

DIVISION BENCH

ITEM NO.166

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

**IA No.189/2022, IA No.90/2023, IA No.176/2023, IA No.288/2023
IN CP (IB) No.05/ALD/2020**

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 20th December, 2023

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	SANGHVI MOVERS LTD V/S ANINDYA INFRA TECH PVT LTD.
UNDER SECTION	9 IBC (in CIRP)

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

Sh. Anil Kumar, PCS : *For the Applicant in all the IAs.*

Sh. Anil Kumar Bajpai, Adv. : *For the Respondent in IA No. 288/2023*

ORDER

Ld. Counsels representing the parties are present.

IA No.288/2023

- 1.** This application has been filed by the RP for withdrawal of the main application/petition filed under Section 9 of the Code, on the basis of Form FA purported to be dated 11th November, 2022 submitted to the RP in compliance of the provisions of Regulation 30A of the Regulation 2016. Another prayer has also been made in the application for directing Operational Creditor/ Suspended Directors to pay the fees of the Resolution Professional and the expenses incurred by him in terms of the provisions of Regulation 2016, as per the Resolution passed by the 4th COC meeting held on 3rd June, 2023.

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2. It is the case of the Ld. Counsel representing the RP that after the MOU was executed between the parties, as a matter of fact, no intimation was brought to him by the Operational Creditor and therefore, he has communicated to the Corporate Debtor that he is not entitled to move any application for withdrawal and rather advised the Operational Creditor to provide the Form FA, so that the application could be moved by the RP in accordance with the provisions of the Code after taking up the agenda before the COC. However, notwithstanding that, an IA No.1 of 2023 was moved by the Corporate Debtor, at its own level, which came to be decided vide order dated 28th April, 2023 of this Tribunal observing as under: -

IA No. 01/2023

It is stated by RP that the application has not been moved through him under Section 12A and there is no resolution of the CoC placed on record so with despite the fact that there is only sole CoC member i.e. Bank of Baroda, the application is not maintainable in the present form. Let it be filed by RP, in accordance with Regulation 30A of the CIRP process Regulations. Though, RP is directed to convey one day meeting of CoC approving this withdrawal and filing of application under Section 12A through him.

Accordingly, IA No. 01/2023 is disposed off.

Compliance of the order be made by RP within one week.

3. In view of the aforesaid order, the IA No.01 of 2023 was disposed off.
4. Later on, the RP collected the FA which is purported to be dated 11th November, 2022 on the basis of which the present application has been moved in the month of June, 2023, inter alia, praying for withdrawal of the main petition as well as for payment of the RP fees as referred to above.
5. Ld. Counsel representing the RP vehemently argues that as per the Form FA purported to be dated 11th November, 2022 placed at page no.115

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undertaking was also given by the applicant vide Clause 3 of Form FA “I am ready to pay the entire expenses as per Sub-Regulation (2) of Regulation 30A.” He further states that as per the provisions of the Regulation 30A, the RP is to move the appropriate application for withdrawal under Section 12A and accordingly, the fees has been claimed as detailed in annexure no.15 placed at page no.127 wherein he has claimed total expenses of Rs.8,04,000/- which includes the CIRP cost as well as the legal Counsel fees.

6. When this matter came up for hearing on previous dates, the Ld. Counsel representing the non-applicant respondent/Operational Creditor has sought time to get instructions from his client about the reasonable amount to be paid towards the CIRP cost. This observation was actuated in view of the fact that the RP in his own wisdom and to settle amicably during the pendency of the case, so that the application under Section 12A could be considered on merit and allowed as proposed after a reasonable amount at least be paid to the IRP and accordingly, it was instructed to the Ld. Counsel representing the non-applicant respondent to take instructions.
7. However, today the Ld. Counsel representing the non-applicant/respondent states that he has got the instructions and according to him the matter may be decided on merit. Hence, this application has been taken up for hearing.
8. We have perused the application and the averments made therein, it is evident from the Form FA dated 11th November, 2022 that once the Operational Creditor was satisfied that a settlement has already been reached, an undertaking was given vide Clause 3 of Form FA thereof that the payment would be made in accordance with the provisions of 30A.

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Even the MOU between the Operational Creditor and Corporate Debtor, was not brought to the notice of the RP by way of the proper channel i.e. by the Applicant/ Operational Creditor himself and it was Corporate Debtor who hurriedly filed the aforesaid application i.e. IA No.01 of 2023.

9. As per the Item No. B2(1) considered by the COC for approval and to make arrangement for payment to RP to ensure compliance of para no.3 of Form FA placed at page no.106 & 107 of the application has not been considered, which was approved by the sole member of the Financial Creditor i.e. Bank of Baroda, as per the attendance placed at page no.109 & 110.
10. Since that application was not maintainable on behalf of the Corporate Debtor as it was only the RP on the advice of the COC alone is competent to move such an application, therefore, the application bearing IA No.01 of 2023 came to be decided on 28th April, 2023 as already referred to above.
11. Eventually, thereafter, the present application has been filed and keeping in view now, the suggestion by the Ld. Counsel representing the RP is that a reasonable amount at least be paid, we deem it appropriate to direct the non-applicant respondent/petitioner to pay in accordance with Regulation 30A and 33(3) an amount of Rs.3 lakh to be paid to RP who is still acting as IRP as CoC has not appointed RP so far, including the Counsel's fees as well as the CIRP cost would be released within a period of two weeks and the compliance affidavit be filed before this Tribunal.
12. The other prayers sought in the application granted permission for withdrawal of the main petition, it may be observed that the resolution to that effect was also passed by the COC in the same meeting and the Resolution is at page no.106 to the following effect.

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“RESOLVED THAT Form FA as submitted by the suspended Directors vide their email dated 22/05/2023, on behalf of Sanghvi Movers Limited, Operational Creditor/Applicant, be and is hereby approved”

“RESOLVED FURTHER THAT Mr. Sudhir Kumar Shukla, Deemed Resolution Professional, be and is hereby authorized to file an application before the Hon’ble Adjudicating Authority, National Company Law Tribunal, Allahabad Bench at Prayagraj, for withdrawal of C.P. (IB) No. 05/ALD/2020 and to complete all the formalities in this regard”.

- 13.** In view of the Resolution passed by the COC and the aforesaid orders for payment of the CIRP cost as well as the Counsel’s fees, we deem it appropriate to allow the present application for withdrawal of the main petition itself, subject to the compliance of payment of the aforesaid fees and filing of the affidavit to that effect by the RP.
- 14.** The aforesaid IA stands disposed accordingly. All other IAs also disposed off having become infructuous.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

20th December, 2023

Avaneesh Kumar Singh
(Stenographer)