

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

I.A. No.376 of 2019 in
C.P. (IB) No.102/BB/2018
U/s 60 R/w Section 12A of IBC, 2016
&
C.P. (IB) No.102/BB/2018
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

Shri Shivadutt Bannanje
Resolution Professional of
M/s. White Horse Network Services Pvt. Ltd.
No.228, Classic Orchid,
Behind Meenakshi Temple,
Bannerghatta Road,
Bangalore – 560 076.

- Applicant/Resolution Professional

In the matter of:

Shri R. Gururaj
No.10/1, 3rd Main Road,
Chamrajpet,
Bangalore – 560 018.

- Petitioner/Operational Creditor

Versus

M/s. White Horse Network Services Pvt. Ltd.
No.223, G.R. Arcade,
3rd Floor, Sampige Road,
Malleshwaram,
Bangalore – 560 003.

- Respondent/Corporate Debtor

Date of Order: 01st 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 Applicant : Shri Shivadutt Bannanje, R.P.
For the Petitioner : Shri Bonny Karyappa
For the Respondent : Shri Bimbadhar M. Gowdar



ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No.376 of 2019 in C.P. (IB) No.102/BB/2018 is filed by Shri Shivadutt Bannanje (hereinafter referred to as 'Applicant/Resolution Professional') under Section 60 read with Section 12A of the IBC, 2016, by inter alia seeking to consider the decision taken by the Committee of Creditors of M/s. White Horse Network Services Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor') in its 7th Meeting dated 29.07.2019 for withdrawal of the application, admitted under Section 9 of the Code for the Corporate Debtor on record; to pass appropriate orders under Section 12A of the Code read with Regulation 30A (6) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019 in view of decision taken by the Committee of Creditors and facts and circumstances of the case.
2. Brief facts of the case, as mentioned in the Application, are as follows:
 - (1) C.P (IB) No.102/BB/2018 is filed by Shri R.Gururaj ('Petitioner /Operational Creditor) under Section 9 of the IBC, 2016 read with Rule 6 of the I&B (AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s. White Horse Network Services Private Limited ('Respondent/Corporate Debtor') on the ground that Corporate Debtor had failed to pay arrears of salary amounting to Rs.3,74,000/- (Rupees Three Lakhs Seventy Four Thousand Only) and the Adjudicating Authority vide order dated 31.12.2018 has admitted the case by initiating the CIRP and appointed Shri Suryanarayana Prathap Kumar Pande as the Interim Resolution Professional (IRP) etc.



- (2) Accordingly, Shri S.P.K. Pande, the IRP has conducted the First Meeting of the Committee of Creditors of Corporate Debtor on 25.01.2019, wherein, Shri B. Chandrashekar Rao, General Manager of Karnataka Bank Limited along with other bank officials, and Shri Panchapakesan Kailasam, suspended Director, apart from the IRP were present. It is stated that basing on the claims received from the Financial/Operational Creditors/Employees, Karnataka Bank was the only Creditor who was eligible to become member in the 'Committee of Creditors' who was the Financial Creditor and as well as the unrelated party, and therefore, Financial Creditor alone constitutes the CoC holding 100% voting rights.
- (3) Subsequently, the Adjudicating Authority vide order dated 11.03.2019 passed in I.A. No.70 of 2019 appointed the Applicant herein, Shri Shivadutt Bannanje as the Resolution Professional for the Corporate Debtor.
- (4) It is stated that in the 6th Committee of Creditors meeting held on 11.07.2019, the Resolution Plan received from the Promoter of the Corporate Debtor i.e. Shri Panchapakesan Kailasam was placed before the Committee for its perusal. The RP informed that the Resolution Plan so received was not in compliance to the Regulations 37 and 38 of the IBBI (IRP for Corporate Persons) Regulations, 2016 and the applicable section of the IBC, 2016. The CoC reviewed the proposal and were of the view that an EMI based repayment as proposed by the Resolution Applicant may not be feasible since RBI guidelines will not permit such EMI based repayment in case of an NPA Account. Further, the Committee along with the RP discussed with the Resolution Applicant/Promoter for revising the Resolution Plan. However, after deliberation no conclusion could be reached. Accordingly, the Committee decided to liquidate the



Corporate Debtor and unanimously passed the resolution for liquidation of the Corporate Debtor and further authorizing the Resolution Professional to intimate the same to the Adjudicating Authority.

- (5) As per the directions of the CoC, the RP filed an application for liquidation under Section 33(2) of the Code on 12.07.2019 vide I.A. No.340 of 2019 and the same is under consideration of this Adjudicating Authority. While pending the above I.A. the Petitioner of the original Petition namely Shri R. Gururaj has approached RP for withdrawal of petition. The RP called for the CoC meeting on 29.07.2019 and placed Shri Gururaj's application for their consideration and approval. And the CoC meeting held on 29.07.2019 has unanimously approved the Application made by Shri Gururaj u/s 12A of the Code read with Regulation 30A of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019 and directed the RP to make necessary applications to the Adjudicating Authority in this regard.
- (6) The extract of the Resolution unanimously i.e.100% passed by the Committee reads as under:

"RESOLVED THAT the Form FA received from the Petitioner i.e. Mr.R.Gururaj in respect of case no. CP (IB) No.102/BB/2018 relating to Corporate Debtor i.e. White Horse Network Services Private Limited filed for withdrawal of application of Corporate Insolvency Resolution Process under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019 be and is hereby approved."

"RESOLVED FURTHER THAT the Committee of Creditors agreed with the Corporate Debtor/Promoter to borne and share the Corporate Insolvency Resolution Process expenses equally as per



Regulation 30A (7) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019.”

“FURTHER RESOLVED THAT Shri Shivadutt Bannanje, Resolution Professional be and is hereby authorized to file necessary application before the National Company Law Tribunal, Bengaluru Bench to give effect to this resolution and further seek for direction and order under the Insolvency and Bankruptcy Code, 2016 from the Hon’ble Tribunal, Bengaluru.”

- (7) It is stated that in the same CoC Meeting dated 29.07.2019, the Committee also directed the RP to make an application for withdrawal of liquidation application filed vide I.A. No.340 of 2019 before the Adjudicating Authority in light of the application received from Shri Gururaj. The RP also filed an application before this Adjudicating Authority for withdrawal of the said application.
- (8) It is stated that as per Regulation 30A (1)(b) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019, this withdrawal of Application made u/s 12A of the Code is made after the issue of Invitation of Expression of Interest under Regulation 36A and accordingly the Applicant in Form FA i.e. Shri Gururaj stated the reason for withdrawal as “the Promoter of the Corporate Debtor i.e. Shri Panchapakesan Kailasam has plans to settle with the Financial Creditors i.e. M/s. Karnataka Bank Ltd. and reviving the Company and further assured me an employment.”
- (9) It is further stated that as per Regulation 30A (2) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019, the expenses of the CIRP will be shared by the Promoter of the Corporate Debtor i.e. Shri Panchapakesan Kailasam and the Financial Creditors i.e. Karnataka Bank Limited in equal proportion as per Regulation 30(A)(7) of IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019. The same

has been incorporated in the minutes of the Meeting dated 29.07.2019.

(10) As per Regulation 30A (4) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019, the Committee has considered the application within seven days from the date of application made u/s 12A of the Code.

(11) It is also stated that as per Regulation 30A (5) of the IBBI (IRP for Corporate Persons) (Second Amendment) Regulations, 2019, the application is approved by hundred percent of the Committee of Creditors and the same has been submitted before the Adjudicating Authority within three days of approval of the application.

3. Heard Shri Shivadutt Bannanje, learned Resolution Professional, Shri Bonny Karyappa, learned Counsel for the Applicant and Shri Bimbadhar M. Gowdar, learned Counsel for the Respondent. We have carefully perused the pleadings of both the parties and extant provisions of the Code.

4. **12-A.** *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”.

Regulation 30-A of the CIRP Regulations states as under:

30 - A. *Withdrawal of application:- (1) An Application for withdrawal under Section 12-A 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 36-A.*


(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 applicant, within three days of such approval.

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

5. By perusal of the application and the provisions of the Code and the Rules of IBBI as mentioned above, the instant application is filed in accordance with law and the Resolution to file this application was approved unanimously. Therefore, it is a fit case to allow the application as prayed for.
6. In the result, I.A. No.376 of 2019 in C.P. (IB) No.102/BB/2018 is allowed by permitting the Applicant to withdraw the main Company Petition [C.P. (IB) No.102/BB/2018], accordingly the Corporate Insolvency Resolution Process initiated vide order dated 31.12.2018 in respect of the Corporate Debtor namely M/s.White Horse Network Services Private Limited stands terminated.
7. The pending I.A. No.340 of 2019 and I.A. No.375 of 2019 is disposed of as infructuous. No order as to costs.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL