

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

I.A. (IB) No. 136/CB/2022

In

C.P.(IB) No.152/CTB/2019

Application filed under section 12A of the Insolvency and Bankruptcy Code,2016,
Read with 30A of Regulation of IBBI (CIRP) Regulations 2016.

In the Matter of:

Saroja Kumar Prusty, Interim Resolution Professional of Fortune Spirit Ltd.

...Applicant/IRP.

In the Matter of:

Unigold System,

... Applicant/Operational Creditor

-Versus-

Fortune Spirit Limited,

...Respondent/Corporate debtor

IDBI Bank Limited,

... Intervener

Appearances (through video conferencing)

For the Applicant /RP : Mr. Umesh Chandra Sahoo, Advocate.

For the Intervener : Ms. Soma Patnaik, Advocate

Order reserved on: 03.06.2022

Order pronounced on.15.06.2022

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

ORDER

Per P. Mohan Raj, Member, (Judicial)

1. This application has been filed by an interim Resolution Professional Saroja Kumar Prusty (IRP) of M/s. Fortune Spirit Limited (Corporate debtor) seeking permission for withdrawal of application C.P. No. (IB) No.152/CTB/2019. The said petition was filed by M/s.Unigold Systems under section 9 of IBC 2016 to initiate CIRP against the corporate debtor. The said petition was admitted by this Tribunal by an order dated 25.04.2022 for initiation of Corporate Insolvency Resolution Process, and appointed as the petitioner as IRP.

2. It is stated that in the petition after admission of the petition the suspended director of the corporate debtor held discussion with the Operational creditor and arrived settlement and executed settlement deed dated 10.05.2022. In pursuance of settlement arrived between the parties this petition for withdrawal is filed before the constitution of COC. In the petition the estimated expenses are valued at Rs.4,13,150/- and Bank Guarantee for a sum of Rs.4,13,200/- valid till 30.09.2022 drawn on ICICI Bank, Bhubaneswar Main branch dated 11.05.2022 has been filed. The petitioner by memo dated 06.06.2022 given details of actual expenses incurred as on the date of petition at Rs.3,56,100/- Thus the petitioner complied Regulation 30A(2)(a) of Insolvency and Bankruptcy Board of India (Insolvency Resolution process for corporate persons) Regulations,2016.

3. When the matter is under consideration IDBI Bank addressing as only Financial Creditor of corporate debtor filed an intervene application I.A.No. (IB)149/CB/2022 seeking permission to intervene the matter and to make submission, the said petition was allowed on 03.06.2022 and heard the submission.

4. On the intervener side opposed the withdrawal petition stating that the Bank received letter dated 06.05.2022 from IRP for filing of claim form-C pursuant to public announcement dated 26.04.2022 and received another letter dated 12.05.2022 informing that parties settled the matter and withdrawal petition is filed before the Tribunal. It is argued that admission order passed against the corporate debtor is order of rem hence the petition for withdrawal shall not be allowed since huge amount of Rs.14,10,73,124.50/-is due by the corporate debtor to the Bank. The contention of the intervener that since the admission order is in the nature of rem the withdrawal plea to be negated is not sustainable. When there is specific provision section 12A and Regulation 30A are available in the statute, the petition can be entertained and decided according to the facts and circumstances of each case. Only because the order of admission of petition is rem procedure there is no total bar or prohibition to entertain the withdrawal application.

5. On the intervener side it is argued that allowing the withdrawal petition amounts to violation of section 53 of IBC 2016 and it is discriminatory act against the interest of Bank. Section 53 of IBC 2016 will come to play at the time of distribution of assets of the corporate debtor during liquidation, but quoting the said provision at this stage is premature and irrelevant.

6. Further on the intervener side relies upon Apex court Judgment Swiss Ribbons Pvt. Ltd. vs Union of India on 25 January, 2019 and argued that Regulation 30A is only directory hence to safe guard the interest of intervener permission should not be granted for withdrawal. The Apex court observed in the said Judgment that at any stage where COC is not constituted the Tribunal by inherent power decide the withdrawal application after hearing all the parties concerned. As far as case in our hand is concern the parties immediately after the admission of petition entered into settlement agreement, there are no elements of malice to defeat the interest of other creditors. If the withdrawal is negated it will cause much inconvenience and prejudice the business activities of the respondent/corporate debtor, on the other hand if the withdrawal is allowed it will not affect the rights of intervener to initiate recovery proceedings in accordance with law. Thus, considering rights and interest of all the parties concern it is concluded in the interest of justice it is fit and proper case to grant permission to withdraw. In view of the aforesaid conclusion, we here by approve the petition and pass the following:

ORDER

(i) This withdrawal petition_I.A. (IB) No. 136/CB/2022_is allowed in consequence the CIRP initiated against the corporate debtor shall stand terminated.

(ii) The petitioner is hereby directed to deposit an amount of Rs.3,56,100/- towards the actual expenses incurred till the date of this order of approval as

determined by the Interim Resolution professional within three days in the Bank Account of the corporate debtor.

(iii) The Board of directors of the corporate debtor is restored to its original position.

(iv) The IRP is hereby directed to hand over the books of account to the hands of restored Board of Directors and the IRP is hereby shall stand discharged. The moratorium which came into effect in consequence of the order of admission dated 25.04.2022 is stand cancelled. The corporate debtor is relieved from the rigorous clutches of all the action initiated in this proceeding.

(v) The IRP is hereby directed to file a report to this Adjudicating authority about the compliance with proof or non-compliance of the supra clause (ii) of this order within three days from the date of expiry of time granted in the said clause.

(vi) Registry is directed to communicate this order to R.O.C. Odisha.

(vii) Registry is directed to invoke the Bank guarantee in the event of non-compliance of condition set out in clause (ii) of this order i.e., fails to deposit the amount into the Bank account of corporate debtor, immediately after the expiry of time limit set out in clause (v) of this order.

7. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

IN THE NATIONAL COMPANY LAW TRIBUNAL
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In

C.P.(IB) No.152/CTB/2019

8. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN
PRASAD

Digitally signed by
SATYARANJAN PRASAD
Date: 2022.06.15 12:52:16 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN
MOHAN RAJ

Digitally signed by
PANDIAN MOHAN RAJ
Date: 2022.06.15 14:44:46
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P. Mohan Raj.
Member (Judicial)

Signed on this 15th day of June, 2022.

Supriya p.s