In the National Company Law Tribunal
Mumbai Bench.

MA 1526/2018 in CP (IB)-1670/(MB)/2017

Under Section 12A of Insolvency & Bankruptcy Code, 2016
read with
Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

In the matter of

Globelink WW India Private Limited : Petitioner/ Operational Creditor

V/s

MTK Tooling & Engineering Pvt. Ltd. : Respondent/ Corporate Debtor

A N D

Mr. Martin S.K. Golla : Applicant & Resolution Professional

Heard on : 18.12.2018
Order delivered on: 24.12.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)

For the Petitioner(s): : 1. Mr. Rajesh Jain, Advocate.
2. Ms. Madhavi Nalluri, Applicant in MA No.1526/2018.

For the Respondent(s): : 1. Ms. Manish Sukhani, (Erstwhile Resolution Professional).

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition u/s. 9 was submitted by M/s. Globelink WW India Private Limited in the capacity of "Operational Creditor" against M/s. MTK Tooling & Engineering Pvt. Ltd. as a "Corporate Debtor" which was "Admitted" vide an Order of 2nd April, 2018 (Page-10) with the direction to commence CIRP by appointing Mr. Manish Sukhani as Interim Resolution Professional pertaining to an Operational Debt of ₹6,58,135/- [₹2,30,954/- (Principal) + ₹4,27,181/- (Interest)].

1.1. Subsequently, M/s. Sinhan Bank, the sole Financial Creditor to the Corporate Debtor having a Debt of ₹2 Crores, filed a Miscellaneous Application (M.A. 548/2018) for change of Resolution Professional u/s. 27 of The Code. Accordingly, Mr.

Manish Sukhani was replaced by Mr. Martin S.K. Golla as Resolution Professional vide Order dated 04.09.2018.

2. This Miscellaneous Application (M.A. 1526/2018) is submitted on 05.12.2018 by the Resolution Professional Mr. Martin S.K. Golla seeking an Order u/s.12A for granting permission for withdrawal of the main Petition (CP(IB)-1670/(MB)/2017). During the course of hearing a Synopsis of the event took place in this case has been placed on record, relevant portion reproduced below:-

"1. MTK CIRP dt. 2nd April,2018

2. IRP appointed: 17th April,2018

3. Change in RP (sec.27) : 29th May,2018 COC meeting

4. Order received for above: order dt.4th September, 2018 …. received on 6th September, 2018

5. CIRP ending : 29th September,2018

6. 5th COC : 15th September- Form G discussed and decided 1st extension and exclusion

7. Application for Extension & Execution: 30th May, 2018 -5th September, 2018 filed on 26th September, 2018

8. Order dated 10th Oct. 2018 received on 29th Oct, 2018 for exclusion of 99 days, hence between that time no CoC since Corporate Insolvency Resolution Process was over on 29th September, 2018.

9. IBBI order dated 12th November, 2018, received on 13th November, 2018 calling for replacement of RP Mr. Martin S.K. Golla

10. 6th CoC meeting on 24th November2018 minutes for replacement of RP. CoC decided to replace RP and till such time Mr. Martin S K Golla to continue as RP: discussed 12A hence Form G kept on hold.

11. 7th CoC meeting on 5th December, 2018 : Meanwhile, 12A received on 1st December, 2018 (within 7 days the CoC was called and within 3 days of CoC meeting, application was filed."

3. In the 5th Committee of Creditors meeting held on 15.09.2018, the sole Financial Creditor has approved the Resolution 14.05.2018, relevant portion of the Resolution is reproduced below:-

"f) Discussion on point no. 6, resolution no. 1 of the 1st meeting of the CoC (held on 14/05/2018, regarding fees payable to the Interim Resolution Professional and subsequent point no. g. of the 2nd meeting of the CoC (held on 29/05/2018), regarding the ratification of the fees payable to the Interim Resolution Professional and subsequently on becoming Resolution Professional (in the 1st CoC meeting held on 14.05/2018):-

This matter was discussed at great length, references were made to the relevant points and resolutions (mentioned in the above para) and it was agreed to pay Mr. Manish Sukhani ,the Interim Resolution Professional/ Resolution Professional, an inclusive fees of Rs. 50,000/- per month for 5 months starting from the Insolvency commencement date, being 02/04/2018 till 04/09/2018 being the date of the order passed by the NCLT, Mumbai Branch, for the appointment of Mr. Martin S.K. Golla, as the Resolution Professional."

4. The 7th Committee of Creditors meeting held on 05.12.2018 discussed the Corporate Insolvency Resolution Process "Withdrawal Application" received in Form FA from the Operational Creditor M/s. Globelink WW India Private Limited on 01.12.2018 u/s. 12A of The Code read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, and passed a Resolution with 100% voting share, authorized Mr. Martin S.K. Golla, Resolution Professional to file the Application before the Adjudicating Authority. Accordingly, this M.A. 1526/2018 is filed before this Tribunal.

5. An understanding has arrived between the Corporate Debtor and the Bank to service the Debt in future.

6. The Operational Creditor's outstanding Debt amount admitted is of ₹97,71,088/- along with Interest of ₹11,63,057/-. The Operational Creditor is the Applicant, M/s. Globelink WW India Private Limited. Amount claimed, admitted and settled are as under :-

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Amount admitted in order dated 2nd April,2018	*₹2,30,954 along with Interest of Rs.4,27,181/- totalling to ₹6,58,135/-*
Amount claimed in Form B	*₹2,30,954/- along with interest of Rs.5,52,792/- totalling to Rs.7,83,746/-*
Amount admitted by IRP	*Rs.2,30,954/- along with interest of Rs.3,66,611/- totalling to Rs.5,97,565/-*
Amount due to Globelink WW India Private Limited as per Books of Account of Corporate Debtor as on 31/03/2018	*Rs.1,23,640/-*
Amount paid to Operational Creditor for settlement	*₹6,50,000/- (Amount admitted as per Hon'ble NCLT, Mumbai Bench Order dated 2nd April,2018) + Rs.40,000 filing Fees (Through Demand Draft No. 299060 of ₹6,90,000/- drawn on Globelink WW India Private Limited dated 29th November,2018 from Shinhan Bank) Note: The claims lodged by only one Financial Creditor i.e. Shinhan Bank who is also the sole member of CoC, is a credit facility which is a Standard Account and hence is not required to be repaid as the FC has not recalled the credit facilities. As regards the claims of the OCs, the said claims are standard running accounts in the normal course of business and have been lodged in response to the Public Announcement in the CIRP process. These are being paid as per the normal business terms.*

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7. The CoC had approved Professional Fees for the Insolvency Professional Mr. Manish Sukhani @ ₹50,000/- per month from 02.04.2018 to 04.09.2018. – A Bank Guarantee of ₹3,80,000/- to be utilized towards Professional Fees.

8. Accordingly, the M.A. 1526/2018 in CP(IB)-1670/(MB)/2017 filed u/s. 12-A of Insolvency & Bankruptcy Code is Allowed. The Insolvency Professional in possession of documents and information of the Corporate Debtor shall hand over all of them to the Debtor Company. Since the requisite compliance have already been made therefore withdrawal is granted and file to be consigned to records.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 24.12.2018
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