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BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 210 of 2019 in/with C.P. (I.B) No. 292/9/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.04.2019

Name of the Company: Chandra Prakash Jain RP

Bank of India
V/s.
Win-Stone Industries (India)Pvt. Ltd.

Section of the Companies Act: Section 12 A r.w. Regulation 30A of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NIKITA C. JAIN	ADVOCATE	RESOLUTION PROFESSIONAL	Nikita
2.	KULDEEP K ADESARA FOR KETAN M. PARIKH	ADVOCATE	Committee of Creditors	[illegible]

ORDER

Resolution Professional & Committee of Creditors are appeared through their respective Counsel.

The IA application is allowed,.

The detailed order is pronounced in the open court, vide separate sheet

MANORAMA KUMARI
MEMBER (JUDICIAL)

HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this the 12th day of April, 2019.

vs

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH

IA No.210/NCLT/AHM/2019

In

C.P (I.B) No.292/7/NCLT/AHM/2018

Chandra Prakash Jain
(Resolution Professional
For Win-Stone Industries (I) Pvt.Ltd.)
Having address at:
D-501, Ganesh Meridian
Opp. Gujarat High Court
SG Road, Ahmedabad-380 060 .... Applicant
[Resolution Professional)

In the matter of:
Bank of India
Rajkot Mid Corporate Branch
1st Floor, Para Bazar, MG Road
Rajkot-360 001 .... Financial Creditor

Vs.

M/s. Win-Stone Industries (I) Pvt. Ltd.
S. No.788/1, Nr. GSPC Gas Terminal
Lakhdhirpar Road
Tal. Morbi
Ghuntu
Gujarat-363 642 .... Respondent
[Corporate Debtor]

Order delivered on 12th April, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:
Ms. Nikita C. Jain, Advocate, for the Resolution Professional.

Mr.Kuldeep Kadesara, Advocate, on behalf of Mr. Ketan M. Parikh, Advocate, for the Committee of Creditors.

ORDER

[Per: Mr.Harihar Prakash Chaturvedi, Member (J)]

1. The present application is filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to

as I & B Code) seeking permission to the Financial Creditor to withdraw the I B Petition and the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor company, viz., **M/s. Win-Stone Industries (I) Pvt. Ltd.**

2. It is a matter of record that the C.I.R.P was initiated in respect of the Corporate Debtor company pursuant to an order dated 26.10.2018 passed in CP (IB) No.292/7/NCLT/AHM/2018 whereby this Adjudicating Authority has admitted the petition and further appointed Mr. Chandra Prakash Jain as an Interim Resolution Professional (IRP), who later-on was confirmed to be appointed and to act as Resolution Professional (RP) to complete the C.I.R.P in respect of the present Corporate Debtor company.

3. As a subsequent development took place in the present matter during the C.I.R.P. that the RP received a letter on 29.03.2019 from the applicant bank i.e. Bank of India, (being the sole member of the Committee of Creditors) that it is inclined to withdraw the matter as it has been settled with the Corporate Debtor company under One Time Settlement (OTS). Thereafter, the RP received Form FA from the applicant bank as per the Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016. Thereafter, the RP received an e-mail from the Committee of Creditors (CoC) to convene the next CoC meeting in order to discuss such issue relating to the settlement with the Corporate Debtor company.

4. Pursuant thereto, the RP duly convened a meeting of the CoC on 02.04.2019 wherein the CoC apprised about the development took place in the matter towards settlement of dues and entire amount of OTS (Rs.10 crores [Rupees Ten Crore only]) is reported to have been received. Therefore, the sole Financial Creditor, i.e. Bank of India also issued No Due Certificate dated 28.03.2019 in favour of the Corporate Debtor company. Thereafter, a Resolution has been passed by the CoC to seek withdrawal of the present petition filed under Section 7 of the I & B Code and for re-call of the C.I.R.P and further authorizing the Resolution Professional to move necessary application, under Section 12A of the I & B Code, before this Court.

5. It is also pertinent to note herein that the Bank of India, being the sole Financial Creditor and sole member of the CoC has given consent for withdrawal of the present C.I.R.P. (Petition) CP (IB) No.292/7/NCLT/AHM/2018. Hence, it is to be treated that the CoC with its 100% majority has recommended for withdrawal of the present IB Petition and for re-calling of C.I.R.P., which is in conformity with the stipulated terms and conditions of Section 12A of the I & B Code. For the sake of convenience, Section 12A of the I & B Code is reproduced hereinbelow;

[12A. 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 prescribed].

In addition to the above, the Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Regulation Process for Corporate Persons) Regulations, 2016, prescribes as under:

[30 A. Withdrawal of application.

(1) An application for withdrawal under section 12A 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 36A.

(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).]

6. In the light of above stated provisions, it is found that the bank has received the entire amount of OTS from the Corporate Debtor company, which is quantified to Rs.10 crores (Rupees Ten Crore only) in the OTS Agreement dated 20.03.2019. Thereafter, the bank has also issued No Due Certificate on 28.03.2019 in favour of the Corporate Debtor company. By acting upon which the CoC has duly passed necessary Resolution on 02.04.2019 seeking withdrawal of the present IB Petition and re-calling of the C.I.R.P. It has further authorized the RP to move necessary application, under Section 12A of the I & B Code, before this Court.

7. Having heard the Counsel for the parties and after perusing the record, we are of the view that the present application is filed in conformity with the prescribed procedure and other terms and conditions stipulated in the relevant provisions of Section 12A of the I & B Code and Regulation 30A of the above referred regulation. Hence, there can be no impediment for accepting such settlement arrived between the parties even at post-

admission stage of the present IB Petition. Because the Bank of India, being the Sole member of the CoC has duly received entire amount of One Time Settlement (OTS) as full and final settlement of the present case from the Corporate Debtor company. Therefore, the bank has issued No Due Certificate 28.03.2019, which is duly supported by the CoC resolution dated 02.04.2019, in this aspect. Hence, it is acceptable.

8. Therefore, the present application deserves to be allowed. Hence, it is allowed. In the result, the C.I.R.P initiated in respect of the Corporate Debtor company is re-called and stands closed as well as the order(s)/direction(s) passed by this Adjudicating Authority in the present IB Petition ceased to have effect. Further action taken by the IRP/RP also stand vacated and merged with this withdrawal order.

9. With the above stated observations, the present Interlocutory Application No.210 of 2019 in CP(IB) No.292/7/NCLT/AHMD/2018 stands disposed of.

10. No order as to costs.

Manorama Kumari
Adjudicating Authority
Member (Judicial)

Harihar Prakash Chaturvedi
Adjudicating Authority
Member (Judicial)

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