In the National Company Law Tribunal
Mumbai Bench
Court-V.

MA 685/2020 in C.P.(IB)-4500/(MB)/2019

Under Section12-A of the Insolvency & Bankruptcy Code,2016

In the matter of

Mr. Prashant Jain : Interim Resolution Professional/Applicant

In the matter of

Haresh Enterprises : Petitioner/ Operational Creditor

V/s

Mohota Industries Limited : Respondent/ Corporate Debtor

Order delivered on: 08.05.2020

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For Petitioner(s) : 1. Mr. Rohit Gupta, Advocate;
2. Ms. Vidya Kala, Advocate;
3. Mr. Joy, (For Applicant).

For Respondent(s) : 1. Mr. Rubin Khan, Advocate for suspended Director of Corporate Debtor.

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. **MA 685/2020** in C.P.(IB)-4500/(MB)/2019 was filed by the Insolvency Resolution Professional (IRP) who is the Applicant in this case. This application has been filed under Section 12A of the IB Code 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

2. CP No.4500 of 2019, i.e. the original Petition was filed by the Operational Creditor u/s.9 of the IB Code 2016, which was 'Admitted' by this Bench vide its Order dated 23.01.2020. The Applicant Mr. Prashant Jain was appointed as IRP in the matter to carry out the functions of CIRP as per the provisions of the Code.

3. The IRP in his submission has mentioned that he received the copy of his appointment as IRP in this case on 07.02.2020 from the Advocate of the Operational Creditor.

4. On receipt of the Order on 07.02.2020 the Applicant within statutory period of 3 days published Form A (Public Announcement) of the initiation of CIRP with respect to the Corporate Debtor and invited claims from the Creditors of the Corporate Debtor. The IRP communicated the facts of the commencement of the CIRP to the Directors of the Corporate Debtor vide email dated 11.02.2020 followed by a letter on 12.02.2020.

5. In the meanwhile, a settlement was arrived at between the Operational Creditor M/s. Haresh Enterprises and the Corporate Debtor i.e. M/s. Mohota Industries Limited. The copy of the Consent Terms dated 20.02.2020 was received by the IRP from the Operational Creditor which has been submitted by the IRP as Annexure in his Application before this Bench. As per the consent terms filed before this Bench, the total claim inclusive of interest was Rs.5,06,452. However, to honour the claim of the Operational Creditor, the Corporate Debtor paid a total amount of Rs. 6,00,000 by way of e-bank transfer on 20-02-2020.

6. The IRP also received Form FA dated 20.02.2020 from the Operational Creditor duly signed and executed. The Form FA is an Application for withdrawal of CIRP under Regulation 30A of IBBI. In Form FA at Para 2 the Operational Creditor, who had filed the CP mentions as under:

> *"I hereby withdraw the Application bearing [case number (IB) 4500/MB/2019] filed by me before the Adjudicating Authority under Section 8 and Section 9 of the insolvency and Bankruptcy Code, 2016"*

7. In the Form FA the Operational Creditor has also stated that all the requisite professional fee of the IRP including reimbursement of expenses as per the details provided by the IRP has been agreed to and has been received by the IRP. The total fee paid by the Corporate Debtor to the IRP as per Form FA, in compliance to sub-regulation (2) (a) of Regulation 30A of CIRP is Rs.3,49,596.

8. In view of the above the Applicant mentions that the present **MA 685/2020** in terms of Section 12A of CIRP read with Regulation 30A of the IBBI Regulations may be considered by this Bench. Through this Application, the IRP has requested the Bench for an Order approving the withdrawal of the original Petition i.e. C.P.(IB)-4500/(MB)/2019 filed by the Operational Creditor.

9. **<u>FINDINGS</u>**

Two provisions, one derived from the IB Code i.e. Section 12A and another Regulation i.e. 30A of the IBBI (Insolvency Regulation for Corporate Persons) Regulation 2016 as amended from to time are important while dealing with this case. The Section 12A of the IB Code 2016 reads as follows:-

"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 specified."

Similarly, Regulation 30A which was with the latest amendment effective from 25.07.2019 reads as follows:-

"Withdrawal of application.

30A. (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).

(b) towards estimated expenses incurred for purposes of clause (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).
(7) 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."

9.1. In this present case the CIRP process has been initiated but Committee of Creditors (**CoC**) has not been constituted yet. In these circumstances section 12A of the IB Code read along with Sub-Regulation 2 and 3 of Regulation 30A of IBBI provides for withdrawal of the Petition, which has been Admitted for CIRP, with the condition that the Application be made in Form FA of the Schedule accompanied by Bank Guarantee towards estimated expenses incurred by the IRP. In this case a 'settlement' has already been reached between the Operational Creditor, who had filed the original Petition, and the Corporate Debtor. The Corporate Debtor has settled the dues to the satisfaction of the Operational Creditor, the Petitioner, in this case. The IRP has been paid all the requisite expenses and also his fee in compliance to sub-regulation (2) (a) of Regulation 30A of CIRP. Therefore, this Bench based on the merit of this case 'Allows' **MA 685/2020**.

10. In the present case, the CIRP is being withdrawn u/s.12A of the Code read with Regulation 30A. Section 11 of the IB Code will not be attracted in the given circumstances and the creditors of the Corporate Debtor can file fresh petition against the Corporate Debtor in case of any default.

11. In view of the above, **MA No.685/2020** is "Allowed" and CIRP in CP No. C.P.(IB)-4500/(MB)/2019 stands withdrawn u/s 12A of the IBC read with Regulation 30A. The Corporate Debtor is released from the rigor of CIRP and the suspended management and the Board of Directors of Corporate Debtor are reinstated. This is subject to the condition that the creditors of the Corporate Debtor can file fresh petition against the Corporate Debtor in the event of any default. Ordered Accordingly.

Sd/-
(Chandra Bhan Singh)
Member (Technical)

Sd/-
(Suchitra Kanuparthi)
Member (Judicial)

Date : 08.05.2020

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