

In the National Company Law Tribunal
Mumbai Bench.

MA 3173/2019 in C.P. No.3543/I&BC/NCLT/MB/MAH/2018

Under Section 12A of Insolvency & Bankruptcy Code, 2016

In the matter of

Global Advertisers : Petitioner/ Operational Creditor

V/s

Paramvir Real Estates LLP : Respondent/ Corporate Debtor

AND

Mr. Hirachand Nemichand Bafna : Applicant/ Resolution Professional.

Order delivered on: 05.12.2019

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical).

For the Petitioner(s) : 1. Hirachand Nemichand Bafna, Resolution
Professional

Per M.K. Shrawat, Member (Judicial).

ORDER

1. The present **M.A.3173/2019** was filed by the Resolution Professional Mr. Hirachand Nemichand Bafna and the prayers are as under:-

"A. That Corporate Insolvency Resolution process initiated as [per order dated 28th August 2019 pass by this Hon'ble Tribunal in aforesaid matter may be withdraw against corporate debtor M/S Paramvir Real Estate LLP,

B. That Mr. Hirachand Nemichand Bafna (IRP) may be absolve from the duties of Interim Resolution Professional in this matter and both the parties may be directed to pay the fees of Rs. 1,00,000/- -- (Rs.one lakh only) towards his work "

2. A Petition u/s. 9 was submitted by the Petitioner M/s. Global Advertisers in the capacity of Operational Creditor against M/s. Paramvir Real Estates LLP (Corporate

Debtor) which was "Admitted" on 28.08.2019 with direction to commence Corporate Insolvency Resolution Process by appointing Mr. Hirachand Nemichand Bafna as Interim Resolution Professional, pertaining to an Operational Debt of Rs.28,46,709/- as on 01.08.2018.

3. Meanwhile on 03.09.2019, a praecipe was moved by both the parties by mentioning in the Court made a submission that the matter was on Board on 27.08.2019 and "Reserved for passing a 'withdrawal' " Order. Therefore, a cost of Rs.1 Lakh was imposed on the parties, to be shared equally for misrepresenting the facts before the Court.
4. It is informed that on 16.09.2019 the Learned IRP applied for Certified copy of the Order dated 28.08.2019 as he was not served with a copy. It is stated that the said Order was given to him on 17.09.2019 along with a Show Cause Notice dated 03.09.2019.
5. It is further informed by the IRP that he visited the office of the Corporate Debtor on 18.09.2019 to initiate Corporate Insolvency Resolution Process when Mr. Kumar Mordani, Partner of the Corporate Debtor handed over a Letter dated 18.09.2019 signed by him stating as under:-

"a) We have made payment of the claim to the Applicant on 29th August 2019 whereby, we have made payment of Rs. 31,70,843/- (Rupees thirty one lakhs seventy thousand eight hundred and forty only) towards the principal amount plus 21% interest and also made the payment towards the TDS amount of Rs.61841/-- . (Rupees Sixtyone thousand eight hundred and forty one only). Thus full and final payment of Rs. 32,32,684/-- (Rupees thirty two lakhs thirty two thousand six hundred and eighty four only) was made as per the claim sheet of the Applicant.

b) We have made transfer of payment on Borivali 9west) branch of HDFC having Account no. 01457630000051 (as per the details provided by Advocate Kedia sir), The payment towards the TDS amount is made to the income taz department . we are hereby enclosing the details of the payment made.

c) Pursuant to the settlement, on 3rd September 2019 both parties jointly mentioned the matter before the Hon, Tribunal. After hearing both the parties the Hon'ble tribunal im[osed cost of Rs. 50000/- each and orally directed that on payment of cost , the captioned matter may stand withdrawn. We are ready and willing to pay the cost imposed on us by this Hon'ble Tribunal."

6. The Resolution Professional further stated that copy of Form FA dated 18.09.2019 duly signed by the sole Proprietor Mr. Sanjiv Gupta of the

Operational Creditor for withdrawal of Corporate Insolvency Resolution Process was also handed over to him.

7. The Applicant further submitted that the captioned Application deserves to be admitted as the subject matter of the case is such that the payment has been done by the Corporate Debtor to Operational Creditor which was accepted by him and filed a praecipe through Advocate stating all details of the payments and prayed for 'withdrawal' of the Insolvency proceedings initiated before this Hon'ble Court. He further submitted that the purpose of Corporate Insolvency Resolution Process to assure the payments of operational creditor has already accomplished. The cost imposed on both the parties were also stated to have paid by Demand Drafts. The Applicant submitted that the Corporate Insolvency Resolution process in aforesaid matter be withdrawn against the Corporate Debtor M/s. Paramvir Real Estate LLP and Mr. Hirachand Nemichand Bafna (IRP) be absolved from the duets of Interim Resolution Professional in this matter and both the parties may be directed to pay the fees of Rs.1,00,000/- (Rupees 1 Lakh only) towards his work.
8. In the circumstances mentioned supra, the Applicant/ Resolution Professional submitted the Application u/s.12A of The Code seeking to withdraw the impugned Company Petition No.3543/I&BC/NCLT/MB/MAH/2018.
9. Considering the fact that immediately on receipt of the "Admission" Order dated 28.08.2019 on 17.09.2019, the Learned IRP visited the office of the Corporate Debtor on the next day (18.09.2019). However, before commencing any action towards Corporate Insolvency Resolution Process by the Learned Resolution Professional, the Partner of the Corporate Debtor Mr. Kumar Mordani handed over a Letter dated 18.09.2019 signed by him to the IRP intimating that the outstanding payment has been made to the Operational Creditor and the requisite TDS amount has also been paid to the Income Tax Department. The requisite Form "FA" dated 18.09.2019 for withdrawal of the Corporate Insolvency Resolution Process has also been handed over to the Learned IRP, duly signed by the sole Proprietor Mr. Sanjiv Gupta of the Operational Creditor for withdrawal of Corporate Insolvency Resolution Process. In view of the fact

that the Corporate Debtor has paid the outstanding Operational Debt to the Operational Creditor and the TDS amount to the Income Tax authorities as stated *supra*, we are of the opinion that the impugned C.P. No. 3543/I&BC/NCLT/MB/ MAH/2018 be allowed to be withdrawn subject to the payment of Fees to the Learned IRP Mr. Hirachand Nemichand Bafna of Rs.1 Lakh each by the Operational Creditor and the Corporate Debtor separately. Thereafter, the Learned IRP is absolved from the case.

10. In case of default of payment of the IRP Fees as discussed *supra*, liberty is granted to the IRP to mention the matter before this Bench.

11. With these directions CP 3543/I&BC/NCLT/MB/MAH/2018 is disposed as **"withdrawn.**

Sd/-
CHANDRA BHAN SINGH
Member (Technical)
Date : 05.12.2019
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Sd/-
M.K. SHRAWAT
Member (Judicial)