

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

CP (IB) No. 107/BB/2017 & I.A No. 382/2019
U/s 7 of the I&BC, 2016,
R/w Rule 4 of I&B (AAA) Rules, 2016
Under Section 12A and 60(5) of the I &B Code, 2016
R/w Regulation 30A of the IBBI 2016,
& Rule 11 & 34 of the NCLT, Rules 2016

In the matter of:

**EDELWEISS ASSET RECONSTRUCTION
COMPANY LIMITED,**

Registered office at Edelweiss House,
Off CST Road, Kalina
Mumbai - 400098

- Applicant/Financial Creditor

Versus

LIVE 100 HOSPITAL PRIVATE LIMITED

Registered office at No.104/1,
Singasandra Hosur Road,
Bangalore- 560 068

- Respondent/Corporate Debtor

Date of Order: 06th August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Resolution Professional: (1) Shri Uday Shankar
(2) Shri Susheel Shankar

For the COC : (1) Shri Vikram Trivedi
(2) Ms. Suchita Vayee

For Respondents : Mr. Kashyap N Naik
Ms. Akhila M.S

Per: Rajeswara Rao Vittanala Member (J)



ORDER

1. I.A No. 382/2019 in CP (IB) No. 107/BB/2017 is filed by Applicant/Financial Creditor, U/s 12A and 60 (5) of the Insolvency and Bankruptcy Code, 2016 R/w Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 and 34 of the National Company Law Tribunal Rules, 2016, by inter alia seeking to permit the Petitioner to withdraw the main Company Petition CP (IB) No. 107/BB/2017 filed under Section 7 of the Insolvency and Bankruptcy Code, as withdrawn, and consequently, terminate the CIRP of the Corporate Debtor, in the interest of justice and equity.

2. Brief facts of the case, as mentioned in the application, as follows:

- i. The Applicant above-named had filed the petition bearing CP (IB) No. 107/BB/2017 against the Corporate Debtor U/s 7 of the Code was admitted by the Tribunal, vide order dated 02.04.2018 and by initiating CIRP , appointing Mr. Rajesh Jhunjhunwala as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. The IRP was subsequently confirmed as the Resolution Professional (RP) by this Hon'ble Tribunal. Accordingly, , public announcement only the applicant made claim and thus the applicant became sole member of COC with 100% voting share.
- ii. It is stated that the Resolution Professional invited Expression of Interest (EOI) from prospective resolution applicants for submitting resolution plans for reviving the Corporate Debtor.



- The Resolution Professional received EOI form 3 prospective resolution application, out of which two resolution applicants submitted their resolution plan for the consideration of the Committee of Creditors. After considering both the plans, one of the plans was finally put up before the Committee of Creditors for voting, however, before the voting could take place, the prospective Resolution Applicant, whose plan was put up for vote, withdrew from the resolution process and informed the Resolution Professional above the same.
- iii. It is stated that at the end of the period of 270 days of Corporate Insolvency Resolution Process i.e., 27.12.2018, no resolution plan was placed before or approved by the Committee of Creditors, the Committee of Creditors solely comprising of the Applicant had no option but to resolve to liquidate the Corporate Debtor and authorize the RP to file an application seeking such liquidation. Accordingly, the Resolution Professional filed an application bearing I.A No. 459/2018 before this Hon'ble Tribunal seeking liquidation of the Corporate Debtor. The Resolution Professional filed another application bearing IA No. 114/2019 seeking an order for his appointment as the liquidator as resolved in the Committee of Creditors meeting held on 26.12.2018. An application bearing IA No. 282/2018 was also filed by the Resolution Professional before this Tribunal under Section 44 (1) of the Code seeking reliefs against the ex-promoter/suspended Director with regard to certain preferential transaction.
- iv. It is submitted that during the pendency of the above application, the erstwhile Promoter-suspended Director of the



Corporate Debtor for finding a holistic solution and initiated discussions for the settlement of debt of the Applicant, who is the sole financial creditor of the corporate Debtor. The Promoter-Suspended Director, who himself is a medical practitioner for the last 32 years, and who was responsible for the day to day affairs of the Corporate Debtor before the initiation of the Corporate Insolvency Resolution Process informed that he is working towards revival of the corporate Debtor, which essentially is a multi-specialty hospital in the name and style of 'Live 100 Hospital'. Considering the fact that the Corporate Debtor being a hospital i.e., a public utility service provider and also taking into account the fact that the Promoter-Director (Dr. H.N. Nagaraj) himself is a medical practitioner with vast experience in the field of medicine and also given the fact that he was the person responsible for running the hospital for close to ten years, the Applicant entered into settlement talks with the erstwhile Promoter-Director. The Applicant and the erstwhile Promoter-Director of the Corporate Debtor have after mutual discussions and negotiations entered into a Settlement Agreement dated 30.07.2019 whereby the Promoter of Corporate Debtor has agreed to pay the Applicant A sum of Rs.30,00,00,000/- (Rupees Thirty Crores only) towards full and final settlement of all dues and liabilities of the Corporate Debtor towards the Applicant. As per the settlement terms, the Promoter as an upfront payment has submitted a Demand Draft of Rs. 3crores with the Applicant at the time of execution of the aforesaid settlement agreement. The Applicant has agreed to receive the said amount of Rs. 30 crores as full and final



settlement of its claims and in the light of the settlement arrived between the parties, the Applicant has agreed to withdraw the insolvency petition filed by it before this Hon'ble Tribunal, subject to grant of leave to do so by this Hon'ble Tribunal. It has been further agreed that in the event, in future the Corporate Debtor receives any sum towards income tax refund with respect to the Income-Tax returns filed for the Financial year 2017-2018/ Annual Year 2018-19 filed by the Resolution Professional, the same will be paid to the Applicant over and above the settlement amount of Rs.30,00,00,000/- under the Settlement Agreement.

- v. It is stated that as per Regulation 30A of the Insolvency Resolution Process for Corporate persons) Regulations, 2016 (as amended) an application for withdrawal under Section 12A of the IBC was submitted to the Resolution Professional in Form FA by the Applicant. Earlier the Resolution Professional vide his communication dated 31.07.2019 informed the Applicant that since the period of 270 days elapsed on 27.12.2018, the Resolution Professional is unable to call for a meeting of the Committee of Creditors to place the application for withdrawal for voting. The Applicant being the sole financial creditor holding 100% voting share in the CoC is presenting this application seeking withdrawal of the petition bearing CP (IB) No. 107/BB/2017 as per Section 12A of the IBC. The Applicant craves leave to refer to and rely upon the said communication when produced.
- vi. The Applicant, the sole Financial Creditor comprising 100% voting share of the COC, in accordance with Section 12A of the




- Insolvency and Bankruptcy Code, has accorded its approval to withdraw the petition bearing CP (IB) No. 107/BB/2017, as required under the said regulations U/s 12A of the Insolvency and Bankruptcy Code read with Regulation 30A of the said Regulations. Consequently, a meeting was called by the Applicant on 2nd August 2019, at its office, wherein the Resolution Professional was also present. The matter of withdrawing the petition filed under Section 7 of the Code and the reasons for considering withdrawal of the petition was discussed and a resolution was passed approving withdrawal of the petition bearing CP (IB) No. 107/BB/2017.,
- vii. The Applicant, being the sole financial Creditor submits that all payments incurred towards Insolvency resolution process costs (under Regulation 31), Costs of the IRP (under Regulation 32) as also the Resolution Professional costs (under Regulation 33) till date of filing the present application has been paid and there is nothing due and payable to the Resolution Professional by the Applicant.
3. Heard Shri Uday Shankar along with Shri Susheel Shankar, learned Counsel for the Resolution Professional and Shri Vikram Trivedi along with Ms.Suchita Valyee, learned Counsel for the Committee of Creditors and Shri Kashyap N Naik along with Ms.Akhila M.S., learned Counsel for the Respondent.
4. The Learned Counsel for the Financial Creditor submit that the Financial Creditor is representing 100% of Committee of Creditors and the instant application is filed under Section 12A of Code, duly complying the extant provisions and rules thereunder. Since the



Financial Creditor wanted to revive the company, which is multi-specialty hospital keeping in view of object of the Code, the Applicant may be permitted to withdraw the main Company Petition in the interest of justice.

5. We have considered the pleadings of both the parties and also extant provisions of the Code and the Rules made thereunder. The instant Application is filed U/s 12A in a prescribed format with the approval of the Sole Committee of Creditors. The IRP also accepted the application by withdrawing the earlier applications i.e. I.A.No. 282/2018, IA No.459/2018 and I.A No.114/2019. Therefore, we are inclined to allow the instant application by permitting the applicant to withdraw the main Company Petition in the interest of justice.

6. In the result I.A No.382/2019 in CP (IB) No. 107/BB/2017 is allowed by permitting the Applicant/Petitioner to withdraw the CIRP initiated on 02.04.2018 by this Tribunal, and consequently terminated CIRP in respect of M/s.Live 100 Hospital Private Limited, Corporate Debtor. According, the main CP (IB) No.107/BB/2017 stands disposed of as withdrawn. No order has to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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