



NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH
COURT-IV

28. IA 1526/2023
IN
C.P. (IB)/776(MB)2020

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **24.04.2023**

Name of the Party: Shalimar Paints Limited
Vs.
Deify Infrastructures Limited

Section 9, 12(A) of Insolvency and Bankruptcy Code, 2016

ORDER

The Court is convened through Video Conference.

1. Mr. Harsh Kesharia, Ld. Counsel for the Applicant present. Ms. Dyuti Ghai, Ld. Counsel for the Operational Creditor present.
2. IA-1526/2023: This is an Application filed by the Interim Resolution Professional (IRP) under Section 12A of the Code seeking withdrawal of CIRP as well as Company Petition i.e. C.P. (IB)/776(MB)2020.
3. The Applicant submits that the Company Petition was admitted by this Bench and CIRP was initiated vide order dated 12.04.2023. After admission of the Corporate Debtor into CIRP, the Corporate Debtor and the Operational Creditor have entered into settlement agreement on 17.04.2023. Ld. Counsel for the Applicant further submits that the publication was not made, therefore, the CoC is not constituted till date.
4. The Resolution Professional has also filed form FA dated 17.04.2023 for withdrawal of the present Company Petition.
5. The Hon'ble Supreme Court in Swiss Ribbons Private Limited & Anr. Versus Union of India & Ors., held that:

“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.”

6. The Hon’ble Supreme Court in the matter of **Abhishek Singh v. Huhtamaki PPL Ltd. and Anr.** {Civil Appeal of 2023 arising from SLP (Civil) 6452 of 2021} has *inter alia* held that an application for withdrawal of the corporate insolvency resolution process (“CIRP”) under Section 12A of the Insolvency and Bankruptcy Code, 2016 (“IBC”) can be allowed by the adjudicating authority even before the constitution of the committee of creditors (“CoC”) in terms of Regulation 30A of the IBBI Regulation (Insolvency Resolution Process for Corporate Persons), 2018 (“IBBI Regulations”).
7. In view of the aforesaid, this Bench finds that Since the conditions for withdrawal for CIRP u/s 12A of the Code and Regulation 30A of Insolvency and Bankruptcy Code Board of India (Insolvency Process for Corporate Persons) Regulations 2016 are met, this Bench has no objection for withdrawal of CIRP.
8. Accordingly, the Corporate Debtor is brought out from the rigors of CIRP and the IRP is directed to handover the charge of the Assets and Affairs of the Corporate Debtor back to the Suspended Members of the Board of Directors. IRP is discharged from his duties. The Corporate Debtor shall pay the dues of IRP, if not paid so far.



9. File be consigned to the records.
10. IA-1526/2023 is **allowed and disposed of**.
11. In view of the above, C.P. (IB)/776(MB)2020 is **dismissed**.

Sd/-

PRABHAT KUMAR
Member (Technical)

/Dubey/

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)