

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

**CP IB NO. 1807/(ND)/2019
A/W
IA 6223/ND/2023 IN CP IB NO. 1807/(ND)/2019**

An Application under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016.

IN THE MATTER OF:

M/S TECHMATE INDUSTRIES

Through its Proprietor Mr. Manoj Kumar

RR/13, Vipin Garden,
Near Dwarka metro Station,
Uttam Nagar, New Delhi-110059

...Operational Creditor

Versus

M/S RETAIL KART SOLUTION PRIVATE LIMITED

RZ P-222, Kh. -43/12,
Raj Nagar-II, Palam Colony,
New Delhi-110077

...Corporate Debtor

AND IN THE MATTER OF:

PRAVEEN KUMAR AGRAWAL

Resolution Professional of

M/s Retail Kart Solution Private Limited

906, I-Thum, Tower-A,
Plot No. A-40, Sector 62,
Gautam Buddha Nagar, Uttar Pradesh-201301

...Applicant

Order Delivered on: 29.02.2024

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A/W
IA 6223/ND/2023 IN CP IB NO. 1807/(ND)/2019
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CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant: Mr. S. Shiva, Mr. Rishabh Singh, Adv.

For the Respondent:

O R D E R

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This is an application filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate Persons) Regulations, 2016 by Mr. Praveen Kumar Agrawal, Resolution Professional of **M/s Retail Kart Solution Private Limited ('Corporate Debtor')** seeking withdrawal of the Company Petition bearing IB 1807/ND/2019 filed by the **M/s Techmate Industries ('Operational Creditor')** under Section 9 of the Code. The Applicant is seeking withdrawal of the CIRP of the Corporate Debtor in view of the settlement agreement dated 24.08.2023 entered between the Operational Creditor and the Corporate Debtor.
2. Briefly stated the facts of the case as mentioned in the instant application, which are necessary for adjudication, are as follows:
 - i) This Adjudicating Authority vide its order dated 27.02.2020 admitted the CP IB No. 1807/ND/2019 initiating the CIRP against the Corporate Debtor, wherein, the Applicant was appointed as the Interim Resolution Professional.
 - ii) In the 1st CoC meeting held on 29.11.2021, the CoC members unanimously decided to appoint Interim Resolution Professional as the Resolution Professional.

iii) The Operational Creditor and the Corporate Debtor entered into a settlement agreement dated 24.08.2023. As per the terms of the settlement agreement, the Operational Creditor and the Corporate Debtor have agreed for full & final settlement of Rs. 4,00,000 (Rupees Four lacs) to be paid by the Corporate Debtor to the Operational Creditor.

iv) The CoC members in the 5th CoC meeting held on 28.09.2023 unanimously decided in favor of the settlement agreement and authorized the Applicant to file necessary application seeking withdrawal of the application filed by the Operational Creditor under Section 9 of the Code.

3. We have gone through the documents on record filed by the Applicant. It is seen that the CoC in its 5th meeting held on 28.09.2023 unanimously decided in favor of the settlement agreement dated 24.08.2023, whereby, the CoC unanimously voted in favor of the withdrawal of the CIRP against the Corporate Debtor.
4. It is observed that the Resolution Professional has duly annexed Form FA dated 25.09.2023 along with the application.
5. It is further observed that the CIRP cost and the fees of the Resolution Professional has been duly paid in full to the IRP appointed by this Adjudicating Authority.
6. In the present case, the RP has filed the application bearing IA 6223/2023 for withdrawal of CIRP under section 12A of the Code read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Relevant extract of section 12A and Regulation 30A is reproduced below: -

12A. Withdrawal of application admitted under section 7, 9 or 10. –

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 per cent. voting share of the committee of creditors, in such manner as may be specified.

30A. Withdrawal of application

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

7. From the bare reading of the above provisions, it is clear that after initiation of CIRP and after constitution of CoC, approval from 90% members of CoC is required to withdraw the application. In the present case, the members of CoC, unanimously approved the withdrawal of CIRP in its 5th meeting held on 28.09.2023 and authorized the Resolution Professional to file necessary application in this regard. The relevant extract of the resolution passed by the CoC in its 5th meeting reads as under:

“RESOLVED that the CoC considered the agreement dated 24th Aug 2023 signed between M/s Techmate Industries represented by its proprietor Mr. Manoj Kumar and M/s Retail Kart Solution Private Limited represented by Mr. Sanjay Suhag and Mr. Dharmender Suhag, suspended directors of the company and the committee unanimously decided in favor of the settlement agreement and authorized the RP to move necessary application on behalf of the applicant before the Adjudicating Authority to seek withdrawal of the application filed by the operational creditor under Section 9.”

8. In the matter of **Vallal RCK Vs M/s Siva Industries and Holdings Limited and others, 2022 SCC Online SC 717**, the Hon'ble Apex Court held that when 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, the Adjudicating authority or the Appellate Authority cannot sit in an appeal over the commercial wisdom of CoC. Relevant paras of the aforesaid judgment are reproduced as under: -

*“21. This Court has **consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the Corporate Debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in the cases of K. Sashidhar v. Indian Overseas Bank and Others , Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, Maharashtra Seamless Limited v. Padmanabhan Venkatesh and Others, Kalpraj Dharamshi and Another v. Kotak Investment Advisors Limited and Another, and Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others.***

22. No doubt that the aforesaid observations have been made by this Court while considering the powers of the CoC while granting its approval to the Resolution Plan.

*23. **As already stated hereinabove, the provisions under Section 12A of the IBC have been made more stringent as compared to Section 30(4) of the IBC. Whereas under Section 30(4) of the IBC, the voting share of CoC for approving the Resolution Plan is 66%, the requirement under Section 12A of the IBC for withdrawal of CIRP is 90%.***

24. When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stake-holders to permit settlement and withdraw CIRP, in our view, the adjudicating authority or the appellate authority cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.

26. It is thus clear that the decision of the CoC was taken after the members of the CoC, had due deliberation to consider the pros and cons of the Settlement Plan and took a decision exercising their commercial wisdom. We are therefore of the considered view that neither the learned NCLT nor the learned NCLAT were justified in not giving due weightage to the commercial wisdom of CoC.

27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC.”

9. In view of the aforesaid judgement of Hon'ble Supreme Court, it is clear that once a withdrawal application is approved by the members of CoC with 90% voting shares, interference by Adjudicating Authority is permissible only if the Adjudicating Authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules. However, in the present case, there is no objection raised against the withdrawal of the CIRP of the Corporate Debtor. Further, we do not find any material to arrive at a conclusion that the decision of the CoC is capricious, arbitrary, irrational and de hors the provisions of the statute or the Rules.
10. Accordingly, **I.A. 6223/ND/2023 stands allowed.** Hence, the main petition bearing **CP IB No. 1807/ND/2019 stands dismissed as withdrawn.**

Consequently, the Corporate Debtor namely M/s Retail Kart Solution Private Limited is released from the rigors of the CIRP.

11. We direct that the Corporate Debtor be revived and restored to its original position with the following directions: -
 - i) The Corporate Debtor shall remain bound to comply with the statutory requirements in accordance with the law.
 - ii) The Corporate Debtor shall be responsible to pay all the statutory dues including Income Tax dues, as per law.
 - iii) This order shall not be construed as waiver to any statutory obligations/liabilities of the Corporate Debtor and the same shall be dealt by the appropriate authorities concerned as per relevant laws.
12. The moratorium order passed by this Adjudicating Authority under Section 14 of the Code shall cease to have effect from the date of this order.
13. The Resolution Professional is directed to handover the records and assets of the Company, if any, to the management of the said Corporate Debtor forthwith. The Registrar of Companies, Delhi is also directed to change the status of the Corporate Debtor as not being under CIRP.
14. Consequently, **IA/6223/ND/2023 stands disposed of** along with closure of the main petition i.e., CP IB 1807/ND/2019.

Let copy of the order be served to the parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)