



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No. 716/2019  
In  
CP(IB) No. 255/9/HDB/2018  
U/S.12 A of IBC, 2016

**IN THE MATTER OF :**

Ram Murthy Kommera,  
Resolution Professional of  
M/s. Sai Krishna Cores Private Limited.

...Applicant

**AND**

1. M/s. Anax Industries Private Limited  
Plot No.8, Shivaji Housing Society,  
Senapathi Bapat Road,  
Pune-411 016.  

... Operational Creditor/  
Respondent No.1
2. Chandra Shekhar(Suspended MD)  
of M/s. Sai Krishna Cores Private Limited  
Registered office of M/s. Sai Krishna Cores Private Limited.  
9-1-2015/1, Shanti Nagar,  
Bhadrachalam, Bhadradri Kotha Gudem District,  
Via.Khammam, Telangana state.  

... Respondent No.2
3. Pakalapati Venkata Rama Rao(Suspended Director)  
of M/s. Sai Krishna Cores Private Limited  
Registered office of M/s. Sai Krishna Cores Private Limited.  
9-1-2015/1, Shanti Nagar,  
Bhadrachalam, Bhadradri Kotha Gudem District,  
Via.Khammam, Telangana state.  

... Respondent No.3
4. Venu GopalRao Chalasani(Suspended Director)  
of M/s. Sai Krishna Cores Private Limited  
Registered office of M/s. Sai Krishna Cores Private Limited.  
9-1-2015/1, Shanti Nagar,  
Bhadrachalam, Bhadradri Kotha Gudem District,  
Via.Khammam, Telangana state.  

... Respondent No.4





**Order pronounced on 28.08.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member(Technical)

**Counsels / parties present:**

For the Applicant: Shri Ram Murthy Kommera, RP

For the Operational Creditor: Shri C.V.Narasimham, and  
Shri.D.V.A.S.Ravi Prasad,  
Counsels.

For the Corporate debtor: Shri K.V.Raman and  
Shri N.Harinath, Counsels.

Per: Hon'ble Shri Narender Kumar Bhola, Member(Technical)

**ORDER**

1. This application is filed by the Applicant/RP under section 12A of IBC, 2016 R/w Regulation 30A of the IBBI Regulation, 2016 and Rule 11 of NCLT Rules, 2016 seeking permission for withdrawal of the company petition CP(IB) No.255/9/HDB/2018 which is filed under section 9 of the code.
2. The averments in the application in brief that this Adjudicating Authority by order dated 25.06.2019 admitted the petition CP (IB) No. 255/9/HDB/2018, filed by Operational Creditor M/s. Anax Industries Private Limited, under section 9 of the Code R/W Rule 6 of the IBC,2016 and appointed Shri Ram Murthy Kommera as IRP.





3. The applicant averred that he has received only one claim from the operational creditor who is also the applicant in the main case and also the Respondent No.1 in this application.
4. The applicant averred that in compliance with Regulation 13(1) of Insolvency and Bankruptcy Board of India Regulations, 2016 IRP verified the claims within 7 days i.e on 19.07.2019 and constituted COC under Regulation 16(1) R/w Proviso to Regulation 16(2)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. The Applicant averred that in compliance with Regulation 17(1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 IRP filed his report on 22.07.2019 in the Tribunal certifying the COC.
6. The applicant averred that the first meeting of the Committee of Creditors was held on 27.07.2019 wherein the IRP has been appointed as a Resolution Professional (RP). The RP accordingly filed a Report to the Adjudicating Authority on 30.07.2019 under Regulation 22(3)(a) of the Insolvency and Bankruptcy Code, 2016 Communicating the appointment of Resolution Professional by the Committee of Creditors. It is also averred that in the first COC meeting the Committee of Creditors with 100% voting share has resolved to settle the entire dues of the creditors.
7. The Applicant further avers that the Operational Creditor also confirmed having received the entire claim amount from the corporate debtor and thus submitted the application for withdrawal of the case to the Resolution professional in FORM FA in terms of Section 12 A of I&B Code in the first COC meeting held on 27.07.2019.
8. Applicant further averred that CIRP expenses incurred up to the date of filing this petition and also the expenses

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expected to be incurred have been paid to the RP through bank , therefore the BG as required under the regulation 36 A is not insisted.

9. RP further avers that COC meeting was held on 27.07.2019, deliberated on the subject of withdrawal request submitted by the operational creditor along with the additional documents like (1) Minutes of meeting of COC. (2) Withdrawal application in Form FA.
10. RP avers that he has placed Form FA before the COC for its approval and the COC approved the withdrawal application with 100% voting share and there by *subject to the approval of the Tribunal* RP filed application on behalf of the Committee of Creditors under Sec 12A of the IBC, praying this Hon'ble Adjudicating Authority to approve the withdrawal of the Petition CP(IB) No. 255/9/HDB/2018.
11. We have heard the Resolution Professional/applicant herein. The Application is filed under Section 12 A of the Code, which is a newly added provision in the code. Sec 12A of the Code read as follows:  
"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".
12. It is clear from section 12 A of the Code that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10 on an application filed by the applicant with the approval of 90% voting share of the Committee of Creditors. Thus it is clear if 90% voting share of Committee of Creditors approves application for withdrawal then Adjudicating Authority to allow for withdrawing the application filed under section 7 or section 9 or section 10 of the Code.

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13. The regulation 30A of I&B( Corporate Insolvency Resolution Process), 2016, deals with procedure for Withdrawal of application under section 12 A of the code. It reads as follows:

- a. An application for withdrawal under section 12 A shall be submitted to the Interim resolution professional or the Resolution Professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of Interest under regulation 36 A.
- b. The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.
- c. The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.
- d. Where the application is approved by the Committee of creditors with ninety percent voting share, the Resolution Professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.
- e. The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).

14. The application for withdrawal under section 12 A of the code shall be submitted to the IRP or RP as the case maybe in Form FA of the schedule before issue of invitation for expression of interest and further to be accompanied by a bank guarantee towards estimated cost. On 27.07.2019 Applicant filed i.e the operational creditor withdrawal

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application in Form FA. The COC discussed the same. The Committee of Creditors to approve with 90% of voting share. If approved the RP shall submit the application to the Adjudicating Authority on behalf of applicant and Adjudicating Authority may approve the same by order.


15. It is the case of applicant/RP that 100% voting share of Committee of Creditors approved the withdrawal application. The minutes of the meeting of Committee of Creditors dated 27.07.2019 is annexed to the application at Page Nos.7-9.
16. We have seen the minutes of the Committee of Creditors meeting held on 27.07.2019. The members of Committee of Creditors having 100 % voting share, unanimously approved the application for withdrawal filed by the applicant. The COC with 100% voting share have approved the application for withdrawal. Therefore, permission can be granted under Section 12 A of the I&B Code to the Applicant for withdrawal of Company petition.
17. Present application is filed by RP before this Tribunal for approval of the withdrawal application. It is clear that Regulation 30A of IB (Corporate Insolvency Resolution Process) regulation 2016, is complied with.
18. By virtue of provisions of sec 12A, Tribunal is empowered to approve the application for withdrawal.
19. This Tribunal by exercising powers under section 12 A of the Code R/W regulations 30A of IBC(Corporate Insolvency Resolution Process) Regulations 2016, approves the application for withdrawal.
20. Consequently, application filed by RP is allowed and moratorium order passed under section 14 shall cease to exist. In the result IA No. 716/2019, is allowed and application for withdrawal filed by Operational Creditor

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which has been approved by the Committee of Creditors with 100 % voting share stands approved.

21. Consequently application filed by Operational Creditor in CP(IB) No. 255/9/HDB/2018, stands withdrawn, and CIRP stands closed.

  
28.8.19  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

  
28/8/19  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

Pavani