

**THE NATIONAL COMPANYLAW TRIBUNAL
SPECIAL BENCH
NEW DELHI**

C.A. 2288 (PB)/2019

In

(IB)-691(PB)/2018

IN THE MATTER OF:

IFCI Venture Capital Funds Limited

APPLICANT / PETITIONER

Vs

VVA Developers Private Limited

RESPONDENT/CORPORATE DEBTOR

Under Section 12 A of Insolvency and Bankruptcy Code, 2016

Order delivered on: 31.10.2019

Coram:

**DR. DEEPTI MUKESH
HON'BLE PRESIDENT (JUDICIAL)**

**S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)**

For the RP: Mr. Apoorv Agarwal & Mr. Abhimanyu Jhalani
Adv.

For the Petitioner: Mr. Susshil Daja & Mr. Nikhil Jain, Adv.
Mr. Aditi Dahiya, Mr. Sandeep Singh &
Mr. Vinay, Adv.

For CA-2289(PB)/2019: Mr. Nikhil Jain, Adv.

For AR: Dr. Sandeep Singh, Mr. Vinay Pal Adv With
Mr. Rohan Chaudhary, AR



ORDER

S. K. Mohapatra, Member

1. This is an application filed by the Petitioner Financial Creditor under Section 12 A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the “Code”) to permit the Petitioner to withdraw the original petition bearing Company Petition No. (IB)-691 (PB) /2018 in view of the settlement arrived at between the applicant financial creditor and the promoters of the Corporate debtor which was duly approved by the Committee of Creditors with the majority votes as required under the Code.

2. It is pertinent to note here that the present Corporate Insolvency Resolution Process against the Respondent Corporate Debtor, M/s VVA Developers Private Limited was initiated on 06.06.2019 with the admission of Company Petition No. (IB)-691 (PB) /2018 filed by the applicant financial creditor under Section 7 of the Code.

3. It has been stated that during the Insolvency Proceedings in the fourth meeting of CoC convened on 14.10.2019 the applicant financial creditor informed the CoC that they had entered into One Time Settlement with the promoters of the Corporate Debtor M/s VVA Developers Private Limited vide settlement agreement dated 01.10.2019.
4. In the same fourth meeting of CoC held on 14.10.2019 the resolution for withdrawal of the Insolvency Resolution Process was put to vote and the resolution was passed **with 98.07% majority votes** by the members of the Committee of Creditors. The Agenda and Minutes of the fourth CoC meeting along with voting results have been placed on record.
5. Section 12 A of the Insolvency and Bankruptcy Code, 2016 envisages as follows:

"12A. 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 specified."

6. The provisions of the Section 12 A of the Code make it clear that with the approval of more than 90% voting share of the Committee of Creditors, the CIR Process against the Corporate Debtor can be withdrawn. The commercial wisdom of the CoC normally should be allowed to prevail particularly when the decision is in conformity with the provisions of the Code.

7. In the present case the Committee of Creditors has passed the following resolution with 98.07 % voting share:

"Resolved that pursuant to Section 12 A of IBC, 2016 it is be and hereby approved to withdraw the application filed under Section 7 of IBC, 2016 and file an application with Hon'ble NCLT with suitable reasons for withdrawal"

8. The petitioner financial creditor has filed the required application in Form-FA in terms of Regulation 30 A on 18.10.2019 for withdrawal of the present Corporate



Insolvency Resolution Process in respect of the Respondent Corporate Debtor, M/s VVA Developers Private Limited. The petitioner has also attached a Bank Guarantee as per sub-regulation (2) of Regulation 30A.

9. During the final hearing no one raised any objection against the present application. The Resolution professional rather supported the application for withdrawal of the present Corporate Insolvency Resolution Process.
10. Be that as it may the Corporate debtor is directed to pay all the outstanding Insolvency Resolution Process Costs including the fees of the RP as per law.
11. It is reiterated that under the provisions of Section 12A of the Code, application admitted under Section 7 of the Code can be withdrawn with the approval of 90% voting shares of the Committee of Creditors.
12. Keeping in view of the aforesaid position that the CoC has in its commercial wisdom resolved with required majority to permit the withdrawal of the Corporate Insolvency Resolution Process and in terms



of the provisions of Section 12A of the Code, the present application is allowed.

13. Accordingly, CP No. IB - 691 (PB)/2018 is permitted to be withdrawn.

14. Before parting with it is seen that M/s Improve Vyapar Private Limited has filed C.A. 2289 (PB)/2019 in respect of its claim against the corporate debtor. However, all the pending company applications filed in IB - 691(PB)/2018 stand closed, with the withdrawal and closure of the original petition. Nevertheless, it is clarified that the applicant M/s Improve Vyapar Private Limited is free to pursue its claim before the appropriate forum as per law, if so advised. C.A. 2289 (PB)/2019 is disposed of in the aforesaid terms.

15. As a sequel to the aforesaid discussion the admission order dated 20.02.2019 passed in IB - 691(PB)/2018 is recalled and the proceedings are closed. Consequently, order of moratorium and all other orders passed thereto are recalled. The corporate debtor stands released from the rigors of the Code. It is made



clear that corporate debtor shall act independently through its Board of Directors.

16. CP No. IB 691 (PB)/ 2019 stands disposed of as withdrawn and consequently all other pending Company Applications filed therein also stand disposed of.

Let copy of the order be served to the parties.



(S. K. Mohapatra)

Member (T)



(Dr. Deepti Mukesh)

Member (J)