IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT- V, MUMBAI BENCH

8. IA/1918/MB/2020
IN
CP(IB)/ 2752/MB/ 2019

CORAM:

SHRI CHANDRA BHAN SINGH
Member (Technical)

SMT. SUCHITRA KANUPARTHI
Member (Judicial)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **02.11.2020**

NAME OF THE PARTIES: Rakesh Tulsyan

SECTION: Sec. 12A OF THE INSOLVENCY AND BANKRUPTCY CODE.

ORDER

1. The CIRP had commenced on 14.10.2019 under section 9 of the Insolvency and Bankruptcy Code, 2016 for a total debt of Rs. 3 lacs. The CoC comprises of the sole Financial Creditor i.e. HDFC Bank with a total financial debt of around Rs. 18 lacs.
2. In the 11th CoC meeting held on 13.10.2020 under section 12A resolution was passed for withdrawal of the CIRP. The relevant paras of the agenda item is reproduced below;

   "Item No. B6: To discuss on the application filed by Operational Creditors to withdraw the case and take COC approval for 12A, Regarding the withdrawal of CIRP Operational creditor sent an e-mail to suspended directors regarding settlement of their dues of Rs.3 lakhs and wanted to withdraw the application filed under section 9 of the Insolvency and Bankruptcy Code 2016 by them. This agenda was put before COC for approval as application under section 12A needs approval of minimum 90% of COC members. The financial creditors or COC also got the settlement plan of suspended directors through RP and COC has following views on the withdrawal application u/s 12A of IBC 2016:

   There were three instalments of Rs.71,306/- each paid to COC before CIRP for the total amount of Rs.2,13,918/- Besides Rs. 2,00,000/- was paid by directors in the capacity of Guarantor and *the Balance money of Rs. 18,36,082 is proposed to be paid by them. Hence the suspended director proposed to pay total Rs. 22,50,000 to settle and withdraw the case. COC has also taken into consideration that suspended director will clear the dues of GST department as well as other creditors with former one on priority basis as it is the statutory dues and later one in the timeframe of 1-3 years as per normal business. So, the total proposed amount of Rs.22,50,000/- to HDFC Bank is accepted in-principal. So the COC confirmed the withdrawal plan with 100% voting rights. The suspended director should pay immediately to the bank after the withdrawal of the case. The COC requested the RP to use the HDFC bank account for operations of the company as they are the only lenders. RP confirmed for the same as there are few issues in the account which he will try to sort out.*

After the approval of withdrawal resolution of CIRP with 90% in favour, l2A application will be filed by RP as fourth Interlocutory Application at Hon'ble NCLT, Mumbai Bench. So, RP requested the COC to approve the fees Rs. 25,000/- + out of pocket expenses for each IA to pay to the lawyer.

Decision: COC confirmed with 100% voting in favour of withdrawal plan and allowed Resolution Professional to file the withdrawal application and also approved the filing of Interlocutory Application under section 12A of the Insolvency and Bankruptcy Code, 2016 with 100% voting."

3. In view of the above agenda, following was resolved with the 100 % voting which is reproduced below;

"RESOLVED THAT the CIRP proceeding is withdrawn with 100% approval of COC and subject to approval of Hon'ble NCLT. Mumbai on the application to be filed by Resolution Professional under section 12A of IBC 2016."

"RESOLVED FURTHER THAT the RP or his appointed advocate should take all the actions necessary for filing IA on priority before the Hon'ble NCLT, Mumbai and represent the case."

"RESOLVED FURTHER THAT the suspended director / Company will pay the dues to the financial creditors at Rs. 22,50,000/- in total immediately after the withdrawal. of application and also pay all the dues of CIRP process cost."

"RESOLVED FURTHER THAT Resolution professional work has been appreciated on records by the COC as he has burnt midnight oil to keep the company as going concern and settle the case with positive attitude and didn't let the company go into liquidation with all odds."

4. In view of the above, the Bench takes into account that all the conditions under section 12A of IBC, 2016 for withdrawal has been has been met and also Operational Creditor at whose behest the CIRP commenced has been paid in full. Therefore the Bench allows IA/1918/MB/2020 for withdrawal of the CIRP against the Corporate Debtor Company and further directs the RP / IRP to hand over the Corporate Debtor Company back to the Promotors / Ex-directors.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)

/p/