BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1

IA 35 of 2020 in TP 73 of 2019 [CP(IB) 317 of 2018]

Coram: Hon'ble Ms. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.02.2020

Name of the Company: Kwality Indutries (Bhopal) Limited Through Shri Jagdishchandra B. Mistry, RP of Lifespan Biotech Pvt. Ltd.

Section: Section 12A IBC

S.NO. NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.			
2. Mrugesh A. Vyas	Advocate	Corporate Debtor /suspened Mgt.	
Love S. Modi	Advocate	R.P	
3. Mehul A. Smit	Advocate	CoC	
4. J. B. Mistry (R.P. in Person)		R.P.	
5. Yogesh Patidar (Suspended BoD)			

ORDER

The parties are represented through their respective Counsel.

The present Interlocutory Application, i.e. IA No.35 of 2020 in TP 73 of 2019 [CP (IB) No.317 of 2018] is filed under Section 12A of the Insolvency and Bankruptcy Code,2016.

Having heard the counsels for the parties, the present interlocutory application is allowed as per order recorded separately and stands disposed of.

(Prasanta Kumar Mohanty)
Member (Technical)

(Harihar Prakash Chaturvedi)
Member (Judicial)

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH at AHMEDABAD

IA No.35 of 2020 in TP 73 of 2019
[C.P (I.B) No.317/9/NCLT/AHM/2018]

In the matter between:-

Kwality Industries (Bhopal) Ltd.
Through Shri Jagdishchandra B. Mistry
Resolution Professional of
Lifespan Biotech Pvt. Ltd. .... Applicant
(Operational Creditor)

Versus

M/s. Lifespan Biotech Pvt. Ltd.
Plot No.36
New Industrial Area-II
Mandideep
Dist: Raisen
Madhya Pradesh ...Respondent
(Corporate Debtor)

Order delivered on 27th February, 2020.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)

Appearance:
Advocate, Mr. Love S. Modi, for the Resolution Professional (RP).
Mr. Jagdishchandra B. Mistry, RP, present in person.
Advocate, Mr. Mehul A. Surti, for Committee of Creditors.
Advocate, Mr. Mrugesh A. Vyas, for the Corporate Debtor.
Mr. Yogesh Patidar (Suspended BoD)

ORDER

[Per: Mr. Harihar Prakash Chaturvedi, Member (J)]

1. The present Interlocutory Application is filed on 6th February 2020, by the Resolution Professional (RP), under Section 30A read with Section 12A of the Insolvency and Bankruptcy Code, 2016,

seeking permission for withdrawal of the Corporate Insolvency Resolution Process (CIRP), the same was initiated in respect of the present Corporate Debtor company, viz., M/s. Lifespan Biotech Pvt. Ltd., vide order of this Tribunal dated 2nd May 2019 passed in above stated matter.

2. The Applicant-RP now informs that a settlement has been arrived at among the Corporate Debtor and the Financial Creditors. Hence, the CoC with its requisite majority duly approved the present settlement and, thus, recommended to recall the Corporate Insolvency Resolution Process in respect of the present Corporate Debtor company. Hence, the present IA with following relief: -

a) ***This Hon'ble Adjudicating Authority be pleased to pass appropriate orders/directions to recall the CIRP proceedings against the Corporate Debtor i.e Lifespan Biotech Pvt. Ltd.***

3. The Applicant-RP submits that after initiation of Corporate Insolvency Resolution Process of the corporate debtor, the outstanding dues of the members of the CoC along with other creditors has been fully settled by the Corporate Debtor.

4. Therefore, in order to comply with the amended provisions of the Code, the Resolution Professional duly convened a meeting, on 20.01.2020, of the creditors of the Corporate Debtor company to place the settlement proposal before the CoC for its consideration and to pass an appropriate resolution for such purpose. It is further reported that the CoC duly considered the same and passed necessary resolution with its requisite majority of 90.71%

voting by accepting and approving the settlement proposal. Thus, the CoC has decided to recall the CIRP in respect of the present Corporate Debtor company.

5. Pursuant thereto, the applicant-RP has moved before us the present application under Section 12A read with Regulation 30 (5) (A) of the I & B Code, seeking withdrawal of the present IB Petition and to recall the CIRP in respect of the present Corporate Debtor.

6. The RP, in support of the application, has filed an affidavit in reply, the gist of such affidavit is narrated hereasunder:-

1 It is submitted that from the date of appointment as IRP till the completion, total outstanding due, being the cost of CIRP is of Rs.12,73,696/-, which is required to be paid by the applicant-operational creditor (the main petitioner in the IB Petition) or by the CoC.

2 It is submitted that the applicant-operational creditor herein is ready and willing to pay Rs.12,73,696/- along with other future charges.

3 In view of what is stated here-in-above, this Hon'ble Tribunal may direct to the Committee of Creditors to reimburse/pay amount of Rs.12,73,696/- towards CIRP expenses and fee of Resolution Professional, so that the RP can be able to make payment to IPE, valuers, other service providers and reimbursement of other expenses towards CIRP.

7. The Suspended Management of the Corporate Debtor, in response to the present IA, has filed a reply affidavit by stating as under:-

1 xxxxxxx
2 xxxxxxx

3 That, Lifespan Biotech Pvt. Ltd is running the business since 2008 and having healthy strength of around more 200 employees and having a

good MSME corporate. A copy of the MSME certificate is annexed with the application as Annexure-A/1.

4 That, there are Financial as well as Operational Creditors and the said Petition came to be admitted, filed by one of the Operational Creditors i.e. **Kwality Industries (Bhopal) Limited,** and Mr. Jagdishchandra Mistri was appointed as IRP and then confirmed as RP.

5 The details of the Financial Creditors are described in the table given below;

Sr. No.	Name	Amount in Rs.	Remarks	Percentage
1	Bank of India	11,74,66,896/-	Supporting Application of Applicant filed under Section 12A of the IB Code	67.20%
2	Bank of Maharashtra	4,11,00,000/-	Supporting Application of Applicant filed under Section 12A of the IB Code	23.51%
3	SIDBI	1,51,21,349/-	In CoC the SIDBI neither approved nor rejected Application of Applicant filed under Section 12A of IB Code. Further by letter dated 13.02.2020 the SIDBI informed that they are following the decision taken by the majority voting of CoC.	8.65%
4	Corporation Bank	11,24,590/-	In CoC the Corporation bank has disagreed for NCLT withdrawal under section 12A of the IB Code	0.64%
	TOTAL	**17,48,12,835**		100%

The said settlement leads to payment of the amount to the Banks who have agreed (other than Corporation Bank) by way of OTS scheme. A copy of Letter from SIDBI is also annexed herewith and marked as Annexure-A/2 to this affidavit.

6 That the dues of other operational creditors are also settled and payment has been made and remaining other operational creditors will also be paid in short span. A copy showing the list of the operational creditors who are the employees of the company and the payment are made by the Suspended Management in their personal capacity. A copy showing the list of the employees who had claimed the outstanding amount out of which certain employees are paid off their dues which is annexed as Annexure-A/3 to this affidavit.

7 That the company is having high mission and vision and on account of the financial crisis the CIRP and RP came to be appointed. Further deponent undertakes the liability of the CIRP cost, if failed, by the Bank as discussed and agreed between Bank of India and the Deponent.

8 The Corporate Debtor has a bright future and the suspended management accepts their mistake and request to give chance to rectify the mistake and request this Hon'ble Tribunal to allow the application filed by the Applicant as the suspended management is likely to have good business from its Customers in near future which will cherish and bring the happiness in the life of the Corporate Debtor and its employees."

8. During the course of hearing and in response to the query raised and clarification sought for by this Court, the RP filed an additional affidavit by replying as under:-

1 xxxxxxx

2 xxxxxxx

3 xxxxxxx

4 I further say and submit that as per the minutes of the 8th CoC meeting, the RP filed the application preferred by operational creditor, i.e. M/s. Kawality Industries (Bhopal) Limited before this Tribunal after seeking approval from the CoC and the said application is registered as IA No. 35 of 2020 which was listed on 14.02.2020 where during course of argument the Hon'ble Tribunal has asked for the **compliance for FORM-H** as per IB Code and for which the matter was adjourned.

5 I say and submit that for the compliance of the order dated 14.2.2020 the compliance certificate in FORM-H is attached herewith this affidavit which is annexed herewith and marked as ANNEXURE-R/1.

6 I say and submit that the Corporate Debtor is a MSME entity and no expression of interest was ever published as decided by the Committee of Creditors to defer and therefore in my humble submission FORM-H would not be applicable in letter and spirit.

7 I say and submit that claims received from the respective Financial Creditors, Operational Creditors, Statutory dues, Employees and workmen are reproduced in a summary form which is as below in Rs:

Table	Table Name	Claimed and Admissible Amount	OTS Proposal Amount	Claim settled by CD/Paid	Amount Payable	% of OTS Amount V/s. Amount Paid
		A	B	C	D	C/B*100
A	Secured Financial Creditors (Claimed in Form C)	14,40,34,164	11,64,61,507	10,68,00,722	1,00,03,313	91.70
B	Payment made to Operational Creditors	70,05,958	66,49,806	66,49,806	-	100
C	Statement of all OC whose claim received by RP	49,95,567	31,88,769	12,16,948	-	38.16
D	Statutory Dues of Corporate debtors (Claim in Form B)	1,98,45,528	77,21,983	28,37,354	48,84,630	36.74
E	Employee of CD (Claimed in Form D)	1,72,74,650	1,72,74,650	1,26,76,032	45,98,618	73.37
F	List of Un-claims of Operational Creditors	-	2,94,21,599	63,37,581	2,30,84,018	21.54
	Total A+B+C+D+E	19,31,55,867	18,07,18,369	13,65,18,443	4,45,42,454	75.54

8. Further I say and submit that as per the meeting of CoC it was agreed that the cost of the CIRP including RP fees, security expenses and other ancillary expenses, including legal fees, till the handing over the charge to the Corporate Debtor, would be borne by it (CoC) and for that the Resolution Professional humbly request to protect the pending RP fees and other expenses as stated herein above.

9. In addition to the above stated additional affidavit of the RP, it is found that the RP has annexed certain document in its additional affidavit dated 26.02.2020 for perusal of this Court, which includes letter dated 24.02.2020, addressed to the present RP about the Scheme of OTS payments to its Financial Creditors, which is annexed at page No.16 of the additional affidavit. As per the schedule, the payment has already been received by the

Financial Creditors, i.e. Bank of India, Bank of Maharashtra, SIDBI and the Corporation Bank.

Bank of India – OTS Amount is Rs.7,88,00,000/-

Sr. No.	Date of Payment	Chq.No./DD No./ RTGS	Amount
1	23.09.2019	48502	90,00,000
2	24.12.2019	RTGS	1,00,00,000
3	24.12.2019	RTGS	1,00,00,000
4	24.12.2019	RTGS	50,00,000
5	02.01.2020	RTGS	3,00,00,000
6	03.01.2020	RTGS	1,48,00,000
	Total		**7,88,00,000**

Bank of Maharashtra – OTS Amount is Rs.2,37,50,722/-

Sr. No.	Date of Payment	Chq.No./DD No./ UTR	Amount
1	04.11.2019	048505	23,75,000
2	04.01.2020	005771	63,75,722
3	08.01.2020	000700	1,50,00,000
	Total		**2,37,50,722**

SIDBI – Settlement amount is Rs.1,31,60,785/-

Sr. No.	Date of Payment	Chq.No./DD No./ UTR	Amount
1	03.01.2020	000692	9,00,000
2	03.01.2020	000693	11,00,000
3	25.02.2020	006051	22,50,000
	Total		**42,50,000**

Corporation Bank – Settlement Amount is Rs.7,50,000/-

Sr. No.	Date of Payment	Chq.No./DD No./ UTR	Amount
1	24.02.2020	005787	75,000
	Total		**75,000**

It is noted that the Corporation Bank did not agree to the OTS. However, its voting percentage is less than 10% in the CoC.

10. In addition to the above stated supplementary affidavit submitted by the RP, on perusal of the material available on record of the case shows that the Corporate Debtor has made payment to its other creditors as per the list annexed as Annexure-B, at page No. 16 of the present IA, where from it is evident that the main operational creditor-petition in the present main IB Petitioner **M/s. Kwality Industries (Bhopal)** Ltd. have already been paid ~~made~~ payment of Rs.11,97,819/-, through Demand Draft on 03.01.2020. That apart, Rs.51,68,987/- paid to **Abil Chem Pharma** through Demand Drafts on 03.01.2020, 18.11.2019 and 30.11.2019. Further Rs.2,83,000/- paid to **Patel Roadways**, through Demand Draft, on 22.01.2020.

11. Thus, the applicant has annexed a copy of letters confirming such payment to Kwality Industries (Bhopal) Ltd., Abil Chempharma Pvt. Ltd. & Patel Roadways. Hence, there is no objection for withdrawal of Corporate Insolvency Resolution Process.

12. Thus, as per record, it is evident that the Secured Financial Creditors, having more than 90% majority (i.e. Bank of India-67.20% and Bank of Maharashtra-23.51% in total 90.71%) have duly accepted the OTS proposal and decided to recall the CIRP, such decision is found in conformity with the provisions of Section 12A read with Regulation 30 (5) of the I& B Code.

13. For the sake of convenience, Section 12A of the I & B Code read with Regulation 30A of the I& B Code are reproduced hereinbelow;

12A. Withdrawal of application admitted under section 7,9 or 10

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 per cent. voting share of the committee of creditors, in such manner as may be prescribed.

30A. Withdrawal Application

(1) An application for withdrawal under section 12A 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 36A.

(2) 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.

(3) 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.

(4) Where the application is approved by the committee with ninety percent voting share, the resolution professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the application, within three days of such approval.

(5) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).

14. In the light of the above statutory provisions and having heard the learned counsels for the parties as well as by perusing the material available on record, we find that the present application is filed in conformity with the prescribed procedure and as per terms and conditions those are stipulated in the relevant provisions of Section 12A of the I & B Code, read with Regulation 30A of the above referred regulation. Hence, there is no impediment for accepting the proposed agreement of settlement, which has been

arrived at among the parties at post-admission stage of the present IB Petition. It is also found that the CoC has duly approved the withdrawal application under Section 12A of the Insolvency and Bankruptcy Code, 2016, with its majority of more than 90% of voting (Bank of Indià-67.20% and Bank of Maharashtra-23.51% in total 90.71%) in its eighth meeting held on 20th January, 2020. It has been further reported that the Financial Creditors have received entire amount of One Time Settlement (OTS) from the Corporate Debtor.

15. For the aforesaid said, the present application deserves to be allowed. Hence, it is allowed with following directions:-

i) The CIRP initiated, in respect of the Corporate Debtor, vide our order dated 2nd May 2019 passed in TP No.73 of 2019/ CP (IB) 317/9/NCLT/AHM/2018, i.e. M/s. Kwality Industries (Bhopal) Ltd. *versus* M/s. Lifespan Biotech Pvt. Ltd., is hereby re-called.

ii) The RP is directed to handover the charge of the Corporate Debtor to its erstwhile management, at the earliest.

iii) The Petitioner-Operational Creditor and/or Committee of Creditors and/or Corporate Debtor are directed to pay the professional fees and necessary expenses incurred by the RP, for initiating the CIR Process and towards CIRP cost, which shall be a prerequisite for approval of the present settlement/withdrawal of the present IB Petition.

iv) Such professional fees and necessary expenses as incurred by the RP are to be reimbursed by the Petitioner-Operational Creditor and/or Committee of Creditors and/or Corporate Debtor by four weeks from the date of receipt of an authentic copy of this order and to furnish a proof of payment through the RP before the Registry of this Bench.

v) It is further made clear that our this order shall not be purported to debar other creditors/stakeholders of the Corporate Debtor company, those have not consented or not a party to the present OTS to agitate their rights in accordance with law before an appropriate forum.

16. With such observation, the present Interlocutory Application, i.e. IA No.35 of 2020 in TP 73 of 2019 [CP(IB) No.317/9/NCLT /AHM/2018], is allowed and stands disposed of.

17. Consequently, the admission order dated 02.05.2019 passed in the main IB Petition, i.e., CP (IB) No.317/9/NCLT/AHM/2018- M/s.Kwality Industries (Bhopal) Ltd. Vs. M/s.Lifespan Biotech Pvt. Ltd., is hereby recalled and proceedings stands closed.

18. No order as to costs.

(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)

(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

SR