

**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)**

**CA No.736/2019, 737/2019, 738/2019,
846/2019, & IA No.30/2020
in
CP (IB) No.191/Chd/Hry/2018
(admitted)**

In the matter of:

M/s Aayush Trading Company

...Petitioner-Operational Creditor

Versus

M/s Monika Freshway Foods Private Limited ...Respondent-Corporate Debtor

And in the matter of:-

CA No.736/2019

**Under Section 60(5) of the IBC, 2016 read
with Rule 11 of the NCLT Rules, 2016**

M/s Chet Ram Banwari Lal

...Applicant

Vs.

1. Ms. Reshma Mittal, Resolution Professional
of M/s Monika Freshway Foods Private Limited
2. Union Bank of India
3. M/s Aayush Trading Company

....Respondents

And in the matter of:-

CA No.737/2019

**Under Section 60(5) of the IBC, 2016 read
with Rule 11 of the NCLT Rules, 2016**

M/s Paul Trading Co.

...Applicant

Vs.

1. Ms. Reshma Mittal, Resolution Professional
of M/s Monika Freshway Foods Private Limited
2. Union Bank of India
3. M/s Aayush Trading Company

....Respondents

And in the matter of:-

CA No.738/2019

**Under Section 60(5) of the IBC, 2016 read
with Rule 11 of the NCLT Rules, 2016**

M/s Vijay Trading Co.

...Applicant

Vs.

1. Ms. Reshma Mittal, Resolution Professional
of M/s Monika Freshway Foods Private Limited
2. Union Bank of India
3. M/s Aayush Trading Company

....Respondents

And in the matter of:-

CA No.846/2019

**Under Section 12A of the IBC, 2016 read
with Rule 11 of the NCLT Rules, 2016**

Ms. Reshma Mittal, Resolution Professional
of M/s Monika Freshway Foods Private Limited

....Applicant

And in the matter of:-

IA No.30/2020

**Under Section 60(5) of the IBC, 2016 read
with Rule 11 of the NCLT Rules, 2016**

M/s Chet Ram Banwari Lal
Vs.

...Applicant

Ms. Reshma Mittal, Resolution Professional
of M/s Monika Freshway Foods Private Limited

....Respondent

Order delivered on: 07.07.2022

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

Present through video-conferencing:

For the Applicant in
CA No.736/2019, 737/2019
738/2019 & IA No.30/2020

: Mr. Shivam Narang, Advocate

For the Applicant/Resolution Professional
in CA No.846/2019 and Respondent No.1
in CA No.736/2019, 737/2019
738/2019 & IA No.30/2020

: 1. Mr. Kamal Satija, Advocate
2. Ms. Reshma Mittal, Resolution
Professional in person

Committee of Creditors/
Union Bank of India

: Mr. Saurabh Bhardwaj, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

CA No.846/2019

The present application has been filed by Ms. Reshma Mittal, Resolution Professional of M/s Monika Freshway Foods Private Limited under Section 12A of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016.

2. In the present application, the applicant prays to allow the withdrawal of the present petition filed under Section 9 of the IBC, 2016 against Corporate Debtor i.e. CP (IB) No.191/Chd/Hry/2018 in terms of Section 12A of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016; and to dispose of pending applications, if any, in CP (IB) No.191/Chd/Hry/2018 and to condone the delay 13 days in filing the present application;

3. The brief facts as stated in the application is that the CIRP proceedings has been initiated against the corporate debtor by order dated 04.12.2018 and the IRP was appointed. Thereafter, in the 2nd meeting of CoC, the RP was changed and this Tribunal confirmed the appointment of present RP by its order dated 26.02.2019. The Expression of Interest (EOI) in Form G was published in two newspapers dated 19.03.2018. However, no Expression of Interest (EOI) was received from any prospective Resolution Applicant. Thereafter, the EOI was again published on 26.04.2019. The copies of published EOI are attached as Annexure-2 of the application. Subsequently, the applicant filed an application for the extension of CIRP period by 90 days which was allowed by order dated 17.05.2019. On the basis of republication of EOI, one prospective resolution applicant has shown interest but did not

submit its resolution plan till the last date. Meanwhile, the corporate debtor has settled the matter with the operational creditor i.e. M/s Aayush Trading Company. Form FA submitted by the aforesaid operational creditor has been attached as Annexure A-4 of the application. In the 5th meeting CoC held on 09.07.2019, the agenda for filing an application under Section 12A of the I&B Code, 2016 was discussed and it was approved with 100% voting share.

4. It is further submitted that the applicant has filed an application bearing CA No.556/2019 under Section 12A of the I&B Code, 2016 which was dismissed on the ground of non-furnishing of bank guarantee. That since CA No.556/2019 was filed without the bank guarantee and the CoC has also not considered this fact in its meeting dated 09.07.2019, the meeting of CoC was again convened on 31.08.2019 wherein CoC member comprising of Union Bank of India with 92% voting share resolved for filing the instant application for withdrawing the petition filed by the operational creditor M/s Aayush Trading Company, and also approve for submission of bank guarantee of Rs.3.00 Lakh by M/s Aayush Trading Company to the Resolution Professional (Annexure-11). M/s Aayush Trading Company has again submitted its application for withdrawal of CIRP against the corporate debtor in Form FA to the applicant-Resolution Professional on 31.08.2019 (Annexure-7). It is stated in the 6th CoC meeting that 92% voted in favour of filing an application with this Adjudicating Authority under Section 12A of the Code, 2016 to withdraw the application filed under Section 9 of the IBC, 2016 (Copy of minutes of 6th CoC meeting, copy of attendance sheet and copy of voting sheet are attached to the application as Annexure-8, 9 and 10 respectively. Hence, the present application has been filed by the RP on 16.09.2019.

5. The relevant provision for considering this application i.e. Section 12A of the IBC, 2016 read with Regulation 30A of the IBBI (Insolvency and Bankruptcy Resolution Process for Corporate Persons) Regulations, 2016 is extracted here as under:-

“Section 12A: Withdrawal of application admitted under Section 7, 9 or 10.

¹[12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.]

30A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.”

6. We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

7. In the circumstances and in view of the compliances made in accordance with Code and Regulations made thereunder the instant CA No.846/2019 is allowed and accordingly the **CP (IB) No.191/Chd/Hry/2018** along with pending applications, if any, is to be withdrawn and the Corporate Debtor is released from all the rigors of the IBC and Regulations made thereunder. The Resolution Professional is discharged. The Board of Directors are restored to its original position.

8. Accordingly, CA No.846/2019 is allowed and disposed of.

CA No.736/2019, CA No.737/2019 & CA No.738/2019

These applications filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016. In the present applications, M/s Chet Ram Banwari Lal is the applicant in CA No.736/2019; M/s Paul Trading Co. is the applicant in CA No.737/2019; and M/s Vijay Trading Co. is the applicant in CA No.738/2019 against Ms. Reshma Mittal, Resolution Professional of M/s Monika Freshway Foods Private Limited; Union Bank of India; and M/s Aayush Trading Company who are respondents in all applications.

2. In the present applications, the applicants prayed to declare Agenda No.6 in 5th CoC meeting and Agenda No.2 in 6th CoC meeting as null and void, whereby Resolution Professional was directed to move application under Section 12A of IB Code and to implead the applicants as the party in Section 12A application filed by the Respondent No.1. It is further prayed to not allow the withdrawal of CIRP Process in present matter till application bearing No.CA559/2019 filed by Resolution Professional for avoidance of certain transactions is decided by this Adjudicating Authority.

3. Since, CA No.846/2019 is allowed in terms of Section 12A of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 which rendered the above mentioned CAs infructuous and hence dismissed accordingly. The applicants are at liberty to approach this Tribunal with their claim independently if required or to seek recourse elsewhere, if advised so.

IA No.30/2020

This is an application filed under Section 60(5) of the IBC, 2016 read with Rule 11 of the NCLT Rules, 2016. In the present application, M/s Chet Ram Banwari Lal is the applicant, and Ms. Reshma Mittal, Resolution Professional of M/s Monika Freshway Foods Private Limited is the respondent.

2. In the present application, the applicant prays to direct the Resolution Professional to consider the claim amount submitted by the applicant in full; and to pass any appropriate relief which this Hon'ble Adjudicating Authority deem fit and proper.

3. Keeping in view the order in CA No.846/2019 which is allowed in terms of Section 12A of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 which renders the present application i.e. IA No.30/2020 infructuous and hence dismissed accordingly. The applicant is at liberty to approach this Tribunal with his claim independently if required or to seek recourse elsewhere, if advised so.

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

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

July 07, 2022

AV