

NATIONAL COMPANY LAW TRIBUNAL

COURT-V, MUMBAI BENCH

Under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016.

I.A. No. 841 OF 2023

IN

CP (IB) No. 848 OF 2021

**Udayraj Patwardhan,
Interim Resolution Professional of Roxina Real Estate Private
Limited**

..... Applicant/Interim Resolution Professional

And in the matter of

ICICI Home Finance Company Limited

...Financial Creditor

Versus

Roxina Real Estate Private Limited

..... Corporate Debtor

Order delivered on: 03.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearance (via video-conferencing):

For the Applicant: Mr. Satendra K. Rai, Adv. along with Mr. Udayraj
Patwardhan, IRP

For the Corporate Debtor: Counsel Shyam Kapadia a/w Adv. Rohit Jadhav,
Adv. Sailee Dixit i/b I V Merchant & Company

Per: Bench.

ORDER

1. The present Interlocutory Application No. 841 of 2023 has been filed by **Mr. Udayraj Patwardhan, Interim Resolution Professional of Roxina Real**

Estate Private Limited Under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter “**Code**”) seeking to consider the withdrawal of Corporate Insolvency Resolution Process (CIRP) initiated by this Hon’ble Tribunal vide Company Petition (IB) No. 848 of 2021, in terms of the Consent Terms dated 15th February, 2023 executed between the Financial Creditor i.e. ICICI Home Finance Company Limited and the Corporate Debtor.

2. The brief facts of the case are that this Hon’ble Tribunal, vide an Order dated February 03, 2023, admitted the Petition and appointed the Applicant as the Interim Resolution Professional to conduct the CIRP of the Corporate Debtor. Upon appointment of Applicant as Interim Resolution Professional, public announcement in Form-A under Section 15 of the Code read with Regulation 6 of CIRP Regulations on February 06, 2023 was published in the newspapers viz. “The Economic Times”, English Newspaper, Mumbai Edition, “Lokmat”, Marathi Newspaper, Mumbai Edition and “Financial Express”, English Newspaper All India Edition and “Loksata”, Marathi Newspaper, Maharashtra Edition.
3. However, in the meantime, the Financial Creditor i.e. ICICI Home Finance Company Limited and the Corporate Debtor have decided to amicably settle the matter and pursuant to the detailed discussions and deliberations, the Parties have arrived at a full and final settlement of all the outstanding dues payable by the Corporate Debtor to the Financial Creditor. To that effect, the Financial Creditor and the Corporate Debtor have executed Consent Terms dated February 15, 2023 and the same was shared by the Financial Creditor with the Applicant-IRP.
4. Further, the Applicant-IRP stated that the last date for receipt of the claims as per the Public Announcement was February 17, 2023 and claims from only Class of Creditors -Allotees under Real Estate Project are as yet to be received and no claims are received from any Financial Creditors,

Operational Creditors (including employees and workmen) or other creditors. As per the timelines under Regulation 40A of the CIRP Regulations, the Committee of Creditors was to be constituted on February 26, 2023, however, in meantime, the settlement was arrived between the Financial Creditor and the Corporate Debtor and the Financial Creditor submitted Form-FA i.e. Application for Withdrawal of CIRP dated February 20, 2023 as per schedule-I of the CIRP Regulations.

5. Pursuant to that, the Applicant-IRP vide email dated February 17, 2023, shared the statement of the estimated expenses incurred by him for the purpose of Regulation 31 and 33 of the CIRP Regulations amounting to Rs.4,66,704/-. In this regard, the Financial Creditor i.e. ICICI Home Finance Company Limited vide its email dated February 20, 2023, submitted that on February 06, 2023, the Financial Creditor had already submitted a Demand Draft amounting to Rs.5,00,000/- to meet the CIRP Cost pursuant to the directions in the Admission Order and accordingly these funds be utilized towards meeting the estimated expenses incurred by the IRP in lieu of the requirement of the Bank Guarantee, in terms of Regulation 30A of the CIRP regulations. The Financial Creditor vide the said email also undertook to pay the actual expenses as on the date of the Order of the Withdrawal of CIRP.

Findings:-

6. We have heard the Learned Counsel for the parties and perused the material available on record.
7. This Bench has taken note that the requirements in accordance with law which are required for allowing the withdrawal of the present Petition have been met and that the Committee of Creditors had not yet been constituted when the present application was filed. Though subsequently, an Interlocutory Application No. 1324 of 2023 has been filed on 17th April 2023 for taking on record the list of creditors prepared as on 3rd February, 2023 for claims received upto 17th February, 2023. Further, the Financial Creditor i.e. ICICI Home Finance Company Limited has duly filed Form FA

and the costs incurred by the Applicant-IRP towards carrying out the CIRP up to date have been paid.

8. In this regard, this Bench is relying upon the judgment of the Hon'ble Supreme Court has in the case of **Swiss Ribbons Pvt. Lid. v. Union of India (2017) 9 SCC 1**, wherein it has clarified the inherent power of this Hon'ble Tribunal in light of Rule 11 of the NCLT Rules, 2016 to allow the withdrawal of CIRP before the Committee of Creditors is constituted by the IRP. The relevant excerpt from the aforesaid decision is reproduced below:

"52. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted 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 the 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 concerned parties and considering all relevant factors on the facts of each case. "The present application is bona fide and in the interest of justice. In case the prayers herein are allowed, no loss or prejudice shall be caused to any party.

9. After hearing the submissions made by the Applicant-IRP and upon perusing the material available on record, this Bench feels that since the matter between the Financial Creditor and the Corporate Debtor has been settled by way of consent terms dated 15.02.2023, it would not be appropriate to push the Corporate Debtor into insolvency. Accordingly, the IA 841 of 2023 is **allowed** and CP (IB) 848 of 2021 shall stand **disposed of** having been withdrawn. In view of the admission of the application, IA No. 1324 of 2023 becomes infructuous and stand **disposed of**.

SD/-

ANURADHA SANJAY BHATIA
Member (Technical)

SD/-

KULDIP KUMAR KAREER
Member (Judicial)