

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
COURT – IV

I.A/602/2024
IN
C.P. (IB)741/ND/2020

IN THE MATTER OF:

Mr. Rajesh Kumar Parakh ..
Interim Resolution Professional
M/s. Prominent Polymers Private Limited **Applicant**
Versus
M/s. Newgen Speciality Plastics Limited
Through its Liquidator
Mr. Sandeep Kumar Bhatt **Respondent**

AND IN THE MATTER OF

M/s. Newgen Speciality Plastics Limited ... **Operational Creditor**
Versus
M/s. Prominent Polymers Private Limited ... **Corporate Debtor**

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 29.02.2024

For the Applicant : Mr. Ahsan Ahmad and Mr. Naimish Tewari,
Advocates along with RP-Mr. Rajesh Kumar
Parakh

ORDER

PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The instant application is being filed on behalf of Mr. Rajesh Kumar Parekh, Resolution Professional ('Applicant') of M/s. Prominent Polymers Private Limited ('Corporate Debtor') under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 inter alia seeking the following relief(s):-

- a) Recall the Order dated 25.05.2022 passed by this Hon'ble Adjudicating Authority and allow the applicant to withdraw the Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 in the matter of Newgen Speciality Plastics Limited against Prominent Polymers Private Limited C.P. IB-741/(ND)/ 2020;
- b) Pass such other or further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case.

2. Briefly, stated the facts of the present case as averred by the applicant and necessary for the adjudication of the present matter are that the Corporate Insolvency Resolution Process was initiated against M/s. Prominent Polymers Private Limited ('Corporate Debtor') vide this Adjudicating Authority's order dated 25.05.2022 and Mr. Rajesh Kumar Parekh was appointed as the Interim Resolution Professional of the Corporate Debtor. Also, pursuant to the Public Announcement made under Regulation 6 of IBBI (Insolvency Resolution Process of Corporate Debtor) Regulation, 2016 on 28.05.2022 in Financial Express (English) Delhi and NCR editions and Jansatta (Hindi) Delhi and NCR edition inviting claim only one claim of Rs.1,53,85,531/- was received from M/s. Newgen Speciality Plastics Limited ('operational creditor') and the same was collated and verified by the Interim Resolution Professional and the committee of creditors "(CoC)" was constituted with only one Operational Creditor namely

M/s. Newgen Speciality Plastics Limited with an admitted claim of Rs. 92,45,001/- only.

3. It was also submitted that the Applicant along with his team members had visited the Registered Office at Plot No. A-609 G/F, GD Colony Mayur Vihar-111 Delhi110096 and that the registered office was non-existent in the said premises. Further, the Applicant had searched about the details of the Corporate Debtor on internet in which he came across one address of the Corporate Debtor situated at D-247, Sector-10, Noida 201301. The Applicant along with his team members visited the said address, however, that location was also closed two-three years back. Thereafter, the IRP tried to connect to the mobile no. of one of the member of suspended Board of Directors namely,. Mr. Navneet Mittal. The suspended Board of Directors had apprised the IRP that the operations of the Corporate Debtor were closed around three years back due to financial crunch and the Corporate Debtor was not doing any business now.. Also, the member of the suspended Board of Directors, Mr. Navneet Mittal also visited the office of the IRP where the IRP handed over the letter containing list of documents required for running the CIRP and the IRP was informed that the suspended Board of Directors will try to provide the documents and details required by the IRP at the earliest
4. The sole member of CoC namely, M/S Newgen Speciality Plastics Limited possessing 100% voting rights in the 2nd CoC Meeting had resolved to file an application under section 19(2) of the Insolvency and Bankruptcy Code, 2016, against the members of suspended Board of Directors for non-cooperation. Further, the only member of the Committee of Creditors had instructed the Applicant to file for early dissolution via emails dated 19.07.2022, 01.12.2022 and 23.01.2023. Pursuant to the directions of the only member of the Committee of Creditors i.e. Newgen Specialty Plastics Ltd., the IRP had filed an application for early dissolution of the Corporate Debtor dated 13.02.2023.

However, as an Application under section 19(2) of the Insolvency and Bankruptcy Code, 2016, by the Interim Resolution Professional (IRP) against the suspended Board of Directors for non-cooperation, this Adjudicating Authority identified a conflict between the two. Consequently, the application under Section 54, read with Rule 14 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, was withdrawn, due to which the fourth meeting of the CoC was called on April 12, 2023. The Applicant in the Fourth CoC Meeting had apprised the CoC about the status of the non-cooperation application and also informed the committee of the creditors that the 180 days of the Corporate Debtor's corporate insolvency resolution process had already expired on 21.11.2022 and due to the non-cooperation of the suspended Board of Directors and non-availability of requisite documents, the IRP was unable to perform his duties.

5. Further, the CoC in its 5th CoC Meeting held on 02.02.2024, had passed a resolution for withdrawal of CIRP against the Corporate Debtor in accordance with Section 12A of the Insolvency and Bankruptcy Code, 2016, and Regulation 30A (1) (B) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and authorized the Interim Resolution Professional for filing an application for the withdrawal of Company Petition No. 741/ND/2020. The operational Creditor/ Applicant i.e., Newgen Speciality Plastics Limited, has provided duly signed and executed Form FA, dated 05.02.2024 signifying their intention to withdraw the application filed for initiating corporate insolvency resolution process of the corporate debtor. Accordingly, the applicant prays for withdrawal of CIRP against the Corporate Debtor.

6. We have heard the Learned Counsel for the Applicant and perused the averments made in the Application and documents annexed therewith. Adverting to the factual matrix of the present case, the Corporate Insolvency Resolution Process was initiated against M/s. Prominent Polymers Private Limited vide this Adjudicating Authority's order dated 25.05.2022 and the 180 days of the CIRP period of the Corporate Debtor as per Section 12 of the Code, 2016 was ended on 21.11.2022. The Committee of Creditors was duly apprised that 180 days of the CIRP period of the Corporate Debtor had already expired on 21.11.2022 as recorded in the Item No.14 of the 4th CoC Meeting of the Corporate Debtor held on 12.04.2023. It is pertinent to note from the records available, that no extension or exclusion in the Corporate Insolvency Resolution Process Period of the Corporate Debtor was granted by this Adjudicating Authority under Section 12 of the Code, 2016.
7. Considering the conspectus of facts and circumstances of the present case, it is evident that as per Section 12(1) of the Code, 2016 the period of 180 days in the Corporate Insolvency Resolution Process of the Corporate Debtor was expired on 21.11.2022. Pursuant, to the expiry of 180 days of the Corporate Insolvency Resolution Process of the Corporate Debtor, no application for further extension /exclusion from the CIRP Period was filed before this Adjudicating. The CoC in its 5th CoC Meeting held on 02.02.2024 i.e., after 618 days from the date of commencement of CIRP of the Corporate Debtor had resolved to withdraw the CIRP against the Corporate Debtor.
8. It is relevant to refer Section 33(1) of the Insolvency and Bankruptcy Code, 2016. The same is reproduced herein below:-

“33. Initiation of liquidation. -

(1) Where the Adjudicating Authority, -

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate

insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall -

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.”

9. This Adjudicating Authority is of the view that after the expiry of the CIRP period of the Corporate Debtor, the CoC the only resort left was to proceed in accordance with Section 33(1) of the Code, 2016. The Committee of Creditors cannot silently apply for withdrawal of the CIRP of the Corporate Debtor after a period of 618 days from commencement of Corporate Debtor's CIRP, just to escape from the liquidation proceedings of the Corporate Debtor.
10. The Hon'ble National Company Law Appellate Tribunal in the matter of **Sanjay Kumar Ruia v. Catholic Syrian Bank Ltd. & Anr. in Company Appeal (AT) (Ins.) No. 560 of 2018** has held that after completion of 270 days, the CoC ceased to exist and thereby they have no jurisdiction to replace a Resolution Professional. The relevant extract of the judgement is extracted below:-

“16. After completion of 270 days of ‘Corporate Insolvency Resolution Process’, the Adjudicating Authority can pass order under Section 31 of the ‘I&B Code’, if a ‘Resolution Plan’ has been approved by the ‘Committee of Creditors’. In absence of any ‘Resolution Plan’, the Adjudicating Authority is bound to pass order under Section 33 by initiating liquidation proceeding against the ‘Corporate Debtor’.

17. In the background of law as discussed above, we hold that after completion of 270 days, the ‘Committee of Creditors’ ceased to exist and thereby they have no jurisdiction to replace a ‘Resolution

Professional’ under Section 22 of the ‘I&B Code’. Even if the decision to replace the ‘Resolution Professional’ is taken prior to 270 days, in absence of any order passed by the Adjudicating Authority, such decision cannot be entertained on completion of 270 days. However, the ground taken by the ‘Committee of Creditors’ can be looked into by the Adjudicating Authority to decide whether the same ‘Resolution Professional’ should be allowed to continue as ‘liquidator’ of the ‘Corporate Debtor’. The Issue No.2 is also answered in negative.”

11. Therefore, in view of aforesaid discussion, this Adjudicating Authority is not inclined to consider the withdrawal of the Corporate Debtor’s CIRP as resolved by the Committee of Creditors in its 5th CoC Meeting held on 02.02.2024 i.e., after 618 days from the date of commencement of CIRP of the Corporate Debtor. Resultantly, the present application being devoid of merits stands **dismissed**.
No orders to cost.
12. Further, since no resolution plan is placed before this Adjudicating Authority for approval within the maximum period permitted for completion of the corporate insolvency resolution process under section 12 of the Code, 2016. Consequently, in exercise of its powers under Section 33(1)(a) of the Insolvency & Bankruptcy Code, 2016, this Adjudicating Authority hereby directs the Applicant that appropriate application for initiation of liquidation of the Corporate Debtor be filed before this Adjudicating Authority within a week.
13. The instant application stands **dismissed** in view of the above discussion and direction.

Sd/-

(DR. SANJEEV RANJAN)
MEMBER (T)

Sd/-

(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)