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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA No.380 of 2020 in CP(IB) 522/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.07.2020

Name of the Company: Sanjay Gupta RP of Pravin Exim Pvt Ltd

Section : Section 12A IBC,2016 r.w 30A IBBI,2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through video conferencing)

Learned Lawyer, Mr. Aditya Pandya appeared on behalf of the RP.

The instant application is filed 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, by the Resolution Professional (RP), seeking withdrawal of Corporate Insolvency Resolution Process (CIRP) initiated against the Corporate Debtor, namely, M/s Pravin Exim Private Limited.

It is matter of record that the Financial Creditor, viz., Bank of Baroda, filed an application under Section 7 of the I&B Code against the Corporate Debtor for initiation of CIRP, which was admitted by this Adjudicating Authority on 01.01.2020 and appointed Mr. Sanjay Gupta to act as IRP, who later-on was confirmed to be appointed and to act as Resolution Professional (RP) to complete the C.I.R.P in respect of the present Corporate Debtor company, accordingly the CIRP proceeding was initiated.

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Pursuant to the said admission order dated 01.01.2020, the IRP made Public Announcement in Form A, inviting claims from the creditors of the Corporate Debtor. The IRP has also sent intimation letters dated 14.01.2020 and informed the erstwhile Directors of the Corporate Debtor. The applicant received one claim from the Financial Creditor, i.e. Bank of Baroda.

During the CIRP, the RP received Form FA dated 06.03.2020 on 21.03.2020 (i.e. Application for Withdrawal of Corporate Insolvency Resolution Process) from the Financial Creditor i.e. Bank of Baroda, (being the sole member of the Committee of Creditors) that it is inclined to withdraw the matter, as the revival of the Corporate Debtor is not possible considering the financial position of the Corporate Debtor because they do not have any business operations, therefore, publishing of Form-G for inviting expression of interest will not yield any fruitful results, since revival of the Corporate Debtor is very rare, rather it will incur another expenditure.

Hence, the CoC in its meeting dated 04.02.2020 passed Resolution for withdrawal of the present petition filed under Section 7 of the I & B Code and to re-call the C.I.R.P and further authorizing the Resolution Professional to move necessary application before NCLT, Ahmedabad, under Section 12A of the I & B Code and Regulation 30A of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

It is further stated by the applicant that Form FA was received on 21.03.2020, but he could not file application due to pandemic of Covid-19, the Tribunals were not functioning. As per the order of Hon'ble Supreme Court dated 23.03.2020 in *suo motu* WP 03/2020, where the Hon'ble Supreme Court has extended the period of limitation w.e.f. 15.03.2020. Hence, the present application may be construed within the statutory period of three days, in terms of Section 12A of Insolvency and Bankruptcy Code, 2016 and Regulation 30A of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.

It is further stated that the Financial Creditor has paid an amount of Rs.3,20,555.56ps. (Rupees Three Lakh Twenty Thousand Five Hundred Fifty Five and Paisa Fifty Six only) to the applicant, via NEFT transfer on 19.06.2020. A copy of the details of the payment to the applicant is annexed as Annexure-7.

Heard the Learned Lawyer on behalf of the RP.

On perusal of the record, it is found that Bank of Baroda, being the sole Financial Creditor and sole member of the CoC has given consent for withdrawal of the present IB Petition, i.e. CP (IB) No.522/7/NCLT/AHM/2018. Hence, it is to be treated that the CoC with its 100% majority has recommended for withdrawal of the present IB Petition and for re-calling of C.I.R.P., which is in conformity with the stipulated terms and conditions of Section 12A of the I & B Code. For the sake of convenience, Section 12A of the I & B Code is 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].

In addition to the above, Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016, prescribes as under:

30 A. Withdrawal of 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 applicant, within three days of such approval.

(5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).]

On perusal of the record, it is found that on 04.02.2020, in the CoC meeting a resolution has been passed for withdrawal of the IB Petition, i.e, CP (IB) No. 522 of 2018, with 100% voting, in favour of withdrawal. It is also seen that the Financial Creditor has filed an application through RP and has also submitted Form-FA in support of withdrawal of the present IB Petition. On perusal of the record, it is also found that if the application is allowed no prejudice will cause to any of the parties. However, if remuneration or expenses, if not yet paid, to the RP in that event the Financial Creditor shall pay the cost of RP or as the case may be.

Under such circumstances, the instant application is allowed and the Corporate Debtor is freed from the rigour of Moratorium and RP is discharged.

Accordingly, the instant application stands dismissed as withdrawn.

MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 16th day of July. 2020

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