

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

C.P.(IB)No.101/BB/2019
U/s. 9 of the IBC, 2016
R/w Rules 6 of I&B (AAA) Rules, 2016

And

I.A.No.640 of 2019
U/s 12A of the IBC, 2016
R/w Regulation 30A of the IBBI
(Insolvency Resolution Process for
Corporate Persons) Regulations, 2016

Ms. Sumana Rao

Interim Resolution Professional of
M/s.SPM (India) Private Limited
#56, 4th Cross, 2nd Sector
Nobinagar, Bannerghatta Road,
Bengaluru – 560 076.

- Applicant/Interim Resolution
Professional

Date of Order: 10th December, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant/IRP : Ms. Sumana Rao

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.640 of 2019 in C.P.(IB)No.101/BB/2019 is filed by Ms. Sumana Rao, Interim Resolution Professional of M/s.SPM (India) Limited (hereinafter referred to as 'Applicant/IRP'), U/s 12A of the IBC, 2016, R/w Regulation 30A of IBBI (Insolvency



Resolution Process for Corporate Persons) Regulations, 2016, by inter alia seeking to withdraw the Company Petition bearing C.P.(IB)No.101/BB/2019 filed by M/s.SMC Corporation (India) Private Limited on the ground that the issue has been settled between the parties.

2. Brief facts of the case, as mentioned in the Application, which are leading to filing of the instant Application, are as follows:-

(1) Initially, C.P.(IB)No.101/BB/2019 is filed by M/s.SMC Corporation (India) Private Limited ('Petitioner/Operational Creditor') U/s. 9 of the IBC 2016, R/w Rule 6 of the I&B(AAA) Rules, 2016, by inter alia seeking to initiate CIRP in respect of M/s.SPM (India) Limited ('Respondent/Corporate Debtor') on the ground that it has committed default for a total outstanding amount of Rs.62,37,652/- (Rupees Sixty Two Lakhs Thirty Seven Thousand Six Hundred and Fifty Two Only) which includes principal and interest. Accordingly, Adjudicating Authority admitted the case by order dated 05.11.2019, by initiating CIRP and appointing IRP namely Ms. Sumana Rao, imposing moratorium etc.

(2) In pursuant to the above order, the Interim Resolution Professional, made the public announcements on 14.11.2019 under the provisions of Section 15 of the Code, R/w Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by calling upon to submit the claims by the respective claimants/creditors in respect of M/s.SPM (India) Limited in 'Business Standard' in English language 'Kannada Prabha' in Kannada in Bangalore (principal place of business), 'Financial Express' in English language 'Jansatta' in Hindi in Delhi (other place of business), 'Economic Times' in English language, 'Navrashtra' in Marathi



in Pune (other place of business), 'Trinity' in English and 'Makkalkural' in Tamil in Chennai (other place of business) wherein the last date for receipt of the claims was 25.11.2019.

- (3) Pursuant to the provisions of Section 17 of the Code, the IRP had visited the registered office of the Corporate Debtor on 14th November 2019 and 25th November 2019, for the purpose of the taking over management of the affairs of the Corporate Debtor. It was noted that the Corporate Debtor had not filed the audited financial statements with the ROC for the financial year ended 31.03.2019. The IRP was not provided access to books of accounts and other registers and records on either of occasions, except for tally data, on the second visit on 25th November 2019. The IRP was also not provided access to Company's website. Till the last day i.e., 25th November for receiving the claims, the IRP had received no claims from any creditors. The last date for collation and verification of claims was 2nd December 2019. One claim was received on 30th November 2019 from M/s.Marposs India Private Limited for an amount of Rs.5,06,106/-. As per the statement of payment furnished with the Form B, due date is 24.07.2014. Further, there is no record of debt in the books of accounts of the Corporate Debtor. Since, the debt is time barred under Limitation Act, 1963, the claim is rejected.
- (4) It is stated that the Corporate Debtor and the Operational Creditor has executed Settlement Agreement dated 5th December 2019, by mutual consent, and an application for withdrawal of application is made under Section 12 A of the Code, R/w Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016. Hence,



constitution of CoC is subject to the outcome of the application of withdrawal.

(5) It is also stated that both the Operational Creditor and Corporate Debtor have settled the claims against the Company by filing Joint Memo of Settlement dated 05.12.2019 (which is taken on record) which reads as under:

a. " The Respondent has agreed to pay and the Petitioner has accepted to receive in the interest of future relationship and business, an amount of Rs.46,17,000/- (Rupees Forty Six Lakhs Seventeen Thousand Only) against the claim of Rs.62,37,652/- including interest, in full and final settlement in the above matter. The Respondent has undertaken to make the payment Rs.10,00,000/- (Rupees Ten Lakhs Only) immediately by DD No.193617, RBL Bank Bangalore by 03.12.2019 and balance amount of Rs.36,17,000/- (Rupees Thirty Six Lakhs Seventeen Thousand Only) by instalments by way of the following post-dated cheques before 31st December 2019. The details of the said cheques are as stated hereunder:

Sl. No.	Cheques No.	Date	Bank	Amount (in INR)
1.	000072	15/12/2019 from GDR Krishna	Kotak Mahindra Bank Lavelle Road Bangalore	10,00,000 /-
2.	000073	31/12/2019 from GDR Krishna	Kotak Mahindra Bank Lavelle Road Bangalore	10,08,547 /-
3.	000074	15/12/2019 from GDR Krishna	Kotak Mahindra Bank Lavelle Road Bangalore	8,00,000/-
4.	000075	31/12/2019 from GDR Krishna	Kotak Mahindra Bank Lavelle Road Bangalore	8,08,453/-

- b. The Petitioner agrees to withdraw all cases filed against the Respondent, including criminal cases filed under Section 138 of the Negotiable Instrument Act, 1881 (CC No.2637/5415/2017 and CC 3166/6351/2017) in Delhi courts on clearance of all above mentioned cheques. The parties agree that in the event of dishonour of any of the above cheque(s) or if the Respondent issues instructions to stop payment or request that any cheque (s) not be presented on the due date or fail to make payment, then, the Respondent shall be liable to pay interest at the rate of 24% p.a. on the entire balance outstanding amount then due, including the amount covered by the said cheque(s), from the date of the cheque(s) in question up to the date of the payment. The parties agree that in such an event, the Petitioner shall be entitled to restoration on file of the present Petitioner filing of a fresh petition before the NCLT as well as all other action in accordance with law, including criminal proceedings.”
3. Heard Ms. Sunana Rao, learned Interim Resolution Professional. We have carefully perused the pleadings of the party and extant provisions of the Code and the law.
4. Ms. Sumana Rao, learned Interim Resolution Professional, while reiterating various averments made in the Application, has submitted that as per Gazette of India, Extraordinary, Part III, Section 4, Published by Authority, Insolvency and Bankruptcy Board of India, Notification dated 25th July, 2019, with regard to the Regulation ‘30A. Withdrawal Application’ can be made through Interim Resolution Professional before constitution of the Committee of Creditors. Since the claim in question made by the Operational Creditor was settled, the



instant Application can be permitted to withdraw in the interest of justice.

5. The learned IRP/Applicant has filed a report dated 05.12.2019 by enclosing the copies of the notifications and a list of creditors along with amount claimed, claims admitted, security interest in respect of those in compliance with Regulation 13(2)(d) of IBBI (Insolvency Resolution Process of Corporate Persons) Regulation 2016. Therefore, we are convinced that the instant Application is filed in accordance with law and thus the Applicant is entitled to withdraw the main Company Petition.
6. By exercising powers conferred on this Adjudicating Authority U/s 12A of the IBC, 2016, R/w Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, we hereby allowed I.A.No.640 of 2019 by permitting the Applicant to withdraw the main Company Petition. Accordingly, C.P.(IB) No.101/BB/2019 is hereby disposed of as infructuous. No order as to costs.

(ASHUTHOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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