

In the National Company Law Tribunal
Mumbai Bench
Court-V

MA 435/2020 in C.P.(IB)-2249/(MB)/2019

Under Section 9 and 12A of the Insolvency & Bankruptcy Code,
2016

In the matter of

Mr. Murlidhar Namdeo Bhalekar : Applicant &
Resolution Professional

In the matter of

Berger Paints India Limited : Petitioner/ Operational
Creditor
V/s.

Nirmangold Alloys Pvt. Ltd. : Respondents/ Corporate
Debtor

Heard on : 06.08.2020
Order delivered on: 10.08.2020

Coram:

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

For the Petitioner(s) : Mr. Murlidhar Namdeo Bhalekar,
Resolution Professional.

For the Respondent(s) : Mr. Navin Arora, Advocate for
Ex-Directors of Corporate
Debtor

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. This present Application **MA 435/2020** in CP(IB)/2249/MB/2019 has been filed by the Resolution Professional (RP) u/s 12A seeking withdrawal of the CP No. CP(IB)/2249/MB/2019.

2. In the CP No.2249/2019 this Bench had passed an Order on 11.11.2019 commencing the CIRP and appointed Mr. Murlidhar Namdeo Bhalekar, Registration No. IBBI/IPA-002/IP-N00373/2017-18/11116 as Insolvency Resolution Professional (IRP). The Applicant mentions that the IRP had constituted the Committee of Creditors (CoC) and held First meeting on 26.12.2019. In this meeting, the CoC, *inter alia*, appointed the IRP as regular RP.
3. The Applicant states that the Corporate Debtor has paid Rs.17 Lakhs to the Operational Creditor, who had initiated the Corporate Insolvency Resolution Process (CIRP) in the matter, to settle the original claim in the Petition. It has been mentioned in the Application that the Operational Creditor and the Applicant has entered into a 'Settlement Deed' and the Operational Creditor has agreed to withdraw the original claim filed in CP No. CP(IB)/2249/MB/2019.
4. Thereafter, in the 3rd meeting of the Committee of Creditors (CoC) on 28.01.2020, as per Item No.5 of the Agenda, the CoC considered the withdrawal of the CIRP against the Corporate Debtor. The 100% CoC consists of Abhyudaya Co-operative Bank Ltd. The CoC resolved that all the cost for CIRP has been received and the CoC unanimously approved the Resolution for withdrawal of the CIRP. An extract of the Resolution passed in the said meeting on 28.01.2020 is reproduced below :-

" *1. Withdrawal of Application u/s 12A of IBC:*

RESOLVED THAT the application for withdrawal of CIRP against Nirmangold Alloys private Limited submitted by Berger paints India Limited

in Form FA dated 27-01-2020 as placed before the meeting be & is hereby approved by the CoC comprising Abhyudaya Co-op Bank limited holding 100% voting share and that all the costs of Insolvency Resolution Process have been received and hence Bank Guarantee as stipulated in the Regulations has not been obtained and Shri M.N. Bhalekar Resolution Professional advised to submit the same to the Hon'ble NCLT, Mumbai Bench"."

5. This Bench, in consonance of Section 12A has looked into the whole matter. The Section 12A of the IBC reads as under:-

"Section 12A of IBC

The Adjudicating Authority may allow the withdrawal of the application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety percent voting share of the committee of creditors, in such manner as may be prescribed".

6. This Bench considered the matter in totality. Keeping in view that 100% of the CoC has agreed for the withdrawal of CIRP and the concerned Operational Creditor who initiated the CIRP has been paid all its dues, this Bench allows withdrawal of CIRP as per section 12A of IBC.

7. In view of the above, **MA 435/2020** in CP(IB)/2249/MB/2019 is **"Allowed"**. The IRP/ RP is discharged and directed to hand over the Corporate Debtor Company to the erstwhile Directors who can run the Company as they deem fit. The Corporate Debtor is relieved

from the rigors of the CIRP and the erstwhile management of the Corporate Debtor is reinstated.

Sd/-
CHANDRA BHAN SINGH
Member (Technical)
Date : 10.08.2020

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

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