

Through Videoconference

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II

IA No.264 of 2021

IN

COMPANY PETITION NO. (IB) 4147/MB/2019

*In the matter*

Under section 12-A of the Insolvency and Bankruptcy Code, 2016,

STCI Finance Limited, )  
Having its Registered Office address )  
At A/B, J-802, A-Wing, 8<sup>th</sup> Floor, )  
Marathon Nextgen Compound, Off )  
Ganpatrao Kadam Marg, Lower Parel )  
(W), Mumbai-400 013. )

Through Subhash Chandra Modi, )  
Resolution Professional of Parinee )  
Developers Private Limited (Corporate )  
Debtor, Having his Office at )  
1301/02, Silver Oak, Raheja Willows )  
CHS Ltd., Akurli Road, Kandivali )  
(East), Mumbai – 400 101. ).... Applicant  
Resolution Professional

Order Delivered on : 31.05.2021

*Coram:*

Mr. H.P. Chaturvedi : Hon'ble Member (Judicial)  
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

*Appearances:*

For Resolution Professional : Mr. Subhash Chandra Modi.  
For the Financial Creditor : Mr. Gopalkrishnan  
For the STCI : Ms. Ferzana Behramkamdin

For Suspended Management: Ms. Prachi Wazalwar,

*Per: Ravikumar Duraisamy, Member*

**ORDER**

1. This Application is filed under section 12A of the Insolvency and Bankruptcy Code, 2016 (“Code”) for Withdrawal of the Corporate Insolvency Resolution Process (CIRP) of Parinee Developers Private Limited by the Resolution Professional (RP).
2. The facts as stated by the Applicant are as under:-
  - (a) The Financial Creditor/ Original Petitioner is a Company registered under the provisions of Companies Act, 1956 carrying on its business under the Companies Act, 2013 and having its registered office address at A/B 1-802, A-Wing, 8<sup>th</sup> Floor, Marathon Innova, Marathon Nextgen Compound, Off Ghatkopar Kadam Marg, Lower Parel (W), Mumbai - 400013.
  - (b) The Corporate Debtor is a Company registered under the provisions of the Companies Act 1956 carrying on its business under the Companies Act, 2013.
  - (c) The Applicant submits that he was appointed as an Interim Resolution Professional on 09.06.2020 by this Tribunal. Thereafter the Committee of Creditors (CoC) was duly constituted within the stipulated time period and resolved to

appoint the IRP as the Resolution Professional (RP) during its meeting dated 18.07.2020.

- (d) The Applicant states that the promoters by the letter dated 08.12.2020, made a settlement proposal which outlined the plan for the revival of operations of the Respondent and full payment to the lenders including principal, interest and all the expenses.
- (e) The Applicant further submits that this Tribunal granted an exclusion of time period of 135 days to complete the CIRP process and extended it to 18.04.2021.
- (f) The Applicant further submits that he was advised to delay the issue of Form G due to the lockdown imposed as well as settlement talks by STCI Finance Limited and the same was confirmed during the CoC meeting on 08.02.2021.
- (g) On 30.01.2021 the Applicant Financial Creditor admitted to the RP that a settlement had been formulated and arrived at between the Debtors and Creditors.
- (h) The Financial Creditor submitted Form FA in accordance with Regulation 30A of CIRP Regulations on 30.01.2021 and the Financial Creditor also submitted a Bank Guarantee to cover the CIRP costs for an amount not exceeding Rs. 78,55,723/- on 29.01.2021.
- (i) The CoC during the meeting held on 08.02.2021, the RP placed Form FA before the Members of the CoC of the Corporate Debtor, and a resolution was placed for their vote. The CoC

approved the resolution with 99.91% votes in favour of the resolution thereby approving the withdrawal of the CIRP under Section 12A of the Code.

3. As per Section 12 A of the Code,

“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 specified.”

4. The Additional Affidavit as directed by the Hon’ble NCLT, Mumbai during the course of the hearing on 25.02.2021 of Application (IA No. 264 of 2021) on behalf of the Resolution Professional states that :-

- a) The Corporate Debtor was Admitted to the CIRP on 09.06.2020 whereby Mr. Subhash Chandra Modi was appointed as Resolution Professional of the Corporate Debtor.
- b) The 1<sup>st</sup> Meeting of the CoC was convened on 18.07.2020 by e-voting and resolved to continue his appointment as Resolution Professional. The appointment was also noted by this Bench vide Order dated 05.10.2020.
- c) The CoC of the Corporate Debtor was constituted on 10.07.2020 as per the provisions of the Code and Regulations thereunder. The report of constitution of CoC of the

Corporate Debtor was filed before this Tribunal on 12.07.2020.

- d) In the 3<sup>rd</sup> Meeting of CoC held on 28.08.2020 the following Agenda was discussed, voted upon and noted by the CoC.
- e) Intimation of appointment of Registered valuers, professional to carry out secretarial due diligence, transaction auditor and statutory auditor.
- f) Status update on company Appeal (AT) (Ins) No. 602 of 2020 moved before the Hon'ble NCLAT, Delhi against Corporate Debtor by Mr. Vipul Shah (member of suspended board of directors.)
- g) On 29.09.2020 and 30.09.2020 requests were received from members of CoC constituting 96.77% of voting share vide email for further Postponement of issue of invitation of expression of interest and the publication of Form G from 01.10.2020 to 15.10.2020 which was consented by majority of the members of the CoC constituting 96.86% of voting share.
- h) On 15.10.2020, 17.10.2020 and 21.10.2020 a request from members of CoC vide emails for further postponement of issue of invitation of expression of interest and the publication of Form G from 16.10.2020 to 24.10.2020 which was consented by the members of the CoC.
- i) On 05.11.2020, 07.11.2020 and 26.11.2020 a request from members of CoC vide emails for further postponement of issue

of invitation of expression of interest and the publication of Form G from 28.11.2020 to 07.12.2020 which was consented by majority of the members of the CoC constituting 75.17% of voting share.

j) On 14.01.2021 and 30.01.2021 requests were received from members of CoC vide emails for further postponement of issue of invitation of expression of interest and the publication of Form G from 15.01.2021 to 02.02.2021, which was consented by majority of the members of the CoC constituting 100% of voting share.

k) The following professionals appointed by the RP during the CIRP of the Corporate Debtor have submitted their reports.

(i) Registered Valuers - The registered valuers appointed in accordance with the provisions of the Code and Regulations thereunder for determining the fair value and liquidation value in the matter of the Corporate Debtor have submitted their draft report vide emails dated 10.12.2020 and 16.01.2021 respectively.

(ii) Practicing Company Secretary – The PCS appointed during the CIRP of the Corporate Debtor has submitted the final report on Secretaries Due Diligence in the matter of the Corporate Debtor on 19.11.2020. Apart from all the above, the RP followed and completed the requisite compliances required to be carried out by Insolvency Professional Agency, Insolvency and Bankruptcy Board of India as well.

- q. In accordance with the provisions of the Code, the RP duly filed on 14.1.2021 a Progress Report as on 31.12.2020 wherein the RP has categorically apprised about the postponement of publication of Form-G with the Hon'ble Adjudicating Authority. It is evident from the records of the meeting that he informed the CoC at various stages about the need to publish Form-G.
- r. Therefore the RP submits that with all good intentions he followed the directions of the CoC. As evident from the Application under section 12A of the Code filed before this Hon'ble NCLT, Mumbai, the said settlement talks have led to fructification in the form of Settlement Deed entered into by the said parties.
- s. The RP had no intention at any point of time to keep the above facts away from the Hon'ble Adjudicating Authority and this is evident from the submissions of the Progress Report filed by RP.
- t. An appeal was also filed by one of the suspended directors namely Mr. Vipul Shah against the admission of the Corporate Debtor to the CIRP process before the Hon'ble NCLAT bearing Company Appeal No. 602 of 2020 in which appeal the RP is Respondent No.1.
- u. In the said hearings it was only informed to the Hon'ble NCLAT that in view of the settlement proposal which was being undertaken between these Suspended Directors and

the Financial Creditors, the RP is unable to proceed with the publication of Form G. Since the lenders of the Corporate Debtor and the suspended directors of the Corporate Debtor had arrived at a settlement, one of the suspended director namely Mr. Vipul Shah who had filed the Company Appeal, had withdrawn the same before the Hon'ble NCLAT and the same was noted in the Order of the Hon'ble NCLAT dated 17.02.2021.

- v. The RP has approached this Bench by filing an IA under Section 12 read with Section 60(5) of the Code for extension of time limit for completing the CIRP process.
- w. The RP had no intention at any time to disregard any of the provisions of the Code nor the alleged lapse of not approaching the Hon'ble NCLT in its capacity as the Adjudicating Authority, to report regarding the decision taken by the CoC to postpone invitation of EOI and the publication of Form-G.
- x. The CoC in its wisdom decided that in view of the impending settlement, it will not be wise enough to publish the Form G prior to the settlement talks which was undertaken by and between the Financial Creditors and the suspended directors. The RP has taken all steps to inform the CoC that the above decision needs to be reconsidered.
- y. The action of not reporting to the Hon'ble Adjudicating Authority in a formal manner other than

through the medium of submission of Progress Reports was never intentional.

5. In the interim, the Promoters of the Corporate Debtor viz. Vipul D. Shah, Dhaval D. Shah, Mukesh B. Patel, Ranjanben M. Patel, Parinee Realty Private Limited and Shreeram Vessel Scrap Private Limited (“**PDPL Promoters**”) by their letter dated 8<sup>th</sup> December, 2020 made a Settlement Proposal (“**Settlement Proposal**”) which outlined the plan for the revival of operations of the Corporate Debtor and full payment to the Lenders including principal, interest and all costs, charges and expenses from the assets mortgaged to each of them. This Settlement Proposal was however, subject to the Hon’ble NCLT allowing withdrawal of the Section 7 Petition.
6. In order to ensure that the PDPL Promoters were serious about the Settlement Proposal and not merely lending the Lenders on without any intention of repaying their dues, the Lenders insisted on upfront deposit which was made in the following manner :-

(i) **STCI FINANCE LIMITED (“STCI”)**

STCI has received Demand Drafts amounting to Rs. 14,43,75,000/- from the proposed Purchasers of various units in the Bharatiya Bhavan Property. It is however, expressly clarified that there is no sale effected of the Bharatiya Bhavan units nor has an agreement/s for sale been entered into with any Proposed Purchaser/s. In fact the 34 Tripartite Agreements entered into between STCI, the PDPL Promoters and the Proposed Purchasers (“**Tripartite**

**Settlement Agreements**”) provide that the same will take effect and be enforceable only if the Section 12A application for withdrawal of the Section 7 Petition is allowed by the Hon’ble NCLT. Thus even the aforesaid Demand Drafts cannot be encashed till the withdrawal of the captioned Petition being allowed. The balance amount payable is also payable by the proposed Purchasers within an outer limit of 60 days from the NCLT Approval Date. The entire settlement is hence dependent on the Hon’ble NCLT allowing withdrawal of the Section 7 Petition.

(ii) **CENTRAL BANK OF INDIA (“CBI”)**

A sum of Rs. 5.50 Crores was deposited by the Promoters with CBI and on the Hon’ble NCLT allowing Withdrawal. CBI would be entitled to appropriate the sum of Rs. 5.50 Crores towards part satisfaction of the CBI outstanding.

(iii) **PUNJAB NATIONAL BANK (“PNB”)**

A sum of Rs. 4.50 Crores was deposited by the Promoters with PNB and PNB was entitled to appropriate the sum of Rs. 4.50 Crores towards part satisfaction of the PNB outstanding.

(iv) **STATE BANK OF INDIA (“SBI”)**

A sum of Rs. 4.50 Crores was deposited by the Promoters with SBI and SBI was entitled to appropriate the sum of Rs. 4.50 Crores towards part satisfaction of the SBI outstanding.

7. Pursuant thereto, the Lenders all having received their internal approvals consented to the Settlement Proposal. The PDPL Promoters and the Lenders hence entered into a Deed of Settlement dated 30<sup>th</sup> January 2021. To ensure the bonafide of the PDPL Promoters that they would implement the Deed of Settlement, the Lenders insisted on payment/deposit of amounts. Accordingly, in addition to the demand drafts deposited with STCI as mentioned above the deposits were also made in favour of the other 3 Lenders too as mentioned above.

Some of the important clauses of the said Deed of Settlement are reproduced verbatim herein below for ease of references :-

*The above preamble/recital shall be considered as an essential part of the present Deed of Settlement. This Deed of Settlement shall become effective only upon : (1) approval by CoC with the requisite voting share as required under Section 12A of IBC, and (2) approval of Hon'ble NCLT for withdrawal of Section 7 Petition under Section 12A of IBC (“**NCLT Approval Date**”)*

- (1) *The primary objective of this Deed of Settlement is to repay and settle the entire Outstandings of each Lender due by PDPL. The PDPL and the PDPL Promoters acknowledge that there is a present due and payable debt of Rs. 461,74,91,791.54 (Rupees Four Hundred and Sixty One Crores Seventy Four Lacs Ninety One*

*Thousand Seven Hundred and Ninety One and Fifty Four Paise Only). On the date their respective settlements as per the terms of this Deed of Settlement, the Lenders shall endeavor to inform PDPL of their Outstandings as on such date, which notice/s shall be binding on PDPL. In case there is any of the Outstands as on the respective dates of settlement, the determination, made by the concerned Lender/s shall prevail.*

(2) *The PDPL Promoters shall, immediately on or within 60 days from the NCLT Approval Date, either themselves or through PDPL, settle any outstanding insolvency resolution process costs as may be unpaid on the NCLT Approval Date. Such unpaid insolvency resolution process costs shall be settled without any impact on full settlement of Lenders under this Deed of Settlement. The PDPL Promoters shall ensure that consequent on such settlement of the outstanding insolvency resolution process costs, the Bank Guarantee/s furnished by STCI to the Resolution Professional of PDPL shall stand discharged.*

37. *It is clarified that, unless released earlier in their sole discretion and subject to such conditions as may be specified, the Lenders shall continue to have charge and security as currently available with them under the finance and security documents (including without limitation, their mortgage on the properties as mentioned in this Deed of Settlement) till such time their Outstandings are paid in full within the time stipulated under this Deed of Settlement*”.

39. *In case of default in making payment of STCI Outstandings, and/or CBI Outstandings and/or PNB Outstandings and/or SBI Outstandings as per the timelines mentioned in Clauses 15, 32, 34 and*

36 above, time being the essence of the contract, it will be open to all or any of the Lenders to move the Adjudicating Authority i.e. the NCLT Mumbai for revival of the Corporate Insolvency Resolution Process against PDPL by setting aside the order of withdrawal that may be passed under Section 12A and for a direction that the Resolution Professional Mr. Subhash Modi (or any other Insolvency Professional retakes charge of PDPL). It is clarified that any such default shall be taken as continuation of existing default of PDPL for the purposes of Section 10A of IBC, and as such, Section 10A of IBC will not be applicable for any such default. The Lenders or any of them may also file an application for initiation of contempt proceedings against any or all of PDPL and PDPL Promoters in such a case in addition to enforcement, filing or adopting any proceedings available to the Lenders including in the DRT under the DRT Act or under the provisions of the SARFAESI Act or under IBC. This clause is without prejudice to, and in addition to, any other remedies which the Lenders may have under law and equity against PDPL, PDPL Promoters, Individual Owners Guarantors, Proposed Purchaser/s, Alternative Purchaser/s and Buyers (collectively "Counterparties"), including any proceedings for seeking relief of specific performance, injunctive relief, and any civil and/or criminal proceedings from any breach or threatened breach of this Deed of Settlement, Escrow Agreement, Transfer Deed/s or any other documents related with the terms of settlement as contained herein designated as such by the Monitoring Committee (collectively, "Settlement Documents"). The liability of PDPL, Promoters shall be joint and several in this Deed of Settlement.

40. In the event of such default as mentioned in Clause 39 above, PDPL and/or PDPL Promoters and/or the Individual Owners shall jointly and/or severally continue to be liable to repay all the outstandings of the Lenders. In such an event, interest, penal interest / liquidated damages, and all other fees, costs and expenses, shall be payable by PDPL or PDPL Promoters and/or Individual Owners on the amounts Outstanding to the Lenders or any of them as per their respective Loan Agreements and other security documents.
42. The Lenders shall with a view to ensure the smooth implementation and supervision of this Settlement constitute a “Monitoring Committee” comprising of one representative of each of the Lenders. It is clarified that as and when a Lender’s share of Outstandings against PDPL is repaid and settled in full, such Lender shall no longer remain a part of the Monitoring Committee, and the Monitoring Committee shall continue with the remaining Lenders. The terms of Monitoring Committee shall be on and from the NCLT Approval Date, till such time all Lenders have been paid in full as per the terms of this Deed of Settlement. All decisions of the Monitoring Committee shall be taken within 4 working days of the issue being communicated to the Lenders, and shall be taken unanimously by Lenders comprising the Monitoring Committee, the decision of the lender whose security is being sold shall be final and binding on all other Lenders. The Monitoring Committee shall continue to have powers and immunity as available to CoC under IBC, and any action in relation to PDPL as stated in Section 28 of IBC shall require prior written consent of Monitoring Committee.

## **8. OBSERVATION OF THE ADJUDICATING AUTHORITY (AA).**

Time and again (10 times) the CoC had decided to postpone issue of EOI, FORM G and no approval for the same was obtained from AA. As per I&B Code, Regulation 40-A, CIRP regulations Model time line is provided to perform, complete various activities, functions, viz. RP to form an opinion on preferential and other transactions (within 75 days of commencement), RP to make a determination on preferential and other transactions (within 115 days of commencement), RP to file an application to AA for appropriate relief (within 135 days of commencement), submission of Information Memorandum to CoC (within 2 weeks of appointment of RP, but not later than 54<sup>th</sup> day of commencement), Publish Form G (within 75 days of commencement Invitation of EOI), Submission of EOI, Provisional List of RAs by RP, Final List of RAs by RP etc. however, COC had postponed on the pretext of settlement. NCLT had already granted an exclusion of 135 days and CIRP to be completed by 18.04.2021

9. From the settlement agreement, suspended directors will sell the assets of the Corporate Debtor which is under moratorium to settle the outstanding dues thereby they will be participating in the affairs of the company (indirectly) which is prohibited when the corporate debtor is under CIRP and moratorium is in existence.
10. The Applicant stated that the promoters by letter dated 08.12.2020, made a settlement proposal which outlined the plan for the revival of

operations of the Respondent and full payment to the lenders including principal, interest and all the expenses.

11. PDPL Promoters acknowledge that there is a present due and payable debt of Rs. 461,74,91,791.54 (Rupees Four Hundred and Sixty One Crores Seventy Four Lacs Ninety One Thousand Seven Hundred and Ninety One and Fifty Four Paise Only). Against which as a settlement proposal STCI has received Demand Drafts amounting to Rs. 14,43,75,000/- from the proposed Purchasers of various units in the Bharatiya Bhavan Property. It is however, expressly clarified that there is no sale effected of the Bhartiya Bhavan units nor has an agreement/s for sale been entered into with any Proposed Purchaser/s. In fact the 34 Tripartite Agreements entered into between STCI, the PDPL Promoters and the Proposed Purchasers (“**Tripartite Settlement Agreements**”) provide that the same will take effect and be enforceable only if the Section 12A application for withdrawal of the Section 7 Petition is allowed by the Hon’ble NCLT. The balance amount payable is also payable by the proposed Purchasers within an outer limit of 60 days from the NCLT Approval Date. A sum of Rs. 5.50 Crores was deposited by the Promoters with CBI, Rs. 4.50 Crores was deposited with PNB and Rs. 4.50 Crores was deposited by the Promoters with SBI.

12. Further it is stated that the Lenders shall with a view to ensure the smooth implementation and supervision of this Settlement constitute a “Monitoring Committee” and the Monitoring Committee shall continue to have powers and immunity as available to CoC under

IBC, and any action in relation to PDPL as stated in Section 28 of IBC shall require prior written consent of Monitoring Committee.

13. I&B Code and CIRP Regulations provide for various activities to be completed in a time bound manner and model time lines is provided as stated above inspite of the same, the CoC had time and again directed the RP to postpone the issue of EOI and FORM G, other activities of CIRP as stated earlier. By exercising their Commercial Wisdom, they cannot be permitted to not comply with the Provisions of the I&B Code as well as Regulations framed thereunder. Neither RP, CoC has filed any IA for seeking permission of this AA in this regard thereby CoC in this case has taken Law in to its hands and not complied with applicable provisions of I&B Code and CIRP Regulations.
14. Further after receipt of NCLT approval for the present withdrawal application, within 60 days they would receive their outstanding amount, constituting Monitoring Committee etc is not in line the I&B Code and CIRP Regulations further there is no backup plan is provided in case of failure to meet the shortfall within the time line agreed by the parties etc, and the settlement proposal contains lot of uncertainty, future events therefore the AA is of the confirmed view that the present application filed under Section 12 A of I&B Code read with Regulation 30 A of IBBI (CIRP) Regulations, 2016 deserves no favourable consideration therefore this **IA 264/2021 is dismissed.**

15. Since IA is dismissed. **CIRP in CP No. 4147/2019 would continue** and RP is directed to complete the process as per the time lines provided in I&B Code and IBBI (CIRP) Regulations, 2016.

**Sd/-**

**RAVIKUMAR DURAISAMY**

**Member (Technical)**

AAH/AAKASHI

**Dated : 31.05.2021.**

**Sd/-**

**H.P. CHATURVEDI**

**Member (Judicial)**