

S.No.108

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-01-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**IA (IBC) 36/2022 in IA(IBC) 22/2022,
IA(IBC) 22/2022 in CP(IB) No.679/9/HDB/2019**
U/s 9 of IBC, 2016

IN THE MATTER OF:

M/s. Nexo Industries Pvt Ltd

...Operational Creditor

Vs

M/s. Tata Projects Ltd

...Corporate Debtor

C O R A M :-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**


O R D E R

IA(IBC)/36/2022:-


Learned Counsel Ms. Prachi Johri for applicant appeared via video conference. Learned Senior Counsel Mr. Gopal Jain for Respondent appeared via video conference. Learned Counsel for applicant today submitted that she is not pressing this application and the same may be disposed of as withdrawn. In the light of the submission, **IA(IBC)/36/2022 is disposed of as withdrawn.**

IA(IBC)/22/2022:-

This application is filed by Interim Resolution Professional under Section 12A of the Code, 2016. Learned Counsel Shri G. Bhupesh for Interim Resolution Professional (IRP), Learned IRP Shri. Krishna Komaravalu and Learned Counsel Ms. Mayur Mundra for Operational Creditor appeared via video conference.



Orders pronounced in IA (IBC)/22/2022 vide separate sheets. In the result, this application is allowed and Corporate Insolvency Resolution Process (CIRP) ordered on 30-12-2021 in CP(IB)No.679/9/HDB/2019 by this Adjudicating Authority against the Corporate Debtor is hereby withdrawn. The Corporate Debtor is allowed to function independently through its Board of Directors with immediate effect.


MEMBER (T)

Srinivas


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 22 of 2022

In

CP (IB) No. 679/9/HDB/2019

*Application under Section 12-A of the IBC, 2016 r/w Rule 30A of IBBI
(IRPCP) Regulations, 2016*

In the matter of Nexo Industries Private Limited Vs Tata Projects Limited

Between

Tata Projects Limited

Represented by Shri Krishna Komaravolu, IRP

Registered office at Mithona Towers-1

1-7-80 to 87, Panderghast Road

Secunderabad, Telangana

...Applicant/
Corporate Debtor

Versus

M/s Nexo Industries Private Limited

Village Mangarh, Kohara -- Machiwara Road

Ludhiana, Punjab – 141112

... Respondent/
Operational Creditor

Date of order: 11.01.2022

Coram

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri G. Bhupesh, Advocate



PER BENCH

ORDER

1. The Interim Resolution Professional. (for short IRP) appointed by this Tribunal pursuant to our order dated 30.12.2021 directing initiation of Corporate Insolvency Resolution Process (For short "CIRP") against the Corporate Debtor (Tata Projects Limited) vide CP No. 679/9/HDB/2019, has filed this application under Section 12A of Insolvency & Bankruptcy Code, 2016 ("Code"), r/w Rule 30A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") praying this Tribunal to set aside the order dated 30.12.2021 ordering CIRP against the Corporate Debtor, citing post CIRP settlement between the operational creditor and the corporate debtor.
2. It is stated in the application that this Tribunal admitted the Company Petition in CP No. 679/9/HDB/2019 filed by the Operational Creditor vide its order dated 30.12.2021 and ordered CIRP against the Corporate Debtor. The IRP received the said order of admission on 31.12.2021 and thereafter on 01.01.2022 made a public announcement in two news-papers, in terms of section 15 of I&B Code, inviting claims from creditors of the Corporate Debtor.



3. It is further stated that as against our order in Company Petition in CP No. 679/9/HDB/2019 dated 30.12.2021 the Corporate Debtor has preferred an appeal before Hon'ble NCLAT, Chennai. However, the said appeal in CA(AT) No.2 of 2022 has been *withdrawn* by the Corporate Debtor on 04.01.2022 in view of a settlement agreement arrived at between the Corporate Debtor and the Financial Creditor. Pursuant thereto, Hon'ble NCLAT Chennai Bench while allowing the withdrawal of said Company Appeal, directed the IRP to file Form-FA application under Section 12 A of the Code, coupled with Regulation 30A of CIRP Regulations 2016, before the Adjudicating Authority for withdrawal of CIRP, within 3 days from the date of the said order and further ordered that in the event of such application being filed by the IRP, the Adjudicating Authority is directed to dispose of the same within 3 days thereafter, without fail. A copy of the order of the Hon'ble NCLAT dated 04.01.2022 has also been filed along with this Application.
4. In the above backdrop, the IRP would contend that the present application has been filed in pursuance of the order of Hon'ble NCLAT Chennai Bench, *supra*, under the relevant provisions of I&B Code and Regulation, as such the Tribunal may allow this application and thus drop CIRP against the corporate debtor. In support of his contention that the CIRP in this case be dropped under the circumstances pleaded, Ld. Counsel for the Applicant



relied on the ruling of Hon'ble NCLAT, Chennai Bench in Company Appeal (AT) (CH) (Insolvency) No. 39 of 2021 dated 01.07.2021 in the matter of **SBI vs M/s AFCO Energy Pte Limited & Anr**, wherein the Hon'ble NCLAT had confirmed the order passed by the NCLT Chennai Bench allowing withdrawal of post CIRP against the Corporate Debtor, even while the pendency of a protest petition filed by one of the financial creditors viz. SBI, opposing allowing the application filed by the IRP for withdrawal of CIRP against the Corporate Debtor.

5. In the above background, the point that arises for consideration of this AA is;
Whether the Resolution Professional can be permitted to withdraw the CIRP against the Corporate Debtor by invoking inherent powers under Rule 11 of NCLT Rules?
6. We heard the L.d. Counsel for IRP, perused the record and the case law.
7. At the outset, it may be stated that the following provisions under the I&B Code besides the Regulation, provide for the exit of the corporate debtor from CIRP, both at pre and post admission stages, before or after constitution of COC, besides confer *discretionary* power on the AA, to either allow or dismiss the prayer for such withdrawal.
8. Section 12A of the Code and 30A of CIRP Regulations which have come into force with effect from 06.06.2018 and 25.07.2019 respectively, are as follows: -





Section 12A of IBC

“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 percent voting share of the committee of creditors, in such manner as may be prescribed”.

Regulation 30A (1) of the CIRP Regulations

Regulation 30A (1) of the CIRP Regulations **requires that an application for withdrawal under section 12A shall be submitted to the Interim Resolution Professional (IRP) or Resolution Professional (RP)**, as the case may be, in Form FA of the Schedule to the said Regulations, before issue of expression of interest (EoI) under regulation 36A.

Thus, while Section 12A of the Code confers power on the Adjudicating Authority to allow the withdrawal of the petition admitted under Section 7 or 9 or 10 of the Code, when the application is made by the Applicant with the approval of 90% voting share of the CoC, in such manner as may be specified, Regulation 30A of CIRP Regulations provides for withdrawal of a petition *before the constitution of the Committee by the Applicant through the IRP as well as after constitution of the Committee by the Applicant, as per procedure stated therein*. Thus, the power under the above is discretionary while considering the Application filed by IRP for withdrawal of the Company Petition.

9. Here, we feel, very apt to quote herein, the authoritative judgement of Hon'ble Supreme Court of India in ***Swiss Ribbons vs Union of***



India & Ors reported in Manu/SC/0079/2019 at para 52 which states as follows:-

Para 52:

“It is clear that once the Code gets triggered by admission of a creditor’s petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case”. (emphasis is ours)

10. The aforesaid ruling amply demonstrates that when an application is filed by the IRP seeking withdrawal of CP No. 679/9/HDB/2019 in pursuance of Section 12A, read with Regulation 30A, the Tribunal *may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all the relevant factors on the facts of each case.*(emphasis is ours).





11. Thus, hearing all concerned parties and considering all relevant factors of the facts of each case, is sine quo non, before the Tribunal allows or dismisses the application filed by IRP for withdrawal of CIRP against the corporate debtor. However, neither the ruling in *Swiss Ribbon*, IBC or any Regulation stated/contained any 'definition' as to who can be considered as the "concerned parties", for the purpose of hearing while deciding a withdrawal petition filed by IRP.
12. No doubt, upon triggering the CIRP against a Corporate Debtor and on appointment of an IRP, the dispute will transform into a dispute in rem, hence slips into the domain of the people at large. In so far as the case on hand is concerned, it has been stated in the application that the IRP had already caused public notice inviting claims, however it is not stated whether any claim is received pursuant to the said publication. It is needless to say that, the Code provides for fixing of timeframe by the IRP for submission of claims by Financial as well as Operational Creditors before the IRP and it is not stated that the said time has lapsed.
13. Therefore, the question that may arise is whether allowing withdrawal of a company petition pursuant to a settlement between the CD and the Financial/Operational creditor since would deprive the financial/operational creditors of the opportunity to file their claims, if any, should "concerned persons" shall mean and





include all the *prospective* financial/operational creditors who are entitled to file their claims pursuant to the public notice issued by the IRP consequent to the initiation of CIRP against the corporate debtor and even those claimants whose claims are pending in the Tribunal? In answer to the same we state herein that, it would be a misnomer to hold that allowing application for withdrawal of CIRP pursuant to a settlement arrived at between the CD and the FC/OC post CIRP, by the Tribunal, would be detrimental to the interests of the prospective financial / operational creditors on the apprehension that the same would result in ‘frustration’ of their opportunity to submit their claims before the IRP, as such they are the “concerned parties”. To substantiate our view, we categorise claims against the Corporate Debtor under CIRP as follows:-

- (i) The claims made before IRP pursuant to public notice issued by the IRP.
 - (ii) Pending claims of FC/OCs before the Adjudicating Authority
 - (iii) Claims which were closed/ disposed of by the AA, consequent to ordering CIR process against the CD and appointment of IRP, with a liberty to approach the concerned IRP/RP.
14. In so far as first category of claims are concerned, since CIRP gets terminated upon withdrawal of CIRP proceedings against the CD and the IRP/RP stands discharged, all such claimants are very much entitled to submit their claims before the Adjudicating Authority as per the procedure laid down under the Code. In

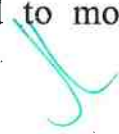


second category of matters, the Financial/Operational Creditor whose claim before this Tribunal has been disposed of, with a direction to approach the IRP can seek revival of their company petition, in view of the changed circumstances, by filing necessary application before the Tribunal, to recall the said order. In so far as the third category of cases, the same can be continued before the Tribunal. Therefore, the argument that allowing withdrawal of the CIRP ordered against the Corporate Debtor, by virtue of a settlement would jeopardize recovery opportunity of the FC/OC, and amounts failure to hear the “concerned parties” is totally unfounded and mischievous.

15. Hon’ble Supreme Court of India in Civil Appeal No 324/2020 in the matter of Ess Investments Private Limited vs Lokhandwala Infrastrutture Private Limited and Anr, in identical situation held as follows:-

Para.6: Since the disputes between the Respondent No.1 and Dalmia Group Holdings has been settled and the order dated 19.09.2019 has been set aside, it will be open to the appellant to proceed against the Respondent No.1 before the NCLT by seeking recall of the order dated -4.09.2018 and revival of its application no. CP (IB) No. 4000/MP/2018

16. In that view of the matter, the Tribunal is of the opinion that no prejudice much less serious will be caused to any intending financial/operational creditors who are entitled to move their



claims before the IRP, if the withdrawal of CIRP is ordered pursuant to any settlement/compromise.

17. Further, a perusal of the order of Hon'ble NCLAT Chennai Bench, *supra*, in re **SBI vs M/s AFCO Energy Pte Limited & Anr** discloses that the Hon'ble NCLAT, approved the order passed by the NCLT Chennai Bench allowing withdrawal of the CIRP by the IRP, consequent to the settlement reached between CD and the Financial Creditor, even while the application filed by the financial creditor (SBI) objecting such withdrawal was pending before the NCLT Chennai Bench.
18. However, placing reliance on the ruling of Hon'ble Supreme Court in Civil Appeal No 324/2020 in the matter of Ess Investments Private Limited vs Lokhandwala Infrastructure Private Limited and Anr, we are of the view that, while allowing a petition for withdrawal of CIRP against the Corporate Debtor, we should ensure that the interests of the Applicants who's Company Petitions were disposed of directing them to approach the IRP, shall be protected.
19. Therefore, having anxiously considered the factual matrix of this matter and keeping in view of the fact that the IRP has not so far received any claim from pursuant to the public notice besides the fact this application does not require the consent of the members of COC (since the same was filed before constitution of the COC) and relying on the ruling in Swiss Ribbons, *supra*, wherein it was

held that relevant facts of each case have to be taken into consideration while allowing or dismissing a withdrawal petition filed by the IRP, we are of the firm view that “concerned parties/persons” for the purpose of deciding a withdrawal application filed by IRP, mean the persons who are parties to the *lis*, which is agitated before the AA, and not those who are not before us.


20. We therefore, hereby clarify that the right of the Applicants whose Company Petitions, if any, filed before this Tribunal against the very same Corporate Debtor, if were closed with a direction to approach the IRP, and such Applicants are at liberty to approach this Tribunal for recall of order of closure of of their Company Petitions. Further, we hereby direct the IRP herein as well the Company (erstwhile Corporate Debtor) to make public announcement that CIRP proceedings ordered against the Corporate Debtor herein vide order of this Tribunal in CP (IB) No. 679/9/HDB/2019 has been withdrawn, vide orders in this Application.
21. Therefore, in view of our discussion above and on careful consideration of the facts and circumstances of the case, this Tribunal is of the opinion that it is a fit case to exercise the inherent power under Rule 11 of NCLT Rules, 2016 by this AA, and accordingly hold that the application deserves to be allowed. As a





sequel, we allow the withdrawal of CIRP against the Corporate Debtor, forthwith.

22. In the result, this application is allowed and CIRP ordered on 30.12.2021 in CP No. 679/9/HDB/2019 against the Corporate Debtor is hereby withdrawn. The Corporate Debtor is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr N.V. Ramakrishna Badarinath)
Member (Judicial)

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