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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD

IA No. 702 of 2019 in C.P. (I.B) No.117/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.05.2020

Name of the Company: Bhavi Shreyans Shah RP for
HV Synthetics Pvt. Ltd.

Section: Section 12(A) of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.

2.

ORDER


The case is taken up through Video Conferencing.

Today, the case is fixed for Pronouncement of Order.

The Order is Pronounced in Open Court.

The IA No. 702 of 2019 in CP(IB) No. 117 of 2018 is allowed, the detailed order recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 27th day of May, 2020.

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH**

IA No.702/NCLT/AHM/2019 in
CP (IB) No.117/9/NCLT/AHM/2018

**Mrs. Bhavi Shreyans Shah
(Resolution Professional
of M/s. HV Synthetics Pvt. Ltd.)**

Having address at:
9B, Vardan Tower
Lakudi Circle
Naranpura
Ahmedabad-380 014

.... Applicant
[Resolution Professional]

In the matter of:

M/s. Dharmendra Enterprise

12, Eden Garden Society
Near Bansidhar Garden
Narayan Nagar, Paldi
Ahmedabad-380 007

.... Operational Creditor

Vs.

M/s. HV Synthetics Private Limited
225/2, Madhu Textile Mills Compound
Behind Asopalav Hotel
Nr. Narol Circle
Ahmedabad-382 405

.... Respondent
[Corporate Debtor]

Order delivered on 27th May 2020.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J).

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T).

Appearance:

Mr. Atul Sharma, Advocate, for the Applicant.

ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The Resolution Professional has filed the present application, under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and

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Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 read with Rule 11 of NCLT Rules, 2016, seeking permission for withdrawal of the application admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor, because the Committee of Creditors (CoC) had approved the withdrawal by the majority of voting of 97.48% of its voting.

2. As per record, the Corporate Insolvency Resolution Process (CIRP) was initiated in respect of the present Corporate Debtor, namely, **M/s.HV Synthetics Pvt. Ltd.** pursuant to an order dated 09th April, 2019 of this Tribunal passed in CP (IB) No.117/9/NCLT/AHM/2018 thereby this Adjudicating Authority admitted the IB Petition and further appointed **Mrs. Bhavi Shreyans Shah** as an Interim Resolution Professional (IRP), she later-on was duly confirmed to be appointed to act as Resolution Professional (RP) so as to complete the C.I.R.P in respect of the present Corporate Debtor company.
3. It is also informed that pursuant to previous direction of this Tribunal dated 18.11.2019, the CoC has duly approved the cost of CIRP and fee of the RP. The RP has received Rs.11 lakh from the CoC.
4. The Applicant, RP, in support of this, has filed an affidavit, which reads as under:-

1 I state and submit and I am the Resolution Professional ("RP") of the Respondent Company, 'HV Synthetics Private Limited'

("Corporate Debtor Company") and I am duly authorized to prefer this Affidavit. I further state and submit that I am well versed with the facts and position of the present matter.

- 2 I state and submit that the present Affidavit is filed in due compliance of the directions passed by the Hon'ble Adjudicating Authority in 'IA No.702 of 2019 in CP No. (IB) 117/9/NCLT/AHM/2018' ("said Application") on 18th November, 2019. I further state and submit that the said Application is filed by the Applicant herein under Section 12A of the Insolvency and Bankruptcy Code, 2016 (hereinafter "Code") read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter "CIRP Regulations") read with Rule 11 of NCLT Rules, 2016 seeking the withdrawal of the Application admitted under Section 9 of the code against the Corporate Debtor, 'HV Synthetics Private Limited'.
- 3 I state and submit that the captioned matter/ said Application came to be listed before the Hon'ble Adjudicating Authority on 18th November, 2019 wherein the Hon'ble Tribunal was pleased to reserve the matter for orders and the Applicant therein was directed to file an Affidavit confirming the fact that the entire cost pertaining to the CIRP of the Corporate Debtor as approved by the 'Committee of Creditors' ("CoC") has been received by the Applicant.
- 4 That in furtherance of the aforesaid, I state and submit that the members of the CoC in its 5th meeting dated 05th November, 2019 had approved the resolution with regards to the withdrawal of the application admitted under Section 9 of the Code with the majority of the 97.48% voting share and I further state and submit that pursuant to the approval of the aforesaid resolution of the **Applicant had received an amount being Rs.11,10,000/- (Rupees Eleven Lacs Ten Thousand only).**

5 I further state and submit that in view of the aforesaid facts and circumstances, it is most humbly prayed before this Hon'ble Adjudicating Authority to allow the said Application seeking withdrawal of the Application admitted under Section 9 of the Code.

5. It is submitted in the present application that the members of the suspended board of the corporate debtor had preferred an Appeal, being Company Appeal (AT) (Insolvency) No. 570 of 2019 with such plea that the corporate debtor intends to settle the matter. However, such Appeal came to be dismissed by the Hon'ble Appellate Tribunal vide its order dated 29.08.2019.

6. It is further stated that the Applicant-RP on receipt of further claims from creditors has reconstituted the CoC and filed the report certifying the reconstitution of CoC along with the updated list of creditors before this on 03.09.2019, which is described as under:-

S. No.	Name of the Creditor	Claim Admitted (Provisionally)	Voting Rights
1	Intec Capital Limited	3,44,91,897/-	52.22%
2	Suraksha Asset Reconstruction Pvt. Ltd.	16,61,151/-	2.52%
3	Central Bank of India	2,48,35,000/-	37.60%
4	Rajesh Impex	50,61,632/-	7.66%
	Total	6,60,49,680/-	100%

7. It is further stated that thereafter the Applicant-RP received an application in prescribed Form FA from the original operational creditor on 05th November, 2019 to be placed before the

members of the CoC seeking for withdrawal of the IB Petition as well as entire Corporate Insolvency Resolution Process.

8. Pursuant thereto, the Committee of Creditors (CoC) in its fifth meeting convened on 05.11.2019 has duly approved such resolution pertaining to the withdrawal of the IB Petition (admitted under Section 9 of the I & B Code) and for re-calling of C.I.R.P., such resolution is in conformity with the stipulated terms and conditions of Section 12A of the I & B Code with the majority of **97.48%** voting of the CoC.
9. It is submitted that the this Adjudicating Authority is empowered under the provisions of Section 12A of the I & B Code read with Regulation 30A of the CIRP Regulations to permit such withdrawal of the Application admitted under Section 7,9 or 10 of the Code. Therefore, the applicant-RP has prayed that this Adjudicating Authority be pleased to allow the present application.
10. We heard Mr. Atul Sharma, the learned Advocate for the RP on the present application. We have gone through the contents of the present IA seeking for withdrawal of the main IB Petition and to recall the CIRP. We also perused the documents annexed therewith.
11. As per record, it is evident that the Committee of Creditors as well as the Applicant-RP have agreed to and duly accepted the settlement proposal and, thus, took a conscious decision for recalling the Corporate Insolvency Resolution Process. The CoC

has passed necessary resolution to this effect with requisite majority of more than 90% of its voting (97.48%) by approving the settlement proposal and proposing for withdrawal of the CIRP in respect of the present Corporate Debtor. In support of such resolution, a copy of the Minutes of Fifth Meeting of Committee of Creditors of M/s. H.Y. Synthetics Pvt. Ltd., are annexed with the present application as Annexure-A, which read as under:-

The following Resolution No.1 was put to vote:

“Resolved that COC is ready and willing to withdraw the present CIRP process”.

ITEM: B-2 TO APPROVE/RATIFY IRP COST INCURRED OR TO BE INCURRED

The resolution Professional requested COC members to approve the CIRP cost so that withdrawal application can be done at the earliest. One of the COC member asked whether it is mentioned in the resolution that the cost shall be borne by the applicant only and Resolution Professional clarified the raised query as under:

1. Resolution Professional stated that CIRP Cost till the withdrawal application shall be borne by the Applicant only and the CoC members are not liable to pay any amount towards the CIRP costs. **Further RP also informed that CIRP cost till 25th June, 2019 is already paid by Dharmendra Enterprise while making previous application dated 25th June, 2019.** To make the matter more clear Mr. Tejas Shah read out the Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016 stating that applicant is required to pay the amount through bank guarantee or transfer the said amount while making the application and NCLT will accept the application only when the CIRP cost is paid.

2. Resolution Professional also informed that the Applicant has already mentioned in the application that they have already paid the estimated cost incurred for the purpose of Regulation 31(c) and 31(d) till date of application.

The following Resolution No.2 was put to vote:

RESOLVED THAT, pursuant to applicable provisions of the Insolvency and Bankruptcy Code, 2016 and in accordance with the Rules and Regulations there under, **the members of the Committee of Creditors approve / ratify, as the case may be, of the expenses amounting to a total of Rs.6,23,810/- (Rupees Six Lacs Twenty Three Thousand Eight Hundred Ten only).**

The details of expenses incurred and approved by the CoC are described as under:

Sr. No.	Particulars	Amount
1	Security from 25-06-2019 to 15-11-2019	2,26,560
2	Repairing Charges	65,000
3	Linkstar Infosys Pvt. Ltd. (4 E votings done plus one current E-Voting (per E-Voting charge inclusive of Rs.8,850/-)	44,250
4	CIRP Consultancy Charges NCLAT Matter- Rs.1,50,000 NCLT Matter for Sec.19-Rs.28,000	2,38,000

	NCLT Matter for Extension-Rs.30,000 NCLT Matter for withdrawal Rs.30,000	
5	Form G Publication	50,000
		6,23,810

12. In the light of the above given facts, we examined the relevant provisions of Section 12A of the I & B Code read with Regulation 30A of the I& B Code. For the sake of convenience, which are being reproduced hereinbelow:

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 prescribed.

30A. Withdrawal Application


- (1) An application for withdrawal under section 12A 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 36A.
- (2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.
- (3) 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.
- (4) Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the application, within three days of such approval.
- (5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).


13. In the light of the above statutory provisions and by perusing the material available on record. It seems that the present application is filed in conformity with the prescribed procedure and as per terms and conditions those are stipulated in the relevant provisions of Section 12A of the I & B Code, read with Regulation 30A of the above referred regulation. Hence, there is no impediment for accepting such proposal of settlement, which is made by parties at post-admission stage of the present IB Petition. It is evident that the CoC has duly approved such settlement and proposed withdrawal application under Section 12A of the Insolvency and Bankruptcy Code, 2016, by its majority of more than 90% of voting (i.e. 97.48%) in its fifth meeting held on 05.11.2019.
14. Having heard the Counsel for the parties and in the light of above given facts and circumstances of the present case, we are of the view that the present application is filed in conformity with the prescribed procedure and other terms and conditions stipulated in the relevant provisions of Section 12A of the I & B Code and Regulation 30A of the above referred regulation. The present application deserves to be allowed. Hence, the present IA is allowed with following directions:-
- i) The CIRP initiated, in respect of the Corporate Debtor, vide our order dated 09.04.2019 passed in CP (IB) 117/9/NCLT/AHM/2018, i.e. M/s. Dharmendra

Enterprise V/s. H V Synthetics Pvt Ltd., is hereby recalled.

- ii) The RP is directed to handover the charge of the Corporate Debtor to its erstwhile management, at the earliest.
 - iii) The Petitioner-Operational Creditor and/or Committee of Creditors and/or Corporate Debtor is directed to RP's professional fees and remaining CIRP cost, if any, which shall be a prerequisite for approval of the present settlement/withdrawal of the present IB Petition.
 - iv) Such professional fees and necessary expenses as incurred by the RP are to be reimbursed by the Petitioner-Operational Creditor and/or Committee of Creditors and/or Corporate Debtor within four weeks from the date of receipt of an authentic copy of this order and to furnish a proof of payment thereof through the RP before the Registry of this Bench.
 - v) It is further made clear that our such order shall not be purported to debar other **creditors/stakeholders** of the Corporate Debtor company, those have not consented or not a party to the present settlement to agitate their rights in accordance with law before an appropriate forum.
15. With such observation, the present Interlocutory Application, i.e. IA No.702 of 2019 in CP(IB) No.117/9/NCLT/AHM/2018], is allowed and stands disposed of.

16. Consequently, our admission order dated 09.04.2019 passed in the main IB Petition, i.e., CP (IB) No.117/9/NCLT/AHM/2018-M/s. Dharmendra Enterprise V/s. H V Synthetics Pv.t Ltd., is hereby recalled and proceedings initiated therein are closed. Pending IA(s) as well as interim direction(s), if any, stand vacated and merged with the present order for recall of the Corporate Insolvency Resolution Process.
17. Accordingly, the main IB Petition No. 117/9/NCLT/AHM/2018 stands disposed of.
18. No order as to costs.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)