

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

IA No.1216/2020
IN CP (IB) No. 88/7/HDB/2019
Under section 12A of the IB Code, 2016.
Read with Regulation 30A of IBBI (Insolvency
Resolution Process for Corporate Persons) Regulations 2016

**In the matter of
M/s. Himagiri Enterprises Private Limited**

Mr. Sridhar Venkatraya Sundararaja,
Resolution Professional
For M/s Himagiri Enterprises Private Limited
Regn. No. IBBI/IPA-002/IP-N00146/2017-18/10382
Having office at, Regus, 1st Floor, Phoenix Tech Tower,
Plot No. 14/46, Survey No.1 (part),
IDA- Uppal Village and Mandal,
Uppal Notified Industrial Area Service Society,
Hyderabad, Telangana, 500039.

...Applicant/
Resolution Professional

Date of Order: 08.01.2021.

**Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsel Present:

For the Applicant: Mr. Sridhar VS, RP along with
Mrs. JVL Bharati, counsel.

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is a Interlocutory Application bearing IA No. 1216 of 2020 in CP (IB) No.88/7/HDB/2019 filed by Applicant/Resolution Professional (RP) under section 12A of the Insolvency and Bankruptcy Code, 2016, on behalf of the Financial Creditor, inter-alia, seeking the following relief (s) :

- i. Allow/ grant permission to M/s NCC Limited, the applicant to withdraw its application/petition in CP (IB) No. 88/7/HDB/2019 against M/s. Himagiri Enterprises Private Limited, under Sec 12A read with Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
2. The following are the brief facts of the case as stated by the Applicant:
- a) That the Application bearing CP (IB) No.88/7/HDB/2019 was filed by Financial Creditor (M/s. NCC Limited) and the same was admitted by this Adjudicating Authority vide order dated 23.09.2020 for initiation of CIRP against the Corporate Debtor (M/s. Himagiri Enterprises Private Limited) under section 7 of IB Code, 2016 and appointed Mr. Ram Murthy Kommera as the Interim Resolution Professional (IRP). Subsequently, he was replaced by the Applicant herein i.e., Mr. Sridhar V.S as RP by this Adjudicating Authority vide its order dated 09.12.2019 in IA No.1066/2019 which was filed by the CoC under section 27 of the IB Code, 2016.
- b) The IRP constituted the following Committee of Creditors based on claims received. The only financial creditor was the applicant M/s. NCC Limited.

Committee of Creditors

Name of the creditor	Amount of Claim.	% of Voting Share
NCC Limited	70,78,90,743/-	100%

- c) That CoC in its 2nd meeting held on 13.01.2020, approved the issuance of invitation of Expression of Interest (EoI) in Form-G. The Applicant herein published the same on 31.01.2020 in Financial Express (English) and Mana Telangana (Vernacular) newspapers.
- d) That as per Form-G the last date for receipt of EoI was 15.02.2020. No response to the Form-G invitation for expression of interest was received by the Applicant herein.

- e) That the Applicant herein convened the 3rd CoC meeting on 28.02.2020 to seek directions from the CoC for further course of action. In the 3rd CoC meeting Mr. Nageswara Rao, suspended Director of the Corporate Debtor, informed that discussions were in advanced stage for One Time Settlement (OTS) of the debt due to the financial creditor and sought time of one week to confirm the modalities. Subsequently, an email confirmation was also received from Mr. Nageswara Rao that they are in discussions with M/s. NCC Limited for arriving at a mutual settlement which was to be finalised before 31.03.2020.
- f) That the Financial Creditor i.e., M/s. NCC Limited also confirmed of the proposed settlement by email on 20.03.2020.
- g) That in view of the abovementioned circumstances, the CoC directed the RP to seek approval of Adjudicating Authority for extension of the CIRP period beyond the 180 days (which ended on 21.03.2020).
- h) That CoC in its 4th meeting held on 08.06.2020, passed the following resolution for the extension of CIRP period:
- “Resolved that the CoC hereby approves seeking of extension of CIRP period for M/s Himagiri Enterprises Private Limited, by a further 90 days beyond the 180 days period and further authorize the Resolution Professional Mr. Sridhar Venkatraya Sundararaja to file necessary application with Hon’ble NCLT, Hyderabad seeking extension.”*
- i) That this Adjudicating Authority approved extension of CIRP period by 90 days beyond the 180 days vide its order dated 16.06.2020 in I.A. No. 330/2020.
- j) That the Corporate Debtor signed settlement deed for a full and final settlement of Rs. 17.56 crores as One Time Settlement (OTS) which was to be completed by 31st August 2020 and the same was accepted by the financial creditor i.e., M/s. NCC Limited. As per the Settlement deed, total settlement value was Rs. 17.56 crores which was made up of two properties one at Chennai valued at Rs 2.98 crores and one at Bangalore valued at Rs 9.58 crores, and payment of Rs. 5 crores. However, due to COVID-19 lockdown situation in the country the settlement actions were delayed.

- k) That CoC in its 5th meeting held on 30.09.2020, approved seeking extension of the CIRP period by a further 60 days and authorized the RP to file necessary application before this Adjudicating Authority. The RP has filed I.A. No.949/2020 in CP (IB) no. 88/7/HDB/2019.
- l) That CoC in its 6th meeting held on 28.10.2020, approved sale of certain investments of the Corporate Debtor and payment to the Financial Creditor as part of settlement of the debt due to the financial creditor.
- m) That in CoC's 7th meeting held on 30.11.2020, the Corporate Debtor has handed over two properties one at Chennai valued at Rs 2.98 crores and one at Bangalore valued at Rs 9.58 crores, and made payment of Rs. 3.25 crores. Balance amount of Rs.1.75 crores is pending to be paid. Meanwhile the Financial Creditor M/s. NCC Limited consented to withdraw its CIRP application against M/s. Himagiri Enterprises Private Limited and submitted Form FA. The CoC approved the withdrawal of the Application bearing CP (IB) No. 88/77/HDB/2019 and passed the following resolution:

***“RESOLVED THAT** pursuant to the provisions of Section 12A of the Insolvency and Bankruptcy Code, 2016, read with Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and based on the undertaking given by the Corporate Debtor to clear the balance amount of Rs. 1. 75 Crores, the Committee of Creditors of M/s Himagiri Enterprises Private Limited hereby unanimously approves the withdrawal of petition/application in CP (IB) No. 88/77/HDB/2019 submitted by M/s NCC Limited, the applicant for the petition for CIRP.*

***RESOLVED FURTHER THAT** Mr. Sridhar Venkatraya Sundararaja, Resolution Professional, is hereby authorized to submit the necessary application to Adjudicating Authority, Hon'ble NCLT, Hyderabad for the withdrawal of the petition in CP (IB) No. 88/77/HDB/2019.*

- n) That the Applicant has made necessary arrangement to defray the expenses incurred by RP up to the filing of the said application.

- o) That the present application is being made bona fide and in the interest of justice, equity and good conscience and further prayed to allow the Application as prayed for
- p) Reiterating the above, counsel for the Applicant prayed to allow the instant Application as sought for.
3. Heard and perused the record.
4. The instant Application is filed by the Resolution Professional seeking to allow the present Application and accord permission to withdraw the Company Application bearing CP (IB) No. 88/7/HDB/2019.
5. It is pertinent to note here that the Board vide Gazette Notification No. IBBI/2019-20/GN/REG048 dated 25.07.2019 have substituted Regulation 30A with a new Regulation 30A which is extracted hereunder:

“30A. Withdrawal of application.

1. An application for withdrawal under section 12A may be made to the Adjudicating Authority-

a. before the constitution of the committee, by the applicant through the interim resolution professional;

b. after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be;

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

2. The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

a. Towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1);
or

b. Towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

3. Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

4. Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

5. *Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*

6. *The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).*

Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code."

6. It is observed that the instant application has been filed under the provisions of sub-regulation 1(b) of Regulation 30A. The applicant/Financial Creditor has submitted Form FA dated 30.11.2020. The Applicant has confirmed that as on date there is no outstanding fees payable to the IRP/RP and further necessary arrangements have been made to defray the cost incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31 up to the date of approval of the instant application. Therefore, there is no requirement to submit Bank Guarantee as envisaged in Sub-regulation (2) of Regulation 30A. The CoC comprises the sole Financial Creditor/Applicant, and it has approved the proposed withdrawal with 100% voting share. Thus all the requirements u/Regulation 30A are complied with.
7. This Adjudicating Authority is empowered to allow the prayer for withdrawal by exercising its power U/s 12A of the IB Code, 2016, R/w Regulation 30A of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process of Corporate Persons) Regulations 2016. Having satisfied with the submissions put forth by the Applicant and having seen that the Applicant has complied with all the requirements as contemplated under Regulation 30A *supra*, this Adjudicating Authority is inclined to allow the Application.

8. In the result, IA No. 1216 of 2020 is hereby allowed. Petition bearing CP (IB) No. 88/7/HDB/2019 is allowed to be withdrawn in terms of provisions of section 12A of the Code, read with relevant Rules and Regulation 30A and CIRP stands closed. The Moratorium order passed u/s. 14 of the IB Code, 2016 shall also cease to have effect from the date of this order.
9. In view of the above, Application bearing IA No.949/2020 and other pending Applications if any, stand closed.



DR. BINOD KUMAR SINHA
MEMBER TECHNICAL



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

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