

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No. 172 of 2020

In CP (IB) No.450/9/HDB/2019

Under section 12A of the Insolvency & Bankruptcy
Code, 2016, Read with Regulation 30A of the IBBI
(Insolvency Resolution Process for Corporate Persons)
Regulation, 2016, Read with Rule 11 of NCLT Rules, 2016.

In the matter of :

M/s. Delecto Foods Private Limited

Mr.Chillale Rajesh
Interim Resolution Professional,
For Delecto Foods Private Limited

...Applicant/
Interim Resolution Professional of
Corporate Debtor

Date of Order: 02.03.2020.

Coram: Shri. K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL.
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL.

Parties/Counsels present:

For the Applicant/IRP: Mr.M.Maharshi Viswaraj

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

ORDER

1. Under consideration is a Interlocutory Application bearing IA No. 172 of 2020 in CP (IB) No.450/9/HDB/2019 filed by Interim Resolution Professional (IRP) under section 12A of the Insolvency and Bankruptcy Code, 2016, seeking the following reliefs:-

- a. Permit withdrawal of Corporate Insolvency Resolution Process against the Corporate Debtor and release the Corporate Debtor from rigour of law and function independently.
- b. Permit withdrawal of Company Petition i.e. CP (IB)No.450/9/HDB/2019.
- c. Pass such other order as it may deem appropriate in the interest of justice, equity and good conscience.

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2. It is stated that the petition bearing CP (IB) No.450/9/HDB/2019 was admitted for CIRP vide this Adjudicating Authority's order dated 05.02.2020 and Mr. Chillale Rajesh was appointed as the Interim Resolution Professional (IRP).
3. It is stated that the Public announcement was made on 10.02.2020 for calling claims from Creditors of the Corporate Debtor. The last date for submission of claims was 21.02.2020 and claims received up to the date of filing of this application are as under:

S.No.	Name of the Creditor	Amount Claimed	Amount Admitted
1	Financial Creditors(a)	-	-
2	Operational Creditors(b)	-	-
3	Other Creditors (c)	-	-
TOTAL CLAIM AMOUNT (a+b+c)		-	-

4. It is stated that till the date of this application, no claims has been received. The Operational Creditor submitted the Form FA – Application for Withdrawal of CIRP U/s.12A r/w Regulation 30A (a) duly signed by the Director of the Operational Creditor M/s. Jupiter Food Products Private Limited.

5. It is stated that CoC was not constituted and the Applicant has made this Application before the constitution of CoC under Section 12A of the I&B Code 2016 and Regulation 30A(1)(a) of Insolvency Resolution Process for Corporate Persons.

6. It is submitted that the Operational Creditor/Applicant in Form FA has borne and paid all the estimated expenses incurred/to be incurred towards Insolvency Resolution Process cost till the date of application. The total expenses incurred/to be incurred till the filing of this Application calculated at Rs.4,75,000/- was paid. Since the entire CIRP



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cost has already been paid by the Operational Creditor, there is no need to furnish Bank Guarantee for the same.

7. The Director of the Corporate Debtor expressed his intention and desire to run the Company as a going concern.

8. It is stated that as per Regulation 30A(1)(a) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, "*the application for withdrawal may be made to the Adjudicating Authority before the constitution of committee by the applicant through Interim Resolution Professional*". In the present case, the Operational Creditor M/s.Jupiter Food Products Private Limited, has submitted Form FA for withdrawal. From the date of Public announcement, till the date of this application 14.02.2020, no creditors have filed any claims.

9. Heard and perused the record.

10. The instant Application is filed by the Interim Resolution Professional seeking to allow the present Application and accord permission to withdraw the Company Application bearing CP (IB) No. 450/9/HDB/2019.

11. 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-*

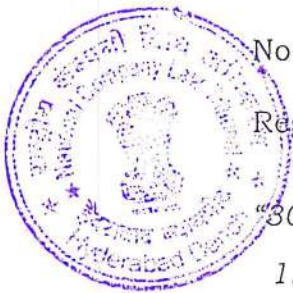
a. before the constitution of the committee, by the applicant through the interim resolution professional;

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."

12. On a specific query regarding claims received upto the last date for making claims; the IRP filed a memo dated 24.02.2020 stating that "As per the Public Announcement the last date for submission of claims is 21.02.2020 and as on dated i.e., 23.02.2020 no claims have received from any of the Creditors. Committee of Creditors has not constituted."

It is observed that the provisions of Regulation 30A(1)(a) are duly complied as Form FA is submitted before constitution of CoC with reasons justifying the withdrawal of CIRP process at this stage.

13. 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 (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



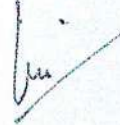
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Regulation 30A *supra*, this Adjudicating Authority is inclined to allow the Application.

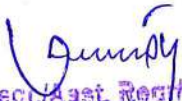
14. In the result, IA No. 172/2020 is hereby allowed and Company Application bearing CP (IB) No. 450/9/HDB/2019 admitted earlier stands withdrawn in terms of provisions of section 12A of the Code and the CIRP stands closed. The moratorium order passed u/s. 14 of the Code will also cease to have effect from the date of this order.



Dr. Binod Kumar Sinha
Member Technical



K. Anantha Padmanabha Swamy
Member Judicial



Dy. Regt. Asst. Regt./Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रत
CERTIFIED TRUE COPY
केस संख्या (CP(IB) No. 450/9/HDB/2019.
निर्णय का तारीख 2/3/2020
DATE OF JUDGEMENT 2/3/2020
जिस शीघ्रत किया गया तारीख 2/3/2020
WIDE SEAL