

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
SPECIAL BENCH (video Conference)**

CORAM: HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY - MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 24.08.2020 AT 11.00 A.M. THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.07 & 173/2020 in CP(IB) No. 194/9/HDB/2019
NAME OF THE COMPANY	Aspen Biopharma Labs Pvt Ltd
NAME OF THE PETITIONER(S)	Survival Technologies Ltd
NAME OF THE RESPONDENTS(S)	Aspen Biopharma Labs Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature

ORDER

1. Matter taken up for pronouncement of Orders in IA No.07/2020 in CP (IB) No.194/9/HDB/2019 through Video Conference in view of Notice of the Headquarters dated 17.04.2020 read with Notice dated 03.05.2020.
2. Mr. A.V.S. Krishna Mohan, RP appeared through video conference.
3. Order pronounced vide separate order. IA No.07/2020 in CP (IB) No.194/9/HDB/2019 is allowed.


MEMBER JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 07/2020
In CP (IB) No.194/09/HDB/2019
Under section 12A of the Insolvency & Bankruptcy
Code, 2016, Read with Regulation 30A (1) (a) of the IBBI
(Insolvency Resolution Process for Corporate Persons)
Regulation, 2016, Read with Rule 11 of NCLT Rules, 2016.

In the matter of :
M/s. ASPEN BIOPHARMALABS PRIVATE LIMITED

Mr. A.V.S Krishna Mohan
Resolution Professional,
Of Aspen Biopharma Labs Private Limited

...Applicant/
Resolution Professional

Vs.

Andhra Bank,
Cherlapally Branch,
Hyderabad.

...Respondent/
Sole CoC Member

Date of Order: 24.08.2020

Parties/Counsels present:

For the Applicant : Mrs. M.S. Mano Ranjani,
counsel for Ex-Mgmt.
Mr. A.V.S. Krishna Mohan, RP

For the Respondent : Mr. V. Sethu Madhava Rao, counsel

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is a Interlocutory Application bearing IA No. 07 of 2020 in CP (IB) No.194/09/HDB/2019 filed by Resolution Professional (RP) under section 12A of the Insolvency and Bankruptcy Code, 2016, on behalf of M/s. Survival Technologies Private Limited (the Operational Creditor) seeking to recall the order dated 29.11.2019 of admission and initiation of Corporate Insolvency Resolution Process against the



Corporate Debtor in the above CP and further to allow the present Application and accord permission to the Operational Creditor to withdraw the Company Application bearing CP(IB) No. 194/9/HDB/2019, in terms of the settlement of debt by the Corporate Debtor.

2. The following are the brief facts of the case as submitted by the Applicant:

- a) That the Application bearing CP (IB) No.194/9/HDB/2019 filed by Operational Creditor i.e., M/s. Survival Technologies Private Limited for initiation of CIRP against the Corporate Debtor i.e., M/s. Aspen Biosphere Labs Private Limited under section 9 of IB Code, 2016. This Adjudicating Authority vide its order dated 29.11.2019 admitted the CP and appointed Mr. A.V.S Krishna Mohan as Interim Resolution Professional (**IRP**). Later, he was confirmed as Resolution Professional (**RP**) in the 1st CoC meeting held on 21.01.2020.
- b) The Applicant/RP made the public announcement of CIRP of Corporate Debtor on 06.12.2019 under provisions of section 13(2) and section 15(1) in newspapers i.e., Financial Express (English) and Nava Telangana (vernacular).
- c) That the IRP sent letter by way of email to the Directors on 05.12.2019, appraising them of the duties and powers of the IRP and sought submission of records, financial statements and other details. The Directors were advised to handover the custody of all the assets including the manufacturing unit immediately. The Directors were

also advised to co-operate with the IRP to maintain the Company and unit as a going concern.

- d) That the IRP has sent letter to Andhra Bank, the Banker of the Corporate Debtor, informing the commencement of CIRP and advised them not to allow any operations of the account by the Directors/company officials without the authorization of the IRP.
- e) That Mr. Sateesh Reddy, Managing Director of the Corporate Debtor had informed the IRP on 07.12.2019 that he had finalized the compromise with the Operational Creditor and he would submit the settlement agreement shortly.
- f) That the IRP received claim (Form-C) from Andhra Bank for an amount of Rs.1,83,47,401.00 by email at the end of the day on 18.12.2019, the due date as per the public announcement.
- g) That IRP scrutinized the claim immediately on 19.12.2019 and informed Andhra Bank officials about the deficiencies through email. Some of the enclosures as mentioned in the claim form were not submitted. The Bank was asked to submit the enclosures and also additional information on computation of interest, contingent liabilities, and outstanding etc. No claims were received from any other Financial Creditor or any operational creditor or government authorities.
- h) That the IRP was informed on 20.12.2019 by the Operational Creditor that they are withdrawing the application initiated for CIRP against the Corporate Debtor as they have entered into settlement.

4

The Operational Creditor requested the IRP to file an application u/s.12A of the IBC, 2016, before this Adjudicating Authority.

- i) That as per the settlement agreement dated 21.12.2019, the Corporate Debtor paid an amount of Rs.86,68,000/- through RTGS/IMPS/DD/NEFT on various dated between 07.12.2019 and 21.12.2019. The Director of Corporate Debtor also handed a post-dated cheque dated 30.12.2019 for an amount of Rs.3,75,000/-.
- ~~j) That Corporate Debtor had also returned raw material valued at~~
Rs.4,25,000/-. The raw material was accepted by the Operational Creditor. Thus the total settlement amount of Rs.94,68,000/- was received by the Operational Creditor as per the settlement agreement.
- k) Accordingly, the Applicant/IRP filed the instant Application on 23.12.2019 along with duly signed Form FA, Affidavit verifying the Form FA and the Settlement Agreement between the Operational Creditor and the Corporate Debtor. When the matter was taken up for hearing on 02.01.2020, this Adjudicating Authority directed the Applicant to issue notice to Andhra Bank, the only Financial Creditor.
- l) That IRP has scrutinized the claim along with supporting documents of Financial Creditor (Andhra Bank) and admitted the same for an amount of Rs.1,81,97,101.00/- on 10.01.2020. The IRP constituted CoC with Andhra Bank as the sole member of Committee of Creditors (CoC). That IRP conducted the 1st CoC meeting on 21.01.2020 wherein, he was confirmed as RP with 100% voting

share. Further, CoC not consented for filing of withdrawal application under section 12A of IBC, 2016.

- i. That Respondent/Andhra Bank filed its counter on 18.02.2020, inter-alia, stating that the Corporate Debtor availed credit facilities and committed default in repayment of the liability in accordance with the agreed terms and as such the Respondent/Andhra Bank was constrained to classify the account as NPA and invoked the provisions of SARFAESI Act and issued demand notice dated 04.08.2018 for payment of Rs.1,43,49,034/- with interest at contractual rate and costs. The Corporate Debtor failed to pay the liability and as such the Andhra Bank issued possession notice under rule 8(1) & (2) of the Security Interest Enforcement Rules. The Respondent/Andhra Bank had also issued Rule 8(6) notice dated 01.10.2019 and sale notice dated 10.01.2020 fixing the date of sale on 24.01.2020 for recovery of Rs.1,85,41,136.01/- as on 31.12.2019. The said sale was not materialized for want of bidders. In view of the above, the counsel for the Respondent prayed to reject the instant application.
3. The counsel for the Applicant filed an application bearing IA No.451/2020 seeking for early listing of the instant Application i.e., IA No. 07/2020 and the same was disposed off vide order dated 16.06.2020.
4. During the hearing held on 28.07.2020, the counsel for the Financial Creditor (Andhra Bank) filed memo dated 21.07.2020 through email to the registry stating that the Corporate Debtor paid the liability in Term

Loan account and expressed no objection for allowing the instant Application for withdrawal of the main CP.

5. Heard and perused the record.
6. The instant Application is filed by the Resolution Professional seeking to allow the present Application and accord permission to withdraw the Company Application bearing CP(IB) No. 194/9/HDB/2019.
7. It is pertinent to note here that the Board vide Gazette Notification No. IBBI/2019-20/GN/REG048 dated 25.07.2019 have substituted Regulation 30A with a new Regulation 30A which is extracted hereunder:


“30A. Withdrawal of application.

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);*
or
 - b. *towards estimated expenses incurred for purposes of clauses (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.*

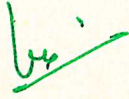
5. *Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*

6. *The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).*

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."

8. It is observed that the provisions of Regulation 30A(1)(a) are duly complied as Form FA is submitted by Operational Creditor before constitution of CoC, with reasons justifying the withdrawal of CIRP process at this stage. The RP has filed memo dated 27.07.2020 through email to the Registry stating there are no dues towards payment of CIRP cost.
9. This Adjudicating Authority is empowered to allow the prayer for withdrawal by exercising its power u/s. 12A of the IB Code, 2016, R/w Regulation 30A of Insolvency & Bankruptcy (Insolvency Resolution Process of Corporate Persons) Regulations 2016. Having satisfied with the submissions put forth by the Applicant and having seen that the Applicant has complied with all the requirements as contemplated under Regulation 30A *supra*. Further, keeping in view the memo dated 21.07.2020, filed by Andhra Bank/sole Financial Creditor stating its no-objection for allowing the instant Application, this Adjudicating Authority is inclined to allow the Application.
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10. In the result, IA No. 07 of 2020 is hereby allowed and Company Application bearing CP(IB)No. 194/9/HDB/2019 admitted earlier stands withdrawn in terms of provisions of section 12A of the Code and the CIRP stands closed. The moratorium order passed u/s. 14 of the Code will also cease to have effect from the date of this order.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL

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