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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 04.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.836/2019 in CP(IB) No.563/7/HDB/2018
NAME OF THE COMPANY	Baypark Hotels & Resorts (P) Ltd
NAME OF THE PETITIONER(S)	Axis Bank Ltd
NAME OF THE RESPONDENT(S)	Baypark Hotels & Resorts (P) Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
VVSN Raju .	Advocates	9866446467	
K. Shreya		8897172671	

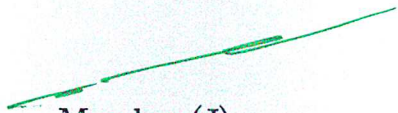
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in IA 836/2019 vide separate orders.


Member (T)


Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 836/2019
In
CP (IB) No. 563/7/HDB/2018
U/s. 12A of IBC Code, 2016
R/w Rule 30A of IBBI Regulations, 2016.

**In the matter of Axis Bank Ltd Vs Bay Park Hotels and
Resorts Pvt Ltd:**

Axis Bank Limited,
Registered Office:
"Trishul", 3rd Floor,
Opp. Samartheswar Temple,
Near Law Garden, Ellis bridge,
Ahmedabad- 380 006.

**...Petitioner/
Financial Creditor.**

VERSUS

M/s. Baypark Hotel & Resorts Private Limited,
Registered Office:
Rushikonda, Gitam Post,
Vishakapatnam- 530 045.

**...Corporate Debtor/
Respondent.**

Date of Order: 04.10.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Parties / Counsels Present:

For the RP:

Mr. V. V. S. N. Raju, Mr. A. B. N. Raju,
Mr. Praveen Kumar Jain, Mr. Pavan





Kumar Rao, and Ms. A. Sravanthi,
Counsels for RP.

RP: Mr. Udayaj Patwardhan.

Heard on: 01.10.2019.

PER: Hon'ble Shri Ratakonda Murali, Member (Judicial)

ORDER

1. This application is filed by the Resolution Professional on behalf of Axis Bank Ltd, Financial Creditor U/s 12A of IBC Code 2016, R/w Rule 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, seeking permission to withdraw the Application which is admitted U/s 7 of the IBC Code, 2016 vide order dated 28.06.2019 passed by this Hon'ble Tribunal in CP (IB) No.563/7/HDB/2018; and to condone the delay of 09 days in filing the present Application.
2. Averments in the application in brief:
 - a. It is submitted that the Petition was admitted by the Tribunal vide order dated 28.06.2019 and appointed Mr. Udayraj Patwardhan, as IRP, who was later confirmed as RP by the CoC's in its First CoC Meeting dated 31.07.2019.
 - b. It is stated that the Financial Creditor has submitted Form FA on 11.09.2019 for Withdrawal of CIRP Process under Regulation 30A of the Insolvency Resolution Process for Corporate Persons Regulations, 2016 and accordingly, requested the CoC's to approve the Application for withdrawal.
 - c. It is averred that M/s. Asian Developers PTE Ltd, one of the promoter of the corporate debtor had made a

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proposal for settlement of dues to Axis Bank Ltd, Financial Creditor , dated 28.08.2019 which was accepted by the Financial Creditor vide its sanction letter dated 30.08.2019 bearing no. AXIS/SA/SA/2019-20/296.

- d. It is further averred that in-lieu of bank guarantee required under regulation 30A of the CIRP Regulations, Financial Creditor in his application under Form FA has undertaken to pay Insolvency Resolution Process Cost of Rs. 17,12,954/- (Rupees Seventeen Lakh Twelve Thousand Nine Hundred and Fifty Four Only) incurred by the RP till 31.08.2019, and the M/s. Asian Developers PTE Ltd, has undertaken to reimburse/born/fund or make necessary arrangement for funding of shortfall of all the costs classified as Insolvency Resolution Process Cost (as on 31.08.2019 unpaid to Rs. 1,44,09,004/-) which has been incurred/to be incurred by the RP towards maintaining the operations of the Corporate Debtor as going concern.
- e. It is stated that in the 3rd COC meeting dated 12.09.2019, financial creditor has considered the OTS proposal for withdrawal under Section 12 A of the Code and was approved by the COC with 100% voting in favour of Resolution. Copy of minutes of the 3rd COC meeting is annexed here with as Annexure VI &VII.
- f. It is stated that in order to receive the documents and to file necessary documentation RP requested the Tribunal to condone the delay of 09 days.
- g. It is averred that in the meeting dated 12.09.2019 COC members unanimously (100%) approved for withdrawal of application submitted by Financial Creditor. The copy of minutes of the meeting are shown as Annexure VI&VII.





3. I have heard the counsel appearing for Resolution Professional/applicant herein. The applicant is Resolution Professional. The Application is filed under Section 12 A of the Code, which is a newly added provision in the code. Sec 12A of the Code read as follows:

“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 percent voting share of the committee of creditors, in such manner as may be prescribed”.

4. It is clear from section 12 A of the Code that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10 on an application filed by the applicant with the approval of 90% voting share of the Committee of Creditors. Thus it is clear if 90% voting share of Committee of Creditors approves application for withdrawal then Adjudicating Authority to allow for withdrawing the application filed under section 7 or section 9 or section 10 of the Code.

5. The regulation 30A of I&B(Corporate Insolvency Resolution Process), 2016, deals with Withdrawal of application. It reads as follows:

a. An application for withdrawal under section 12 A shall be submitted to the Interim resolution professional or the Resolution Professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of Interest under regulation 36 A.

b. The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses© and (d) of regulation 31 till the date of application.

c. The committee shall consider the application made under sub-regulation (1) within seven days of its

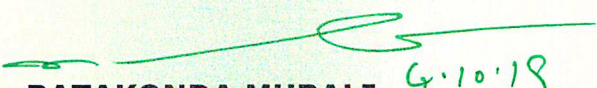




applicant. The COC with 100% voting share have approved the application for withdrawal. Therefore permission can be granted under Section 12 A of the I&B Code to the Applicant for withdrawal of Company petition.

10. Present application is filed by RP before this Tribunal for approval of the withdrawal application. It is clear that Regulation 30A of IBC(Corporate Insolvency Resolution Process) regulation 2016, are complied.
11. By virtue of provisions of sec 12 A, Tribunal is empowered to approve the application for withdrawal.
12. This Tribunal by exercising powers under section 12 A of the Code R/W regulations 30A of IBC(Corporate Insolvency Resolution Process) Regulations 2016, approved the application for withdrawal.
13. Consequently, application filed by RP is to be allowed and moratorium order passed under section 14 shall cease to exist. In the result IA No. 836/2019, is allowed and application for withdrawal filed by financial creditor which has been approved by the Committee of Creditors with 100 % voting share stands approved.
14. Consequently application filed by Financial Creditor in CP(IB) No. 563/7/HDB/2018, stands withdrawn, and CIRP stands closed.


4.10.19
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)


4.10.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

Pavani