

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI BENCH

Company Appeal (AT) (CH) (Ins) No. 133 of 2022

[Arising out of Order dated 12th January, 2022 passed by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench-I in IA No. 792 of 2021 in CP (IB) No. 31/9/HDB/2020]

IN THE MATTER OF:

- 1. Pawan Kapoor
S/o Late C.L. Kapoor
R/o House No.6, Road No.68,
West Punjabi Bagh,
New Delhi – 110026****...Appellant No.1**

- 2. M/s Amari Resorts (P) Ltd.
Having Registered Office at:
House No.6, Road No.68,
West Punjabi Bagh,
New Delhi – 110026
Through its Director Mr. Shiv Kapoor****...Appellant No.2**

Versus

- 1. Karvy Data Management Services Ltd.
Having Registered Office at:
Karvy Gateway, Plot No. 38 & 39
Nanakramguda, Financial District,
Gachibowli, Hyderabad, Rangareddi
Telangana – 500032
E-mail ID: compsec@karvy.com****...Respondent No.1**

- 2. Shri Golla Ramakantha Rao
Former IRP of Karvy Data
Management Services Limited
Flat No.1106, Block-4,
Smt Vinay Fountain Head,
Calvary Temple Road,
Hydernagar, Hyderabad,
Telangana – 500049
E-mail ID: gollaram@yahoo.com****...Respondent No.2**

Present:

For Appellant : Mr. Rakesh Kumar, Advocate.
For Respondent : None.

J U D G M E N T
(Virtual Mode)
(09.06.2022)

KANTHI NARAHARI, MEMBER (TECHNICAL)

Preamble:

The Present Appeal is filed against the Order dated 12th January, 2022 passed in IA No. 792 of 2021 in CP (IB) No. 31/9/HDB/2020 by the Adjudicating Authority/National Company Law Tribunal, Hyderabad Bench- I, whereby, the Adjudicating Authority allowed the Application filed by the IRP thereby the CIRP against the Corporate Debtor has been withdrawn.

Brief Facts:

Appellant's Submissions:

2. The Learned Counsel for the Appellants submitted that the Appellants collectively holders of secured Non-convertible debentures of the Corporate Debtor, namely, M/s Karvy Data Management Services Limited for a total value of Rs. 3 crore and formed part of the CoC having voting share of 0.76% of M/s Karvy Data Management Services Limited.

3. While so, an Application was filed by an Operational Creditor of the Corporate Debtor under Section 9 of the IBC, 2016 seeking

initiation of CIRP against the Respondent No. 1 herein i.e. CD (Corporate Debtor), which was duly admitted by the Adjudicating Authority, NCLT, Hyderabad Bench, vide Order dated 30.11.2021 and the Respondent No. 2 herein was appointed as IRP to conduct the CIRP proceedings.

4. On 18.12.2021 public announcement in Form-A was made and claims from the Creditors of the CD were invited and the last date of submission of claims was fixed as on 01.01.2022. While so, on 24.12.2021 an Application under Section 12 A of the I&B Code, 2016 read with Rule 30A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 in Form-FA was filed by the IRP for withdrawal of the Application of the Operational Creditor on the ground that there is a settlement between the Operational Creditor and the Members of the Suspended Board of Directors.

5. On 29.12.2021 the Appellants submitted their claims in Form-CA along with a supporting document pursuant to the public announcement made on 18.12.2021. Further, the Appellants received notice dated 10.01.2022 regarding the First Meeting of CoC which was to be held on 15.01.2022. The Appellants forms part of CoC and collectively hold 0.76% share in the CoC.

6. The Learned Counsel submitted that the Adjudicating Authority allowed the Application filed by the IRP without considering that there is no consent of the CoC and submitted that the Appellants received notice dated 10.01.2022 regarding Constitution of CoC to be held on 15.01.2022.

7. In view of the reasons as stated above, the Learned Counsel for the Appellants prays this Bench to set aside the Order dated 12.01.2022 passed by the Learned Adjudicating Authority and allow the Appeal.

Analysis/ Appraisal:

8. Heard the Learned Counsel for the Appellants. Since the Appeal is reserved for Orders at the stage of admission, therefore, this Bench has not ordered Notice to the Respondents and taken up the Appeal for hearing and disposal.

9. The bone of contention of the Learned Counsel for the Appellants that since the Appellants have received a Notice on 10.01.2022 regarding the Constitution of Committee of Creditors to be held on 15.01.2022 and the Appellants are under the impression that the Meeting of CoC has been constituted in the eye of law and in view of Constitution of CoC the Adjudicating Authority cannot allow the Application filed by the IRP seeking

withdrawal of CIR proceedings initiated against the Corporate Debtor on the ground of settlement. It is the contention of the Learned Counsel for the Appellant once the CoC is constituted as per the Section 12A, the withdrawal of Application admitted under Section 7,9 or 10, the Adjudicating Authority may allow the withdrawal of Application made by the Applicant with the approval of 90% voting share of the Committee of Creditors in such manner as may be specified.

10. The Adjudicating Authority in the Impugned Order dated 12.01.2022 at Para-20 has clearly observed that the IRP has not received any claims pursuant to the public notice and also observed as under:

“besides this fact this Application does not require the consent of the Members of CoC since the same was filed before constitution of the CoC and relying on the ruling in Swiss Ribbons, Supra, wherein, it was held that relevant facts of each case how to be taken into consideration while allowing or dismissing a withdrawal filed by the IRP, we are of the firm view that concerned parties/persons for the purpose of deciding a withdrawal application

filed by IRP mean the persons for parties to the lis which is agitated before the AA and not those who are not before us”.

11. It is a fact borne out from the Appeal that the public announcement in Form -A was made on 18.12.2021 and the date of submission of claims with proof was fixed as on 01.01.2022. However, immediately after public announcement an Application under Section 12A was filed on 24.12.2021. It is also fact that no meeting of CoC has been held and no claims have been received by the IRP. This Tribunal is of the view that the Application seeking withdrawal has been filed by the IRP with no loss of time. The Adjudicating Authority after satisfying the procedure adopted in filing the Application rightly allowed the Application filed by the IRP and we do not find any infirmity or illegality in the order. It is an admitted fact that the Application filed by the IRP before the Adjudicating Authority seeking withdrawal of CIR Proceedings initiated against the Corporate Debtor under Section 12A of the IBC, 2016 read with Rule 30A of IBBI (IRPCP) Regulations, 2016, is in accordance with law.

12. The Section 12A has been inserted by Act 26 of 2018, with effect from 6th June, 2018 and Rule 30A has been substituted by

notification No. IBBI/2018-19/GN/REG048 dated 25.07.2019, whereby, the Rules have been prescribed regarding withdrawal of Application. In the present case the Application has been filed in accordance with law in due compliance of procedure as enumerated under law.

Finding:

13. In view of the aforesaid discussions this Tribunal comes to a resultant conclusion that the Appeal is devoid of merits and liable to be dismissed. Accordingly, the Appeal is dismissed. No orders as to cost. Application if any pending stand disposed of.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Simran