

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**IA No.1/2022 and IA No.24/2022
In
CP (IB) No.171/Chd/Pb/2019
(Admitted)**

In the matter of:

M/s Pardeep Cycle Industries

....Petitioner-Operational Creditor

Versus

M/s Arpan International Limited

...Respondent-Corporate Debtor

In the matter of:-

IA No.1/2022

Under Rule 11 of NCLT Rules, 2016

M/s Pardeep Cycle Industries

....Applicant

Vs.

1. M/s Arpan International Limited

2. Deepankur Sharma, Interim Resolution Professional

....Respondents

In the matter of:-

IA No.24/2022

Under Section 60(5) of IBC, 2016

M/s Pardeep Cycle Industries

....Applicant

Vs.

3. M/s Arpan International Limited

4. Deepankur Sharma, Interim Resolution Professional

....Respondents

Order delivered on: 16.03.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through video-conferencing:

For the Petitioner/Operational Creditor : 1. Mr. Harsh Garg, Advocate
2. Mr. Pulkit Goyal, Advocate

For the Respondent/Corporate Debtor : Mr. Deepankur Sharma, IRP

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.1/2022

The present application is filed by the Operational Creditor, whereby it seeks permission of this Tribunal to withdraw the CP (IB) 171/Chd/Pb/2019 and for setting aside the admission order dated 22.12.2021 passed by this Tribunal on the basis of the settlement arrived at between the parties prior to the constitution of Committee of Creditors of the Corporate Debtor i.e. M/s Arpan International Limited.

2. It is submitted by the applicant that the Insolvency petition bearing CP (IB) 171/Chd/PB/2019 was filed by the applicant/Operational Creditor against the corporate debtor under Section 9 of IBC, 2016, which was pertaining to the dispute/default of Rs.13,88,969/- (Rupees Thirteen Lakhs Eighty Eight Thousand Nine Hundred and Sixty Nine only) at the end of corporate debtor. The said Insolvency Petition was admitted by this Tribunal vide order dated 22.12.2021 and the respondent No.2 was appointed as Interim Resolution Professional in the CIRP of Corporate Debtor.

3. It is contended by the applicant that both the parties i.e. applicant/operational creditor and the corporate debtor have arrived at settlement. Now, the operational creditor does not want to continue with the Insolvency proceedings against the corporate debtor. The applicant has sent

FORM FA dated 27.12.2021 to the respondent No.2 by email dated 28.12.2021 informing him about the withdrawal of the Insolvency application which has been admitted vide order dated 22.12.2021 by this adjudicating authority against the corporate debtor.

4. It is averred by the applicant that the operational creditor in compliance of the order dated 22.12.2021 has deposited the said amount of Rs.75,000/- in the account of respondent No.2 on 30.11.2021, copy of the payment received dated 30.12.2021 is attached with the application as Annexure A-3. It is further submitted that the CIRP in the matter of corporate debtor has commenced on 22.12.2021 and the committee of creditor has not yet been constituted in this matter.

5. It is contended by the applicant that it has filed the present application under Rule 11 of NCLT Rules, 2016 for withdrawal of the present CIRP and not under Section 12 A of IBC, 2016 read with Regulation 30A of CIRP Regulations, 2016 as in the present case, the CoC has not yet been constituted. It is submitted that even though Regulation 30A provides for application for withdrawal under Section 12A may be filed prior to constitution of COC, however, Section 12A provides for application for withdrawal to be made by the applicant only with the approval of 90% voting share of CoC. However, in the present matter the CoC is yet to be constituted, accordingly, the aspect of obtaining consent of CoC does not arise. Moreover, the Regulations are made in support of the main code and they cannot supersede the main act in the present case the IBC Code, 2016.

6. The applicant to buttress his contentions relied on Hon'ble NCLAT New Delhi in case bearing *IA No. 815 of 2021 in **Company Appeal (AT) (Insolvency) No. 298 of 2021 titled Anuj Tejpal Director of the Suspended Board of Directors OYO Hotels and Homes Private Limited Vs. Rakesh Yadav*** decided on 07.07.2021 and the Hon'ble Supreme Court in its judgment in the matter of ***Swiss Ribbons Pvt. Ltd. and Ors.*** Learned counsel for applicant has also placed reliance upon judgment of the Hon'ble Apex Court in the matter of ***Amit Katyal Vs. Meera Ahuja and Others in Civil Appeal No.3778 of 2020 dated 03.03.2022.***

7. The respondent/Interim Resolution Professional in its reply vide Diary No.7/3 dated 19.01.2022 submitted that in response to the Email dated 28.12.2021 of applicant, the respondent replied on 29.12.2021 stating that applicant has to provide bank guarantee and MOU between the parties, to move an application for withdrawal. The estimated CIRP cost will be Rs.3,75,000/- and final cost will be informed on the approval of application as the CIRP will continue till any specific direction from this Tribunal.

8. The respondent submitted that the applicant/petitioner concealed the settlement agreement with the corporate debtor and the applicant/petitioner has filed incorrect/manipulated Form FA in order to mislead this Tribunal. It is further submitted that the applicant was not willing to pay the professional fee as well as the CIRP cost of the respondent.

9. It is contended by the respondent that settlement with the corporate debtor could not be arrived at by passing the respondent. That is the reason, the Form FA is incorrect as well as incomplete. The application should have

ought to be filed under Section 12A of the Insolvency and Bankruptcy Code, 2016. The learned counsel relied on the order of the NCLT, New Delhi Bench (Court-II) in the matter of ***M/s Reach International Vs. M/s Altech Infrastructure Private Limited in IA No.411 of 2022 in IB No.3013/ND/2019 dated 01.02.2022.***

10. It is alleged by the respondent that the present application filed by the operational creditor in connivance with the corporate debtor is only to protect the corporate debtor from the fraud that is being played with the Income Tax Authorities inter alia amongst other Statutory Authorities including GST wherein, after conducting the due diligence into the conduct of the business of the corporate debtor, it came to the knowledge of IRP that huge siphoning off the inventory and funds is being committed by the corporate debtor.

11. It is further submitted by IRP that the Suspended Board of Directors have been mismanaging the affairs of the corporate debtor. Further, a huge claim of Rs.11,14,17,128/- has been received with the IRP of (i) The Karur Vysya Bank and the next one from the (ii) Income Tax Department amounting to Rs.93,53,560/- (iii) Employees Provident Fund Organization amounting to Rs.2,64,096/- wherein, in view of the order of this Adjudicating Authority, the Committee of Creditors have not been constituted. It is alleged that if the present application is withdrawn which is inter alia put forward without following the due process as mentioned in IBC 2016, along the Regulations, a huge flood of creditors will come forward wherein, it will be a dilemma to the creditors where they will hardly be able to recover from the Corporate Debtor.

12. In his reply, IRP has stated that estimated Corporate Insolvency Resolution Process cost will be Rs.3,75,000/- to the applicant in response to e-mail dated 28.12.2021, the same is attached as Annexure R-2 of the reply.

13. After careful perusal of the record available and considering the submissions made by the learned counsel for the applicant and respondents, we have come to the conclusion that in the present case it is not disputed that CoC has not been constituted so far. The Hon'ble Apex Court in **Swiss Ribbons Private Limited and Anr. V. Union of India and others (2019) 4 SCC 17** has held that at any stage, before a Committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, allow or disallow an application for withdrawal or settlement. It was held thus:

“82. It is clear that once the Code gets triggered by admission of a creditor’s petition before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.”

14. It is true that the procedure for preferring an application under Section 12A of the IBC is contained in Regulation 30A of the Corporate Insolvency Resolution Process Regulations, 2016. However, as per the decision of Hon'ble Apex Court in the case of **Brilliant Alloys Pvt. Ltd. V. S. Rajagopal,**

2018 SCC Online SC 3154, the said provision is held to be directory, depending on the facts of each case.

15. The Hon'ble NCLAT, in the matter of **Sushil Ansal Vs. Ashok Tripathi and Ors. in Company Appeal (AT) (Insolvency) No.452 of 2020 decided on 14.08.2020** and in the matter of **Shilpi Cable Technologies Limited Vs. Macquarie Bank Ltd. in Company Appeal (AT) (Ins) No.101 and 102 of 2017 decided on 01.08.2017** held that "*the Adjudicating Authority will fix the fee of 'Interim Resolution Professional' for the period he has functioned*". Although IRP has claimed estimated cost of Rs.3,75,000/- but he has not forwarded the details of expenditure. He had already been paid Rs.75,000/- as CIRP cost. Keeping in view the facts and circumstances when Corporate Insolvency Resolution Process was ordered on 22.12.2021 and present application has been filed on 03.01.2022, we direct the applicant to pay the fee of Rs.1,10,000/- (One Lakh Ten Thousand Only) which is just, fair and reasonable in addition to Rs.75,000/- already paid CIRP cost, including all miscellaneous expenses to the Interim Resolution Professional. The Corporate Debtor (Company) is released from all the rigours of law and is allowed to function independently through its Board of Directors from immediate effect.

16. In view of the above facts and circumstances and in the interest of justice, the Rule 11 of NCLT Rules, 2016 can be invoked in the instant case for withdrawal of CP (IB) No.171/Chd/Pb/2019. Hence, the present application is allowed and CP (IB) No.171/Chd/Pb/2019 stands as withdrawn. Accordingly, IA No.1/2022 disposed of.

IA No.24/2022

The present application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') by the applicant/Operational Creditor seeking clarification in the order dated 04.01.2022 pertaining to the extent of maintaining status quo by Interim Resolution Professional i.e. Respondent No.2 till the next date of hearing for further proceeding under admission order dated 22.12.2021.

2. As IA No.1/2022 is allowed and disposed of, the instant IA No.24/2022 being interlinked is disposed of being infructuous.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

March 16th, 2022
AV/ASH