

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

M.A. No. 3672/2019

In

C.P. No.553/I&BP/2019

Under section 12A of the IBC, 2016

Bidue SRL

....Petitioner

v/s.

Bhor Engineering Private Limited

....Corporate Debtor

MA 3672/2019

Mr. Rajesh Shah,

Interim Resolution Professional

...Applicant

Order delivered on: 04.12.2019

Coram: Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shri Shyam Babu Gautam, Member (Technical)

For the Applicant: Rajesh Shah, (Interim Resolution Professional) a/w Mr. Sanjay
Bhor,

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an application filed by Interim Resolution Professional Mr. Rajesh Shah (hereinafter referred to as Applicant) under Section 12A of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") praying for withdrawal of C.P. No. 553 of 2019.
2. Heard the Applicant. It is submitted that Previously CP was admitted on 11.10.2019 and Mr. Rajesh Shah, was appointed as Interim Resolution

Professional (IRP). Consequently, the IRP has issued advertisement inviting the claims from the creditors and the last date of receipt of the claim was 30.10.2019. The Applicant submits that claims no claims were received and hence COC is not constituted.

3. In the mean-time Counsel for the Corporate Debtor submits that the matter has been amicably settled between the parties and filed consent terms and also prayed for withdrawal of this Petition in view of the fact that the COC is not constituted. The Applicant has also filed Form-FA since not COC has formed. The Hon'ble Supreme Court in the matter of "Swiss Ribbons Pvt. Ltd. & Another Vs Union of India & Others" at Para 52 of the order held as below:-

"It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case."

In view of the order of the Hon'ble Supreme Court this case is a fit case for the Adjudicating Authority to invoke Rule 11 of NCLT Rules and accordingly the Order of CIRP passed in this Petition is recalled and the IRP is discharged from his duties.

Accordingly, the CP is disposed of.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)
/NP/

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)