

IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

IA (IB) 106/CB/2021
And
MA (IB) 10/CB/2021
In
CP (IB) No.01/CTB/2020

In the matter of:

An application under Section 12 A of IBC, 2016 read with Rule 30A of IBBI Insolvency Resolution Process for Corporate Persons) (third Amendment) Regulation, 2016;

And

In the matter of:

Dharani Geotech Engineers, [Regd No. 25/2015], a firm registered under the Indian Partnership Act, 1932, No. 134 B, Kuruthukkalkadu, Mandagapalayam, Kumaramangalam, Tiruchengode – 637 205, Tamil Nadu;

...Operational Creditor

And

In the matter of:

Shivam Condev Private Limited having registered office at 971, Mahanadi Vihar, Cuttack- 753 004, Odisha.

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing):

For Petitioner : Mr. Sanjay Ruia, CA
For the Respondent : Mr. Saswat K. Acharya, Adv.

Order reserved on: 27.10.2021

Order pronounced on: 03.11.2021

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ORDER

Per: P. Mohan Raj, Member (Judicial)
Satya Ranjan Prasad, Member (Technical)

1. Hearing conducted through video Conferencing.
2. Interlocutory Application No. IA (IBC) 106/CB/2021 has been filed under Section 12 A of IBC, 2016 read with regulation 30 A of the CIRP Regulations for withdrawal of Application under Section 9 of the Code and thereby withdrawal of the Corporate Insolvency Resolution Process of Shivam Condev Private Limited. The application has been filed by Mr. Vinod Radhakrishnan Nair (Interim Resolution Professional) appointed through Order dated October 08, 2021 of this Tribunal.
3. It is submitted in the Application that vide order dated 08.10.2021 this Tribunal had pronounced an order of admission of insolvency (“**Admission Order**”) against the abovesaid Corporate Debtor (“**CD**”). Thereafter, on the very next day, i.e., 09.10.2021 (Saturday), when the Admission Order was not yet uploaded, the Operational Creditor (“**OC**”) entered into a settlement agreement with the CD and the matter was settled between the parties. Accordingly, on the said date itself, the OC filed a withdrawal application vide M.A. (IB) No. 10/CB/2021 praying to withdraw the company petition vide C.P. (IB) No. 01/CTB/2021. An email was also issued by the OC to the Registry of this Bench on 10.10.2021 (12:57 PM) urgently mentioning the same for passing orders of withdrawal.
4. Consequently, the aforesaid Admission Order was uploaded and communicated to the Interim Resolution Professional, Mr. Vinod Radhakrishnan Nair (“**IRP**”) who thereafter took charge of the CD. Pursuant to the above, the OC approached the IRP and submitted its Form-FA (**at Pg.**

Sd

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29-30 of IA 106/21) as per Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”).

5. Accordingly, on the basis of the fact that the matter has been amicably settled between the parties and that the OC has issued the Form-FA, the IRP has filed the I.A. (IB) No. 106/CB/2021 to withdraw the CIR process against the CD under Section 12A of the Code.
6. It is stated that against the stated invoices a total of ₹1,42,19,251/- is outstanding and not paid by the Corporate Debtor. The Corporate Debtor has deducted and paid TDS on the said invoices but not settled the amount. The Corporate Debtor has not disputed the liability at any point of time rather they had agreed to pay ₹80.00 lakhs as one time settlement. This *prima facie* suggests existence of debt.
7. In the present case, since the period of 30 days has not expired from the date of Admission Order, no Committee of Creditors has been formed as yet. Therefore, the Applicant states that the present case falls under **Regulation 30-A(1)(a)** of CIRP Regulations and accordingly the OC has filed the Form-FA for withdrawal. IRP has also submitted during the hearing before this Tribunal that he has received his dues and expenses in respect of CIRP for which bank Guarantee has been specified to be accompanied with application in Form A. Therefore, it has been prayed to allow I.A. (IB) No. 106/CB/2021 and accordingly the CIR process against the CD be withdrawn.
8. Regulation 30A(1)(a) and 30A (2) (a) read as under –

“30 A. Withdrawal of application.

- (1) *An application for withdrawal under Section 12 A may be made to the Adjudicating Authority –*

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(a) *before the constitution of the Committee, by the applicant through the interim Resolution professional;*

.....

(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 application under clause (a) of sub regulation (1);.... .”*

9. After carefully considering all the facts and circumstances of the case, more particularly that an amicable settlement has been arrived at between the parties, committee of creditors have not been formed as yet and the CIRP expenses and IRP dues have already been settled, this tribunal is inclined to ALLOW this application and accordingly pass the following Orders.

ORDER

- (1) The CIR process initiated against the CD i.e., Dharani Geotech Engineers shall stand closed, and the CD be released from the rigours of the CIR process.
- (2) The Board of Directors of the CD is restored to its original position.
- (3) The IRP is directed to hand over the books of accounts of the CD and the CD to the restored Board of Directors of the CD.
- (4) Moratorium which came into effect consequent to the Admission Order shall stand cancelled.
- (5) Accordingly, M.A. (IB) No. 10/CB/2021 and I.A. (IB) No. 106/CB/2021 shall stand disposed of. The main C.P. (IB) No. 01/CTB/2020 shall also stand disposed of in the above directions. File be consigned to the record room.

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- (6) Copy of this Order shall be forwarded within 7 (seven) days to the concerned authorities and the Registrar of Companies having jurisdiction, for further necessary action as prescribed under Law and for updating the status of Corporate Debtor.
- (7) The Registry is hereby directed to communicate this Order to the petitioner and respondent.
- (8) Certified copies of this order, if applied for, be issued subject to completion of usual formalities.

Sd

Satya Ranjan Prasad
Member (Technical)

Sd

P. Mohan Raj
Member (Judicial)

Signed this 03rd day of November, 2021.

Ravijeet_P.S.