

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA No.271/2020
In
CP(IB)No.262/9/HDB/2019**

**In the matter:-
M/s. Reddy Pharmaceuticals Limited**

Between:-

Konda Raghu Rami Reddy,
Plot No.76 , MLA-MP Colony,
Road No.10C, Jubilee Hills,
Hyderabad – 500 033.

...Applicant/
Shareholder of the Corporate Debtor

And

M/s.Reddy Pharmaceuticals Limited,
(Rep. by Mr.Madhusudhana Reddy Maligi, RP)
Sy.No.111/E, 111/EE, Cheriya Village,
Kandi Mandal, Sanga Reddy District,
Telangana- 502 285.

...Respondent No.1/
Corporate Debtor

Committee of Creditor, Reddy Pharmaceuticals Limited,
Karnataka Bank,
Banjara Hills Branch,
Srinagar Colony, Road No.3,
Banjara Hills, Telangana.

...Respondent No.2/
Financial Creditor

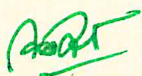
Mr.Madhusudhana Reddy Maligi,
Resolution Professional
G-8, Amrutha Ville, Opp. Yashoda Hospital,
Rajbhavan Road, Somajiguda,
Hyderabad, West Marredpally, Telangana – 500082.

...Respondent No.3/
Resolution Professional

M/s.Sri Chaitanaya Chlorides Private Limited
Plot No.29-32, 39-42,
IDA Phase-II, Pashamylaram,
Sangareddy District – 502 307.

...Respondent No.4/
Operational Creditor

Order pronounced on: 16.03.2020.



**Coram: K. Anantha Padmanabha Swamy, Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/ Counsels Present:-

For the Applicant: Mr. Avinash Desai along with Mr. TPS Harsha,
Advocates

For the Respondent: Mr.Naresh Kuamr Sangam, Advocate

For the CoC: Mr.P.Veerabhadra Rao, Advocate

Per: Dr. Binod Kumar Sinha, Member Technical

ORDER

1. The present application bearing IA No.271/2020 is filed praying to close the company petition and order the withdrawal of CIRP of the Corporate Debtor and pass any other order or orders as it may deem fit.
2. Brief facts of the case, as stated by the Applicant are as under:-
 - a. That the said company petition was admitted by the Adjudicating Authority vide order dated 16.12.2019 and against the said order of admission, Mr.K.Raghu Rami Reddy one of the shareholder filed Company Appeal (AT) (Ins.) No.41 of 2020 before the Hon'ble NCLAT. That the Hon'ble NCLAT vide order dated 09.01.2020 directed the IRP not to constitute the CoC and gave liberty to the parties to settle the dispute.
 - b. That the parties pursuant to the order of the Hon'ble NCLAT mutually decided to settle the disputes and consequently entered into an agreement dated 04.02.2020 to settle the said dispute and other company petition filed by the operational creditor vide [CP(IB)No.262/9/HDB/2019, CP(IB)No.306/9/HDB/2019 and



CP(IB)No.308/9/HDB/2019]. Accordingly, the disputes between the Operational Creditor and Corporate Debtor have been settled.

- c. That pursuant to the settlement agreement, the Operational Creditor has issued Form FA dated 04.02.2020. The said Form FA was returned by the Interim Resolution Professional on the ground that bank guarantee for CIRP costs were not given.
- d. That the Applicant withdrew the appeal filed before the Hon'ble NCLAT on 13.02.2020 in light of the settlement agreement with the Operational Creditor and to pursue appropriate remedies before this Adjudicating Authority. That the Hon'ble NCLAT accordingly allowed for withdrawal of the appeal.
- e. That on 13.02.2020, the operational Creditor re-issued the Form FA dated 14.02.2020, after rectifying the previously issued Form FA dated 04.02.2020, to the IRP on 15.02.202.
- f. That the Operational Creditor through IRP accordingly got filed IA No.177/2020 before this Adjudicating Authority for withdrawal of the Company Petition and closure of CIRP of the Corporate Debtor. That one of the Suspended Director also filed IA No.176/2020 for stay of constitution of COC as the parties have already settled the matter.
- g. That this Adjudicating Authority disposed of IA No.176/2020 and IA No.177/2020 by a common order dated 18.02.2020, wherein this Adjudicating Authority directed for constitution of CoC referring to the Hon'ble NCLAT order dated 13.02.2020. As the parties have settled the disputes, this Adjudicating Authority gave liberty to the

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present applicant and the applicant in IA No.176/2020 to submit an application for settlement and withdrawal of CIRP before the CoC.

- h. That the IRP constituted the CoC vide email dated 20.02.2020 and called for the 1st CoC meeting on 26.02.2020. That the Applicant approached the CoC (i.e., Karnataka Bank being the sole financial creditor) with a proposal and to give consent to withdraw the company petition and for closure of CIRP of the Corporate Debtor vide Application dated 24.02.2020.
- i. That the CoC directed the RP to convene a meeting of CoC to decide on the application submitted by the Applicant. That accordingly the RP vide notice dated 08.03.2020 called for a meeting of the CoC on 10.03.2020 to discuss on the withdrawal of CIRP of the Corporate Debtor among other agenda items.
- j. That the CoC at the 2nd CoC meeting on 10.03.2020 approved the withdrawal of CIRP of the Corporate Debtor. That the CoC further authorized the RP to file for memo for withdrawal of CIRP by re-submitting the Form FA dated 14.02.2020 already issued by the Operational Creditor along with the letter for withdrawal of CIRP issued by sole member of CoC before this Adjudicating Authority.
- k. That the Applicant herein vide email dated 27.02.2020 had clearly requested the Operational Creditor for a Form FA and the Operational Creditor failed to respond to the same. In any case, no further Form FA needs to be issued by the Operational Creditor as the original Form FA dated 14.02.2020 is part of the record of this Adjudicating Authority and the only step is the consent of the CoC, who have





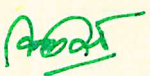
approved for the withdrawal and closure of CIRP of the Corporate Debtor.

- l. That as per Regulation 30(A)(5) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the RP was to file the application for withdrawal within three days of such approval.
 - m. That the Applicant has diligently undertaken all the steps required under the Code and the Regulations for withdrawal of Company Petition and closure of CIRP of the Corporate Debtor by complete settlement of the Operational Creditor, issuance of Form FA by the Operational Creditor which was already filed before this Adjudicating Authority and consent of the CoC, but still the RP without any reason has not filed the Application for withdrawal before this Adjudicating Authority.
 - n. That in light of the settlement with the Operational Creditor and the categorical consent given by the CoC at the 2nd COC meeting dated 10.02.2020 and the Form FA dated 14.02.2020 given by the Operational Creditor, this Adjudicating Authority may close the Company Petition and order the withdrawal of CIRP of the Corporate Debtor.
3. Counsel for the Respondent No.3/RP filed Counter, *inter-alia* stating as under:-
- a. That as the Applicant and other Directors were not co-operating with the Respondent No.3, the Respondent No.3 herein has approached this Adjudicating Authority, seeking directions under Section 19(2) of



IBC and filed an Application vide I.A. No. 22 of 2020 in CP (IB) No 262/9/HDB/2019. The same is pending for adjudication.

- b. That the Appellant herein who has obtained the ex-parte order has in utter violation of the order dated 09.01.2020 of the Hon'ble NCLAT, were not co-operating with the Respondent No. 3 to carry on business of the Corporate Debtor as a going concern for which the Respondent No.3 has already filed an Application under Section 19(2) of the Insolvency and Bankruptcy Code, 2016. Though the Hon'ble NCLAT has categorically stated that person who is authorised to sign the Bank Cheques may issue cheques but only after authorisation of the 'Interim Resolution Professional the Appellant herein is operating the Bank Accounts of the Corporate Debtor without the authorisation of the Respondent No.3 herein and thereby committed contempt of the order. The Respondent No. 3 herein filed another Application before this Adjudicating Authority seeking directions against the Applicant with regard to operation of the Bank Account of the Corporate Debtor in violation of the provisions of IBC and in violation of the Orders passed by the Hon'ble National Company Law Appellate Tribunal. The said Interim Application is numbered as I.A. NO. 142 of 2020 in CP (IB) No. 262/9/HDB/2019. The same is pending for adjudication.
- c. That the Respondent No.4 herein and the Corporate Debtor entered into settlement and in accordance with 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 the Respondent





No.4 herein has submitted an Application in Form FA for withdrawal of the Application already submitted before this Adjudicating Authority and same was numbered as I.A. 177 of 2020 in C.P(IB) No. 262/9/2019.

- d. That as there was specific direction from the Hon'ble National Company Law Appellate Tribunal, this Adjudicating Authority vide its order dated 18.02.2019 closed the Application No. 177 of 2020 in view of the specific direction from the Hon'ble National Company Law Appellate Tribunal with a liberty to submit another application for settlement and withdrawal of CIRP before CoC, if any after duly following the provisions of IB Code 2016 and Regulations thereunder (para 18 of the order).
- e. That on 07-03-2020, the Sole Member of COC has sent an email to the Respondent No. 3 for convening the 2nd meeting of Committee of Creditors. That as per the directions of the sole member of the Committee of Creditors the Respondent No. 3 herein has sent a notice informing the proposed 2nd CoC to be held on 10-03-2020.
- f. That the Sole CoC Member i.e. Karnataka Bank Limited represented by its Senior Branch Manager, Shri.K.Raghavendra Prasad furnished a letter dated 10.03.2020 to the RP. The content of the said letter is reproduced here under:

"with reference to the above subject, we as the Committee of Creditors of M/s. Reddy Pharmaceuticals Limited have no objection for the withdrawal of CP(IB) No.262/9/HDB/2019 in the 2nd COC meeting held today i.e. 10-03-2020".

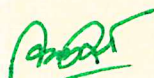


- g. Member of CoC has also enclosed a letter dated 24.02.2020 addressed by the Application along with Form FA dated 14.02.2020 issued (acknowledged by Interim Resolution Professional on 15.02.2020, the same Form FA filed with this Adjudicating Authority vide IA 177 of 2020 on 17-02-2020) by Sri Chaitanya Chlorides Private Limited. Accordingly, COC got the permission from the Head Office for withdrawal of CIRP of the Corporate Debtor i.e. Reddy Pharmaceuticals Limited and a Resolution was passed accordingly at ITEM No.4 of the minutes of 2nd COC meeting.
- h. That the said Application in Form FA dated 14.02.2020 was already submitted before this Adjudicating Authority as part of IA No.177 of 2020 on 17-02-2020 and the same has been closed by this Adjudicating Authority vide Order dated 18-02-2020 with a liberty to file another Application for settlement and withdrawal before CoC after due compliance of the provisions of IB Code and Regulations made thereunder.
- i. That as per 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, the Application for withdrawal has to be made by the Applicant (i.e., Sri Chaitanya Chlorides Private Limited (Respondent No.4)) along with the CIRP costs till date in accordance with regulation 30A(2).

- j. That as per Regulation 30A(4) any Application in Form FA received after constitution of CoC, the same shall be considered by the CoC within seven days. However in the present case the Application was submitted by Applicant herein but not the Operational Creditor which is again dated 14.02.2020.
- k. That the Application Form FA dated 14.02.2020 was already closed by this Adjudicating Authority vide order dated 18.02.2020 with a specific liberty to file another Application for withdrawal, hence same cannot be re-submitted for withdrawal again. The Respondent No. 3 has requested the sole CoC member to issue a letter specifically confirming to file Application under 12A of the Code read with Regulation 30A basing on the Form FA dated 14.02.2020 which was already closed as the Respondent No. 3 as in his opinion same cannot be considered for resubmission.
- l. That the Respondent No. 3 specifically insisted to issue confirmation letter to proceed with filing withdrawal Application basing on Form FA dated 14.02.2020. The sole member of CoC vide its email dated 12-03-2020 advised the Respondent No. 3 to take legal opinion on the same.
- m. That Applicant herein instead of obtaining fresh Application in Form FA from the Operational Creditor or waiting for the Respondent No.3 for obtaining the legal opinion as suggested by the sole member of the CoC has filed the present application making several allegations against the Respondent No.3.



- n. That the Respondent No. 3 is never against any withdrawal of the Petition. If the Respondent No. 3 would have received the Application in Form FA in compliance of regulation 30A the Respondent No. 3 would have immediately filed the same before this Adjudicating Authority in accordance with the provisions of the IB Code and Regulations therein.
- o. That this Adjudicating Authority may pass appropriate orders in the present Application.
- p. The Respondent No. 3 further submits that he has following Applications against the Applicant herein:
- (a) I.A. 22 of 2020 under Section 19(2) seeking co-operation.
 - (b) I.A. No. 142 of 2020 for contempt of the order of the Hon'ble NCLAT and illegally withdrawing the monies in violation of the IB Code.
 - (c) I.A. No. 270 of 2020 again under Section 19(2) seeking co-operation and direction to police for their support.
- q. That if the Adjudicating Authority allows the withdrawal of the Petition the Respondent No. 3 ceases to be Resolution Professional hence this Adjudicating Authority may pass appropriate order in the above Applications, especially in I.A. No. 142 of 2020 which is very serious in nature.
4. Counsel for CoC present and made oral submissions stating that the CoC is supporting the Application of the Applicant and has 'No-objection' in allowing the Application as prayed for.





5. Heard submissions and perused the record.
6. In this case, the applicant has moved this Adjudicating Authority for withdrawal of CIRP U/s.12A of the Code, with approval of CoC as recorded in the minutes of the 2nd CoC Meeting held on 10.03.2020. It is seen from the Minutes of the said meeting that Karnataka Bank is the sole CoC member who has 100% voting share in the CoC. During the meeting of CoC, the following Resolution was passed:

“Resolved that the CoC has informed and authorised Resolution Professional to file the Memo for withdrawal of CIRP by resubmitting the Form FA dated: 14.02.2020[received by IRP on 15.02.2020] already issued by Applicant/Operational Creditor i.e., Sri Chaitanya Chloride Pvt. Ltd, and filed before Hon’ble NCLT on 18.02.2020 along with the letter for withdrawal CIRP issued by the sole member of the CoC with the Hon’ble NCLT, Hyderabad.

*Proposed by: Karnataka Bank Ltd,
Rep. by K.Raghavendra Prasad, Senior Branch Manager*

*Supported by: Karnataka Bank td.
Rep. by K.Raghavendra Prasad, Senior Branch Manager*

Committee of Creditors took notice and approved the above resolution being the sole member of the CoC.”

7. It is pertinent to note here that though the RP has recorded the above minutes, he has not moved this application, for reasons mentioned in his counter as referred to in the foregoing para 3. The main objection raised by the RP is that Applicant should have submitted a fresh Form FA from the Operational Creditor who triggered the CIRP, as the earlier Form FA

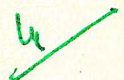




dated 14.02.2020 has been rejected by this Adjudicating Authority vide order dated 18.02.2020 in IA No.176/2020.

8. On a consideration of the facts and circumstances of the case, the following observations are made:

- a. It is a matter of record that CIRP got admitted in CP(IB)No 262/9/HDB/2019 vide this Adjudicating Authority's order dated 16.12.2019.
- b. It is also a matter of record that on an appeal filed by the Corporate Debtor Hon'ble NCLAT stayed constitution of CoC until appeal was heard.
- c. However the Hon'ble NCLAT directed to constitute the CoC vide their order in CA(AT) 41 of 2020 dated 13.02.2020 upon which this Adjudicating Authority closed the IA No.176/2020 filed for withdrawal U/s.12A with a direction to come before this Adjudicating Authority with the requisite approval by CoC U/s.12A of the Code.
- d. The instant IA No.271/2020 has been filed by the Shareholder of the Corporate Debtor placing before this Adjudicating Authority, the Form FA as signed by the Operational Creditor M/s. Shri Chaitanya Chlorides Pvt. Ltd., alongwith the Minutes of the 2nd CoC meeting held on 10.03.2020 approving the application for withdrawal with 100% voting share. The counsel for the sole CoC member Karnataka Bank also appeared on 16.03.2020 and stated that they support the instant application for withdrawal.



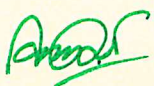
e. Hon'ble NCLAT in the matter of Andhra Bank Vs Sterling Biotech Ltd. [CA (AT) (Insolvency) No.612 of 2019] held as under:

"12. From Section 12A and the decision of the Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd. & Anr.' (Supra), it is clear that the Promoters/Shareholders are entitled to settle the matter in terms of Section 12A and in such case, it is always open to an applicant to withdraw the application under Section 9 of the 'I & B Code' on the basis of which the 'Corporate Insolvency Resolution Process' was initiated.

13. In view of the aforesaid provisions of law, we hold that Section 29A is not applicable for entertaining/considering an application under Section 12A as the Applicants are not entitled to file application under Section 29A as 'resolution applicant'.

14. In the present case, the 'Corporate Insolvency Resolution Process' was initiated pursuant to an application under Section 7 filed by the 'Andhra Bank' (Appellant herein). The application under Section 12A having been approved by the 'Committee of Creditors' more than 90% of the voting share, it was not open to the Adjudicating Authority to reject the same and that too on a ground of ineligibility under Section 29A, which is not applicable."

f. In view of the above judgement of the Hon'ble NCLAT, it is held that the Applicant is entitled to make the instant application for withdrawal.



- g. The RP in his counter has not objected to the withdrawal on any substantive issue, but has raised objections based on the provisions of Regulation 30(A). It is pertinent to note here that Hon'ble NCLAT in the matter of CA(AT)(Insolvency) No.242 of 2018 held that Regulation 30A cannot override the substantive provisions of Sec.12A according to which the Applicant can only move application for withdrawal before the Adjudicating Authority and not by the RP.
- h. In the instant case, the sole Financial Creditor/Sole Member of CoC has approved the withdrawal application with 100% voting share. Hon'ble NCLAT in the matter of Sunshine Caterers Pvt. Ltd. Vs Redreef Finance and Investment Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 725/2018 have held that if the CoC approved the application U/s.12A with majority voting share of 90% the Adjudicating Authority cannot further look into the matter and is required to allow the application for withdrawal.
9. In view of the above, this Adjudicating Authority is empowered to allow the prayer for withdrawal by exercising its power u/s. 12A of the IB Code, 2016, R/w Regulation 30A of Insolvency & Bankruptcy (Insolvency Resolution Process of Corporate Persons) Regulations 2016. Having satisfied with the submissions put forth by the Applicant and having seen that the Applicant has complied with all the requirements as contemplated under Regulation 30A(1)(b), this Adjudicating Authority is inclined to allow the Application. Further, Applicant is directed to ensure



that all the fees and expenses incurred by the RP, up to the date of this order are reimbursed to him.

10.In the result, IA No. 271/2020 is hereby allowed and Company Application bearing CP (IB) No. 262/9/HDB/2019, admitted earlier stands withdrawn in terms of provisions of section 12A of the Code and the CIRP stands closed. The moratorium order passed u/s. 14 of the Code will also cease to have effect from the date of this order.

Dr. Binod Kumar Sinha
Member Technical

Alekhyu/SKRathi

K. Anantha Padmanabha Swamy
Member Judicial