NATIONAL COMPANY LAW TRIBUNAL
COURT-I, MUMBAI BENCH

Item No. 7
IA 1302/2023 IN C.P. (IB)/1268(MB)2021

CORAM:

SH. H. V. SUBBA RAO	**MS. ANU JAGMOHAN SINGH**
HON'BLE MEMBER (JUDICIAL)	**HON'BLE MEMBER (TECHNICAL)**

ORDER SHEET OF THE HEARING ON **12.04.2023**

NAME OF THE PARTIES: **Birmecha Investments Private Limited.**
VS
Taksha Spaces Private Limited.

Section 7, Section 12 A of the IBC 2016

ORDER

IA 1302/2023

Adv. Rakesh Gupta for the Applicant / Resolution Professional is present.

The present application is filed by the Resolution Professional of the Corporate Debtor under Section 12 A of the Insolvency and bankruptcy Code, 2016 read with Regulations 30 A (1)(b) of the IBBI (Insolvency Resolution Process for Corporate persons) regulations, 2016 and Rule 11 of NCLT Rules, 2016 for withdrawal of the company petition contending that the Corporate Debtor have amicable settled the matter with the original petitioner.

The facts leading to the case in hand are as follows :

(a) Record reveals that a petition under Section 7 was admitted against the Corporate Debtor vide order of this bench dt. 25.11.2022 and Corporate Insolvency Resolution Process was initiated against the Coporate Debtor and Ms. Prajakta Menezes was appointed as Interim Resolution Professional and subsequently confirmed as Resolution Professional of the Corporate Debtor pursuant to the decision of the Committee of the Creditors.

(b) Thereafter, on 12.11.2022 IRP made a public announcement in two news papers in Mumbai Region in *inter alia* notifying that the Corporate Debtor is admitted under CIRP and the appointment of the applicant as the RP. On 23.12.2022 addendum to the public announcement was published in two news papers of Mumbai Region *inter alia* for electing names of Insolvency Professionals identified to act as authorized representative of the financial creditor. In the first meeting of CoC held on 23.12.2022, wherein the IRP appraised the CoC members about the steps as taken till date of passing of the CIRP admission order. IRP also informed the member about the business affairs of the Corporate Debtor and informed about the pending redevelopment work as undertaken by the Corporate Debtor and further actions to be taken by the CoC for appointment of registered valuers.

(c) In the second CoC meeting dt. 19.01.2023. applicant appraised the members about the meeting with the suspended board of Directors and continuous non-cooperation as received from him. Applicant also appraised that till the convening of the second CoC meeting no claims were received from home buyer; however, the last date of filing of the claim is 23.02.2023. Thereafter, applicant receives claim from 14 home buyers for 31 flats amounting to the tune of Rs. 48,26,06,941/- on which were under verification process.

(d) However, when the claims of the Homebuyers were under verification , the Applicant also received a Form FA dated 4 March 2023 from the Original petitioner, Bimrecha Investments Private Limited in compliance of the Regulations 30A(2) of the CIRP Regulations vide email dated 6 March 2023. Thus, the receipt of the same. A copy of the email dated 6 March 2023 as received by the Applicant along with the

Form FA dated 4 March 2023 is annexed hereto and marked as Exhibit 8 colly.

(e) Thus, the 3rd CoC Meeting of the Corporate Debtor was convened on 9 March 2023, wherein the Applicant apprised the CoC Members about the status of claims as received from the Homebuyers and informed that the Homebuyers would have to be reconstituted in light of the fresh claims as received from the Homebuyers and informed that eth Homebuyers would have to be reconstituted in light of fresh claim as received from the Homebuyers. However, in the light of fresh claims as received from the Homebuyers. However, the Applicant also informed that she in receipt of the Form FA dated 4 March 2023 from the Original petition and Financial Creditor for withdrawal of the present CIRP of the Corporate Debtor. The applicant thereafter sough as the views of the CoC members on the CIRP withdrawal, to which, the members of the CoC unanimously agreed to consider withdrawal of the CIRP since the development rights have been terminated by the Society and they do not forseen any cashflows going to be generated from the project, nor do they expect any prospective resolution applicant to come up with resolution plan given the pending litigations at the High Court. The Members of the CoC opined that the suits filed by the homebuyers against the society and the Corporate Debtor before the Hon'ble Bombay High Court is reserved for orders since July 2021 and any further actions will be dependent on the receipt of the order by the Respective parties viz. society, real estate and ICICI Bank (secured financial creditor).

(f) In view of the aforesaid circumstances, the members of the CoC decided to proceed with the CIRP withdrawal and requested the applicant to put the matter for voting. Based on the request received from the CoC members the agenda for withdrawal of the CIRP was put forth for voting and the voting lines were kept open till 16 March 2023 till @

6.00 p.m. Further, the CoC members in view of the present factual matrix of the current CIRP of the Corporate Debtor unanimously voted in favour of withdrawal of the present CIRP of the Corporate Debtor and passed the following resolutions.

"*RESOLVED THAT the consent of the members of Committee of Creditors be and is herby accorded to approve the withdrawal of the CIRP application admitted under Section 7 of the code against the Corporate Debtor pursuant to Section 12A of the Insolvency and Bankruptcy Code, 2016.*

RESOLVED FURTHER THAT Mr. Prajakata Menezes, Resolution Professional be and is hereby authorized to make the necessary application to the Hon'ble NCLT, Mumbai bench for withdrawal of application admitted under Section 7 of the Code against the Corporate Debtor and to do all such actions, deeds, and things to given effect to the aforesaid resolution."

Thus, in accordance with Regulation 30A of the CIRP Regulations, the Applicant has received the entire CIRP cost as incurred for running the present CIRP of the Corporate Debtor on 30 March 2023. The Applicant submits that the voting Results of the 3rd CoC meeting of the Corporate Debtor were concluded on 16 March 2023 and the last date for filing of the present application was of 19th March 2023 as per Regulation 30A (5) of the CIRP Regulation. However, due to unforeseen difficulties in depositing the CIRP costs by the CoC Members, there's a delay of 12 days in filing of the present application.

The applicant respectfully submits that since the re-development rights as allocated to the Corporate Debtor have been terminated by the Society and the CoC in its commercial wisdom do not foresee any cashflows going to be generated from the project, nor do they except any prospective resolution applicant to come up with resolution plan given the pending litigations at the High Court, it would just and appropriate that the present CIRP as admitted against the

Corporate Debtor should be withdrawn in accordance with Regulation 30 (A) (1) (b) read with Section 12 A of the Code.

Hence this application. Having considered the submission and on perusal of the averments made in the application this bench is satisfied and is of the considered view that the present Interlocutory application is liable to be allowed and the same is allowed thereby allowing the applicant to withdraw the CIRP process of the Corporate Debtor. The Corporate Debtor is released from all the rigor and clutches of Corporate Insolvency Resolution Process. The Resolution Professional is directed to hand over all the assets, records, effects available with her in the physical or in the form of electro to the promoters, Board of Directors of the Corporate Debtor immediately. Needless to say that, the fees of the Resolution Professional towards her work shall be paid in full. In that view of the matter IA 1302/2023 is allowed and disposed of.

Sd/-	**Sd/-**
ANU JAGMOHAN SINGH **MEMBER (TECHNICAL)**	**H. V. SUBBA RAO** **MEMBER (JUDICIAL)**

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