

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 112**  
**(IB)-160(PB)/2018**

**IN THE MATTER OF:**

Asset Reconstruction Company (India) Ltd	...	Applicant/Petitioner
Vs		
White Metals Ltd	...	Respondent

**Order under Section 7 of Insolvency & Bankruptcy Code, 2016, CIRP.**

**Order delivered on 06.09.2022**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR**  
**HON'BLE PRESIDENT**

**SH. AVINASH KUMAR SRIVASTAVA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant	:	Mr. Prachi Johri, Advs. In IA 817/2019. Amar Nath, Adv in IA no. 1656 of 21 for applicants
For Respondent	:	Mr. Alishan Naqvee, Ms. Rupal Bhatia, Mr. Iman Naqvi Advs. Sus. BOD
For the RP	:	Mr. Ashu Kansal, Mr. K. Khetan, Advs.
For the Union Bank	:	Mr. Alok Kumar, Mr. Somya Yadava, Mr. Manan Gambhir, Ms. Garima Soni, Ms. Nandita Jha, Advs. For UBI

**ORDER**

**IA-2615/2022,**

This is an application by the Resolution Professional under Section 12A of IBC, 2016 seeking withdrawal of the CP(IB) No. 160(PB)/2018. The reliefs sought in the application read as follows:

*“(a) Allow the present Application and permit withdrawal of the Company Petition (IB) No. 160(PB)2018 filed by ARCIL).;”*

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- (b) Allow the Applicant to remain the Authorized Signatory of the Current Bank Account No.922020027769280 till the Final payment of the disbursement of entire CIRP Cost;*
- (c) Direct the Management or to any authorized representative not to seek any right over the Current Bank Account No. 922020027769280 until the entire CIRP cost is disbursed;*
- (d) Pass appropriate order in IA No. 3264 of 2021 filed by the Applicant seeking extension of 80 days in total CIRP period which is pending adjudication.*
- (e) Exclude the time spent on the adjudication of IA No. 3264 of 2021 from the total CIRP period;*
- (f) Pass such or any further order as may be deemed fit and proper in light of the facts and circumstances of the present case and in the interest of the justice.*

The withdrawal of the Company Petition has been approved by the CoC in the 18<sup>th</sup> Meeting held on 11.05.2022. Para 24 of the application, which contains the Minutes of the meeting reads as below:

*“24. Pursuant to the submission of the demand draft, in the Eighteenth CoC meeting- Part 3 on 11th May 2022 wherein the Applicant presented the application for withdrawal in Form FA submitted by ARCIL for consideration. ARCIL while putting Form FA provided justification of Form FA for withdrawal of the captioned petition owing to the fact that the Erstwhile Directors were*

*in the discussion with the Financial Creditors for settlement since a very long time period. However, the devastating effects of Covid had severely impacted the Erstwhile Directors ability to finalize an investor and to arrange the necessary funds. Such paucity of funds had delayed the process of settlement erstwhile, now the concerned erstwhile Directors had successfully managed to arrange the necessary funds to offer a settlement.*

*Further, the additional reasons were provided by ARCIL for the proposal of the said withdrawal. Relevant extracts of minutes of the Eighteenth CoC meeting are as follows:*

**“ITEM No. B2**

**TO VOTE ON THE APPLICATION UNDER FORM FA RECEIVED BY THE RESOLUTION PROFESSIONAL FOR THE PURPOSE OF WITHDRAWAL OF APPLICATION INITIATED UNDER SECTION 7 IN ACCORDANCE WITH THE SECTION 124 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

**Facts and Explanatory Statement:**

*The chairman intimated the Committee members that was discussed previously, the One Time Settlement Offer was proposed by the erstwhile Director of the Corporate Debtor. Mr. Ranjit Kapoor/ Mr. Kiran Kapoor and ARCIL had taken the same into the consideration.*

*However, before proceeds further, the Chairman debriefed the Committee about the procedural aspect of such withdrawal in accordance with the Insolvency and*

*Bankruptcy Code and the Regulations therein. It was succinctly informed by the Chairman that in accordance with Section 124 read with Regulation 30A(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Application shall be made in Form FA of the schedule accompanied by a bank guarantee. Further, as per Regulation 30A(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Application for Withdrawal by the Applicant shall be considered by the Committee of Creditors within Seven days of its receipt and shall be taken under consideration for filing before the Adjudicating Authority only if it is approved by the committee with ninety percent voting share in accordance with Regulation 30A(5) within 3 days of such approval. Additionally, it was informed that where an Application under Section 12(A) is approved by the Adjudicating Authority, the Applicant shall deposit an amount, towards the actual expenses incurred by the Interim Resolution Professional /Resolution Professional for conduction of CIRP of the Corporate Debtor within three days of such approval, in the bank account of the Corporate Debtor, failing which the bank guarantee received under Regulation 30A(2) shall be invoked, without prejudice to any other action permissible against the applicant under the code. The Committee members noted the same.*

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*The Chairman subsequently informed about the progress in the instant matter that was presently in the receipt of the Application under Section 12A dated 09.05.2022 along with Form FA from one of the Financial creditors, i.e., ARCIL which was also the Applicant of CP (IB) NO. (IB) 160(PB)/2018 against the White Metals Limited. Thus, the Chairman informed that the said step was in accordance with the requirements of Regulation 30A and was hence placed before the Committee for deliberations in the instant meeting.*

*It was further informed that the Chairman was also in receipt of a Bank Guarantee on behalf of AOV Agro Foods Private Limited amounting to Rs.9,00,50,073/- for the CIRP Expenses/ Costs as on 31.05.2022 in accordance with Regulation 30A(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It was informed by the representative of ARCIL that the said investor namely, AOV Agro Foods Private Limited invested the money on behalf of ARCIL and the Erstwhile Directors, Mr. Ranjt Kapoor and Mr. Kiran Kapoor.*

*It was additionally informed by the representative of ARCIL that, although they have considered the OTS proposal of the Erstwhile Directors however, the approval of the said resolution shall entirely depend on the deposit of the balance amount as discussed between the Erstwhile Directors and the Financial Creditor and in case they fail to deposit the same, the amount of Rs. 10 Crores*

*As*

*deposited with ARCIL shall stand forfeited. The representative of ARCIL further went ahead to clarify that there are multitude of reasons for consideration of the Withdrawal under Section 12A of the Code, some of which highlighted are as follows:*

- 1. The Erstwhile Directors were in discussion with the Financial Creditors for settlement since a very long time. However, the devastating effects of Covid had severely impacted the Erstwhile Directors ability to finalize an investor and arrange necessary funds. Such paucity of funds had delayed the process of settlement nevertheless, now the Erstwhile Directors had successfully managed to arrange necessary funds to offer a settlement.*
- 2. The Erstwhile Directors of the Corporate Debtor and the Corporate Debtor was no less than a child for the Directors who have the sole intention of reviving the operations of the Corporate Debtor. Moreover, considering their expertise and acute familiarity in the kind of projects the Corporate Debtor is involved in, it was of no doubt that the operations would be placed in the hands of persons who had best interest of the corporate Debtor in mind. Such a revival of the operations of the Corporate Debtor will serve as a boon both for the market and for the business of the Corporate Debtor.*
- 3. The revival of the Corporate Debtor through Corporate Insolvency Resolution Process however effective would not have justly and adequately served the interests of all the*

*As*

*Creditors and Stakeholders involved. The involvement of the Erstwhile directors to bounce back the business of the Corporate Debtor would mean efficient and guaranteed satisfaction to all the creditors initially involved in the business of the Corporate Debtor.*

- 4. The said move would nonetheless generate employment and would economically benefit the society at large.*
- 5. The approval of the settlement guarantees the maximization of all the Assets of the Corporate Debtor as compared to the process of the Resolution through Insolvency and Bankruptcy Code.*

*The Committee and the Chairman and the Committee took note of the reasons highlighted by the representative of ARCIL.*

*Further, Chairman informed the Committee and the Erstwhile Directors that, the approval of the Application filed u/s 12A might take a considerable time as the Hon'ble NCLTs are to remain closed for a few weeks in the month of June. Further, it is also to be noted that the adjudication by the Hon'ble NCLT, Principal Bench upon the instant Application might also take some time due to unforeseen circumstances. As such, the CIRP costs accrued till the approval of the Application shall be borne by the Applicant/ Erstwhile Directors and the same was also confirmed by the representative of ARCIL. To this, the representative of ARCIL informed the Chairman that the compensation of all the costs accrued for conducting CIRP*

costs over and above the costs accrued till 31.05.2022 shall be the responsibility of the Erstwhile Directors. The same was confirmed by Mr. Ranjit Kapoor and Mr. Kiran Kapoor.

Further, the Chairman highlighted the need to open an Escrow Current Account in the name of the Corporate Debtor to transact the CIRP Costs deposited by the Applicant within three (3) days of receipt of the Order by the Hon'ble NCLT, approving the Application else by way of encashing the Bank Guarantee if the amount is not deposited within three (3) days of the Order and that the Chairman shall undoubtedly remain the Authorized Signatory of such an Account till the payment as per the CIRP costs are final and settled

The same was duly noted by the Committee Members and the Erstwhile Directors of the Corporate Debtor.

Thus, considering that the Resolution Professional has received Application for Withdrawal u/s 12A read with Regulation 30A(1)(b) alongwith Form FA and Bank Guarantee under Regulation 30A(2), the Committee Members may deliberate upon the same and consider the following Resolution for approval:

**Resolution:**

**To consider and if found fit, to pass with or without modification the following Resolution:**

AKS

*"RESOLVED THAT the Application for Withdrawal of Application initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 in White Metals Limited alongwith Form FA under Section 12A of the Insolvency and Bankruptcy Code read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 submitted by ARCIL is hereby approved by the COC."*

*"FURTHER RESOLVED THAT the Resolution Professional Mr. Hemant Sharma is hereby authorized to file the said Application before the Hon'ble NCLT on behalf of the Applicant within three days of the said approval."*

As per Regulation 30A(1)(b), the reasons for withdrawal of CIRP Proceedings after issuing of the invitation for expression of interest is given in the Minutes of the Meeting stated above.

The Erstwhile Directors were in discussion with the Financial Creditors for settlement since a very long time. The application is filed along with Form FA submitted by the ARCIL, Financial Creditor with 100% approval of Committee of Creditors. A Bank Guarantee for payment of the CIRP cost amounting to Rs. 9,00,50,073/- is given at page 133.

In view of the above we are inclined to allow prayer "(a)" and **(IB)-160(PB)/2018 stands withdrawn and disposed of.**

The Moratorium which was imposed under Section 14 stands withdrawn. The Corporate Debtors and all the directors are released from the CIRP Proceedings.

*Res*

With respect to prayer “(b)”, the Ld. Counsel for the Resolution Professional also stated that in Current Bank Account No. 922020027769280 the Applicant be allowed to remain the Authorised Signatory, since the Bank Guarantee by the Corporate Debtor of Rs. 9,00,50,073/- will be disbursed to above Bank Account.

Resultantly the **Prayer “b” is hereby allowed.**

The Resolution Professional will disburse this amount to all the persons concerned to discharge the above amount now lying in the Bank account, as per the order to settle the CIRP cost without failure.

With respect to prayer “(c)”, seeking exclusion for Extension of time, as a consequence application for Extension of time is allowed and IA-3264/2021 stands **disposed off.**

The Resolution Professional will hereby duly inform each and every claimant under the CIRP cost and ensure that disbursement is made and a final report will be filed before this Tribunal, after giving the extract of the payments made, so as to complete the proceedings.

List the matter **on 14.10.2022** for compliance by the Resolution Professional.

**IA-4115/2022, IA-3072/2021, IA-360/2021, CA-1527/2020, CA-190/2019, CA-619/2019, IA-4385/2021, IA-5032/2021**

Ld. Counsel Mr. Alishan Naqvee for Mr. Ranjeet Kapoor appeared and seeks to withdraw the all above applications.

All above applications stand **dismissed as hereby withdrawn.**

*Ans*

**IA-1110/2021, IA-4720/2020, IA-1656/2021, IA-1706/2021.**

Today, when the matter was called, neither the Petitioner Ld. Counsel nor the Respondent Ld. Counsel appeared.

Therefore, the Applications stand **dismissed for non-prosecution.**

**CA-1134/2019,**

This application has been filed seeking following reliefs:

*“A. Allow the present Petition;”*

*B. Initiate the contempt proceedings against the Contemnors herein for contempt of directions contained in order dated 14.01.2019 passed by this this Hon'ble Tribunal;*

*C. Pass any such any other or similar Order(s) as this Hon'ble Tribunal deems fit and necessary under the facts and circumstances mentioned in the present application.*

Ld. Counsel for the Resolution Professional Mr. Kanishk Khetan, appeared and states that he is not pressing further the said application.

IA-1134/2019 stands **dismissed** as not being pressed.

**IA-4727/2020 & CA-817/2019**

Ld. Counsel for the RP Mr. Kanishk Khetan, appeared and states that he is not pressing the said application as it becomes infructuous.

**IA-4727/2020 and CA-817/2019** stand **dismissed** as having become infructuous.

  
(RAMALINGAM SUDHAKAR)  
PRESIDENT

  
(AVINASH KUMAR SRIVASTAVA)  
MEMBER (TECHNICAL)