

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I**

IA No. 2925/MB/C-I/2022

And

IA No. 2962/MB/C-I/2022

In

C.P (IB) No.1067/MB/C-I/2017

An application under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016
Filed by

Ms. Dipti Mehta

Liquidator of Prag Distillery Private Limited

...Applicant

Versus

Standard Chartered Bank and Ors.

...Respondent

In the matter of

Standard Chartered Bank

...Financial Creditor

Versus

Prag Distillery Private Limited.

... Corporate Debtor

Order Pronounced on: 23.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H.V. Subba Rao

Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Applicant/Liquidator : Mr. Aniruth Purusothaman, Advocate

For the Respondent No. 1 : Mr. Aashdin Chivalwala, Advocate
For the Respondent No.3 : Mr. Gaurav Joshi, Ld. Sr. Advocate

ORDER

Per: H.V. Subba Rao, Member (Judicial)

IA No. 2925 of 2022

1. The present Applicant is filed by the Liquidator seeking withdrawal of the Company Petition under Section 12A of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**), filed by the Financial Creditor namely Standard Chartered Bank. The following reliefs are sought by the Applicant:
 - i. Allow the withdrawal of the Captioned Company petition bearing C.P (IB) No.1067/MB/C-I/2017.
 - ii. Pass an Order of closure of Liquidation process of the Corporate Debtor.
 - iii. Pass an Order of reinstating the erstwhile Board of Directors for the management of the operations of the Corporate Debtor.

Backdrop of facts

2. The Corporate Debtor was admitted in CIRP vide Order dated 27.06.2017. The Applicant herein was appointed as the Resolution Professional (**“RP”**)

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by the CoC in its 1st Meeting dated 28.07.2017. Thereafter 11 CoC meetings were convened by the RP. The CoC in its 12th meeting held on 23.03.2018 unanimously decided to Liquidate the Corporate Debtor.

3. This Adjudicating Authority passed an Order dated 09.08.2018 under Section 33 of the Code for Liquidating the Corporate Debtor and appointed the Applicant Ms. Dipti Mehta as the Liquidator. It is submitted that the Liquidator has complied with all the formalities and functions of the Liquidator post commencement of Liquidation.
4. It is submitted that on account of the failure of the Corporate Debtor to discharge the liability owed to Respondent No. 1, Mr. Amit Dahanukar (who is a Personal Guarantor of the Corporate Debtor) and Respondent No. 3, in order to revive the Corporate Debtor out of liquidation, entered into a settlement agreement dated 17.11.2020 and supplementary agreement dated 18.08.2021, with the Respondent No. 1 for an amount of USD 22,50,000/- (US Dollars Twenty-Two Lakh Fifty Thousand only) to be paid to the Respondent No. 1 in full and final settlement of the outstanding debt owed to the Respondent No. 1. It is further submitted that Mr. Amit Dahanukar and Respondent No.3 have made the payments under the said settlement agreement.

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5. The Respondent No. 1 has issued a no dues certificate dated 25.01.2022 and 03.10.2022 to the Corporate Debtor in this respect. The Copy of the settlement agreement dated 17.11.2020 and supplementary agreement dated 18.08.2021 entered into between the Respondent No. 1 with Respondent No. 2 and Mr. Amit Dahanukar and no dues certificate dated 25.01.2022 and 03.10.2022 issued by the Respondent No. 1 to the Corporate Debtor are annexed and marked as Exhibit-M Colly.
6. It is submitted that a settlement agreement was entered into by the Respondent No. 2 with Mr. Amit Dahanukar, Respondent No.3 and Punjab Expo Breweries Private Limited (which is a wholly-owned subsidiary of Respondent No.3) on 02.07.2021, for an amount of Rs.22,52,77,632/- (Rupees Twenty-Two Crore Fifty-Two Lakh Seventy-Seven Thousand Six Hundred Thirty-Two only) in full and final settlement of its dues to the Corporate Debtor. As per the terms of the Settlement agreement, the Special Leave Petition filed by the Respondent No. 2 has been withdrawn and the sum of Rs.2,85,74,454/- (Rupees Two Crores Eighty-Five Lakh Seventy-Four Thousand Four Hundred Fifty-Four only) has been transferred to the Corporate Debtor's bank account and simultaneously equivalent sum has been paid by Respondent no. 3 to

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- Respondent No. 2. It is further submitted that the Respondent No. 2 has issued a no dues certificate dated 16.03.2022 to the Corporate Debtor in this respect. The Copy of the settlement agreement dated 02.07.2021 entered into by Respondent No. 2 with Mr. Amit Dahanukar, Respondent No.3 and Punjab Expo Breweries Private Limited and a no dues certificate dated 16.03.2022 is annexed and marked as Exhibit-N.
7. It is submitted that the Respondent No.3 has entered into a settlement agreement dated 14.02.2022 with the 99 employees of the Corporate Debtor in respect of the pending salaries and dues of the employees. It is further submitted that all the employees of the Corporate Debtor have agreed to the said settlement. The Respondent No.3 has also paid the first tranche to the employees under the settlement agreement. The Copy of the settlement agreement entered into by the Respondent No.3 with the 99 employees of the Corporate Debtor is annexed and marked as Exhibit-O.
8. It is submitted that the Respondent No.3 has also entered into a settlement agreement with M/s. Alutop, one of the Operational Creditor of the Corporate Debtor vide settlement agreement dated 25.05.2022 for an amount of Rs. 25,62,832/- (Rupees Twenty-Five Lakhs Sixty-Two Thousand Eight Hundred Thirty-Two only) in full and final settlement of

the outstanding amount of the Corporate Debtor. The Copy of the settlement agreement dated 25.05.2022 entered into by the Respondent No.3 and M/s. Alutop is annexed and marked as Exhibit-P.

9. It is submitted that the Respondent No.3 has also invested an advanced funds of around Rs.1.50 crores into the Corporate Debtor for starting of the unit which was lying unoperated since last two years. The excise licenses, electricity connections, etc. have been restored. All the licenses and compliances are being renewed and in place and the unit has started generating employment for around 100 people.
10. Post settlement agreements, the Respondent No. 1 has transferred a sum of around Rs. 2,85,74,454/- (Rupees Two Crores Eighty-Five Lakh Seventy-Four Thousand Four Hundred Fifty-Four only) in the account of Corporate Debtor. The result of this arrangement is that the Corporate Debtor now has enough funds to take care of its liabilities and as on present date it does not remain in the state of insolvency.
11. It is further submitted that in the 11th meeting of the Stakeholders consultation held on 07.10.2022, 100% of the members passed a resolution for withdrawal of the captioned Company Petition against the Corporate Debtor and closure of the liquidation process. The Copy of the minutes of

the 11th meeting of the Stakeholders consultation along with the voting sheet is annexed and marked as Exhibit-Q Colly.

12. It is submitted that the Respondent No.1, which is the Financial Creditor has submitted Form FA dated 06.10.2022. The Copy of the Form FA dated 06.10.2022, receipts and payment accounts for the period 01.07.2022 to 06.10.2022 and the copy of audited balance sheet of the Corporate Debtor for the year ending 31.03.2022 is annexed and marked as Exhibit-R Colly.
13. The Applicant submits that the Respondent No. 3 has settled the dues of all the other creditors of the Corporate Debtor including Organic Industries Private Limited whose claim of the operational debt to the tune of Rs.20,66,930/- (Rupees Twenty Lakhs Sixty Six thousand Nine Thirty Only) has been duly settled. The Copies of the settlement letters issued by the other creditors are hereto annexed and marked as Exhibit-S Colly.
14. The Applicant has relied on the Order of the Hon'ble NCLAT in *Navaneetha Krishnan v Central Bank of India, Coimbatore & Another [Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018]* wherein it was held as under:

“5. However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A, satisfy the demand of

‘Committee of Creditors’ then such person may move before the Adjudicating Authority by giving offer which may be considered by the ‘Committee of Creditors’, and if by 90% voting share of the ‘committee of creditors’, accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order....”

IA No. 2962 of 2022

15. The Applicant has filed IA No. 2962 of 2022 to place on record Final Report prior to dissolution in compliance with Regulation 45 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

Findings and Directions:

16. We have perused records and heard the submissions made by the parties.
17. Considering the Settlement arrived at between the parties, the Applicant has filed an Application under Section 12A of the Code for withdrawal of the main Company Petition. Further, in the 11th meeting of the Stakeholders held on 07.10.2022, 100% of the members holding voting shares have accorded their approval for withdrawal of the Company

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18. Moreover, in view of the ratio laid down by the Hon'ble NCLAT in Navaneetha Krishnan (supra), the criteria that if CoC holding 90% of the voting share accept the offer, then this Adjudicating Authority must pass appropriate Order under Section 12A of the Code. We allow the withdrawal of the Company Petition and consequent closure of the Liquidation process.
19. With the aforesaid observation, **IA No. 2925 of 2022 and IA No. 2962 of 2022 in CP(IB) No. 1067/MB/C-I/2017** stands disposed of as **allowed.**
20. The Captioned Company Petition (IB) No. 1067 of 2017 stands **disposed of as withdrawn.**

Sd/-

SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

23.06.2023

Priyal

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)