26.08.2019 is annexed at Pg no.12 in the application.
15. We have seen the minutes of the Committee of Creditors meeting held on 26.08.2019. The sole member of Committee of Creditors having 100 % voting share, approved the application for withdrawal filed by the applicant. Therefore, permission can be granted under

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Section 12 A of the I&B Code to the Applicant for withdrawal of Company petition.

16. This Tribunal by exercising powers under section 12 A of the Code R/W regulations 30A of IBC(Corporate Insolvency Resolution Process) Regulations 2016, allows the application for withdrawal filed by RP and consequently moratorium order passed under section 14 shall cease to exist. In the result IA No. 746/2019, is allowed and application for withdrawal filed by Operational Creditor which has been approved by the Committee of Creditors with 100 % voting share stands approved.

17. Consequently application filed by Operational Creditor in CP(IB) No. 581/9/HDB/2018, stands withdrawn, and CIRP stands closed.

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3.9.2019
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

3.9.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

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