



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

**IA No. 29/2020, 65/2020,
775/2020 & 191/2021**

**In
CP (IB) No. 278/Chd/Hry/2018
(Admitted Matter)**

**Under Sections 33 R/w R31 &
34, 19(2), & 60(5), of the
Insolvency and Bankruptcy
Code, 2016 read with Rule 11
of NCLT Rules, 2016**

In the matter of:-

M/s Weizman Forex Ltd. (Now Weizmann Ltd.)

....Operational Creditor

Vs.

M/s Techcon Labs Private Limited

...Corporate Debtor

And in the matter of IA No. 775/2020:-

Interim Resolution Professional (IRP),
for M/s Techcon Labs Private Limited
Correspondence Address: 904, GF,
Sector 7-C, Faridabad-121006

....Application/IRP

Vs.

M/s Weizman Forex Ltd. (Now Weizmann Ltd.)

Empire House, 214, Dr. DN Road,
Fort, Mumbai-400001

Syndicate Bank (Financial Creditor)
Branch at DLF-IV, Super Mart-1,
Gurgaon-122001

IA No. 29/2020, 65/2020,
775/2020 & 191/2021

In
CP (IB) No. 278/Chd/Hry/2018 (Admitted Matter)



...Respondent

And in the matter of IA No. 29/2020:-

Sunil Kumar Agrawal

Interim Resolution Professional (IRP),
M/s Techcon Labs Private Limited
Correspondence Address: 904, GF,
Sector 7-C, Faridabad-121006

....Application/IRP

Vs.

Canara Bank (Sole Financial Creditor)
(Formerly known as Syndicate Bank)
A-209, Supermart-I, DLF-IV, Gurgaon-122009

....Respondent

And in the matter of IA No. 191/2021:-

Sunil Kumar Agrawal

Interim Resolution Professional (IRP),
for M/s Techcon Labs Private Limited
904, GF, Sector 7-C, Faridabad-121006

....Applicant/IRP

Vs.

1. Syndicate Bank (Financial Creditor)
A-209, Supermart-I, DLF-IV, Gurgaon-122009
2. M/s Weizmann Forex Ltd.
(ow M/s Weizmann Ltd.)
Empire House 214, Dr. DN Road,
Fort, Mumbai-400001
3. Mr. Puneet Yadav, (Suspended Director)
41/10, DLF City, Phase-1,
Sikanderpur Ghosi (68), DLF QE, Farukkhn Agar,



Gurgaon-122002

4. Mr. Sudeep Kumar Sharma (Suspended Director)
P-1/55, Ground Floor,
Jacaranda Marg, DLF City Phase-2,
Gurgaon-122002

....Respondents

And in the matter of IA No. 65/2020:-

Interim Resolution Professional (IRP),
for M/s Techcon Labs Private Limited
904, GF, Sector 7-C, Faridabad-121006

....Application/IRP

Vs.

1. Mr. Sudeep Sharma
(Suspended Director of the Board of Directors)
R/o P-1/55, Ground Floor,
Jacaranda Marg, DLF City Phase-2,
Gurgaon-122002
2. Mr. Puneet Yadav,
(Suspended Director of the Board of Directors)
R/o 41/10, DLF City, Phase-1,
Sikanderpur Ghosi (68), DLF QE, Farukkhn Agar,
Gurgaon-122002

....Respondents

Order delivered on: 17.04.2023

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

Present:-

For the Applicant/IRP

in IA Nos.29/2020, 65/2020

775/2020 & 191/2021

: Mr. Mast Ram Chechi, PCS



For the Canara Bank
in IA No.29/2020, IA No.65/2020,
775/2020 & 191/2021 : Mr. Rakesh Gupta, Advocate
For Practising Company Secretary
In IA No. 29/2020, IA Nos. 65/2020,
775/2020 & 191/2021 : Mr. Subhash Saini, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No. 775/2020 & IA No. 191/2021

Both these applications, i.e. IA No. 775/2020 and IA No.191/2021 are taken up together for discussion being interrelated and interconnected.

1. The present application is being filed by Interim Resolution Professional (IRP) (herein referred to as Interim Resolution Professional) against M/s Weizmann Forex Limited (herein referred to as Operational Creditor) under Rule 33 read with Rule 31 & 34 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Section 60(5) & other applicable provisions of IBC,2016.

2. It is prayed by the applicant to direct Respondent No. 1 to pay Interim Resolution Professional CIRP cost amounting to Rs. 2,95,926/- for a period from 27.09.2019 to 26.10.2019 including IRP fees, and to direct respondent No. 2 to ratify the CIRP cost for a period from 27.09.2019 to 26.10.2019 including IRP fees. It is further prayed to issue directions to the Committee of Creditors to fix and pay the fees of IRP/RP as the CIRP cost.

3. The brief facts of the case, as stated in the application, are that The corporate insolvency resolution process was initiated by order dated 27.09.2019 and in



compliance with the provisions of Section 13,15 and other applicable provisions of the code, the applicant has made a public announcement on 29.09.2019 in Financial Express (English) And Jansatta (Hindi) and the last date for the submission of the claims was fixed as 11.10.2019. The sole financial creditor submitted its claim on 11.10.2019 in the prescribed Form C. The committee of creditors was constituted on 19.10.2019 by the applicant, and the applicant conducted its first meeting on 24.10.2019. The minutes of the first meeting of the CoC are attached as Annexure A-4 of the application. In the first meeting of the CoC, the details of expenditures were submitted by the applicant for ratification, but no decision has been taken by CoC, and the same was deferred for want of internal approval. The proposal for the appointment of IRP to RP has also been discussed in the first meeting of the CoC, but the same has not been decided. It is further submitted by the applicant that till date, no CIRP cost has been provided by Respondent No. 2, and the applicant is managing the CIRP cost on its own. Respondent No. 1-Operational Creditor, has also not deposited any amount at the time of admission of the petition. Moreover, due to the non-ratification of CIRP cost by the CoC, the applicant is facing difficulty managing the Corporate Debtor.

4. Respondent No. 2 has filed a reply by diary No. 02206/2 dated 21.06.2022 stating that before the constitution of CoC, an email has been sent by the petitioner-operational Creditor to the applicant on 5th October 2019 in which it has been stated that they were withdrawing their petition/claim in terms of Section 12A read with Regulation 30A, (1)(a), (3) and (6) of IBC and the same has been attached as Annexure R-2/1 of the reply. It is averred that the applicant has failed to perform his duty in terms of Regulation 30A(1) of IBC. A plain reading of Regulation 30A(2) and (3) makes it clear that the operational creditor (M/s. Weizmann Forex Limited),

IA No. 29/2020, 65/2020,
775/2020 & 191/2021

In
CP (IB) No. 278/Chd/Hry/2018 (Admitted Matter)



having intimated their intention to withdraw the petition to the Interim Resolution Professional, the applicant was duty bound to move an application within 3 days, even if Form FA has not been furnished by the operational creditor. Any further action taken by IRP after the e-mail was without any authority, and the applicant cannot claim expenses for the same. The tentative costs assessed by the IRP as per his own communication dated 06.09.2019 was Rs. 3,20,442/- in which Rs. 2.30 lakhs were the fees which has not been assessed and approved by the CoC as it was not constituted on that date.

5. It is further submitted by respondent No. 2 that there was no Bank Account and no tangible asset of the corporate debtor. Hence, there is no possibility for any resolution in any manner, and the claim of respondent No. 2 was merely Rs. 23 lakhs which were withdrawn lately. It is professional misconduct on the part of the applicant to keep on incurring huge money as there is absolutely no asset, and the present application deserves to be dismissed on this ground only. There was no occasion to constitute CoC and to call for the meeting in view of the email dated 05.10.2019. However, the applicant still went on to proceed with the CIRP process and invited expressions of interest. The applicant has filed a rejoinder vide diary No. 02206/3 dated 21.07.2022 wherein it has been stated that as per Section 12A & Clause 1(a) & (2) of Regulation 30A, the applicant shall make an application in Form A along with the Schedule accompanied by the bank guarantee. However, the email dated 05.10.2019 states that **“due to certain constraints at our end, we are not interested in pursuing the petition/claim filed before the Hon’ble NCLT, Chandigarh. We, therefore, request you to withdraw our petition/claim in terms of Section 12A read with Regulations 30A(1)(a), (3), (6) of IBC, 2016 before the constitution of the Committee of Creditors.”**

IA No. 29/2020, 65/2020,
775/2020 & 191/2021

In

CP (IB) No. 278/Chd/Hry/2018 (Admitted Matter)



6. It is averred that the operational creditor has deliberately not complied with Regulations 30A(2) by avoiding the bank guarantee in the prescribed format. The applicant has also sent an email dated 06.10.2019 for complying with the same. The Bank is fully aware of the fact with regard to the withdrawal of CIRP proceedings, and the same was recorded in the minutes of the 1st CoC meeting held on 24.10.2019. Respondent No. 2, the sole member of the CoC, has a 100% voting share, has not participated in the CoC meetings and due to non-action on their part, the CIRP has suffered.

7. We have heard learned counsel for the applicant and respondent No. 2 and have perused the record carefully.

8. The issue under discussion is whether the Resolution Professional has acted on the information regarding the withdrawal of the application received from the operational creditor immediately, even though the Form FA was not forwarded by the operational creditor. In this connection, the relevant parts of the provisions of Regulation 30A of CIRP Regulations 2016 is extracted below for the sake of clarity:

Regulation 30A: Withdrawal of application.

[30A. (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) xxx

(2) The application under sub-regulation (1) shall be made in Form FA of the ³[Schedule-I] 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).

9. The aforementioned regulations clearly state that the withdrawal application is to be filed through the Interim Resolution Professional, and the same 'shall be made' in Form FA of this Schedule accompanied by a bank guarantee towards estimated expenses. The facts of the present case narrated above clearly indicate that the operational creditor has not complied with Regulation 30A (2), and the Form FA duly accompanied by a bank guarantee as stipulated was not handed over even to the IRP.

10. In view of the same, this stipulation in Regulation 30A(3) that the IRP was submitted by the application within three days of its receipt could not be complied with.

11. We are of the view that the expenses incurred by the IRP for the period from 27.09.2019 to 26.10.2019, i.e., for the period of one month from the initiation of the Insolvency Regulation Process on 27.09.2019, need to be considered by the CoC. The Resolution Professional is directed to convene a meeting of the members of the CoC for ratification of the said expenses and make necessary payments within a period of three weeks from this order.

12. In the result, the application, i.e. IA No. 775/2020 and IA No. 191/2021, are allowed with aforesaid directions and disposed of accordingly.

IA No. 29/2020

13. The present application is being filed by Sunil Kumar Agrawal, Interim Resolution Professional (IRP), (herein referred to as Interim Resolution Professional) against Syndicate Bank (herein referred to as Respondent) under Section 22 read



with Rule 17 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and Section 60(5) & other applicable provisions of IBC,2016.

14. It is prayed by the applicant to direct the respondent to either resolve to appoint Interim Resolution Professional as Resolution Professional or to replace the IRP by another Resolution Professional. It is further prayed to direct the respondent to attend and participate in all the meetings of CoC held from time to time and to take the decisions as per provisions of the Code.

15. The brief facts of the case, as stated in the application, are that after the verification of the claims, the applicant has made the list of creditors in compliance with Regulation 13 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The CoC was constituted with one financial Creditor holding 100% voting rights who attended the first meeting of the CoC held on 24.10.2019. In the first meeting of the CoC, the issues relating to the appointment of a Resolution Professional, the appointment of the Registered Valuers, Transaction audit, forensic audit etc., were discussed, and no decision was taken by the financial Creditor. It is informed by the authorised representative of the financial character that the respondent will not attend the second CoC meeting as they have not received any authority or permission to tend the meeting, due to which the quarter of the second meeting of the CoC could not be met and no decision was taken. On 10.12.2019, the applicant visited the regional office of the respondent, but the authorised representative was not available in the office.

16. As per Section 22(2) of the IBC, 2016, the Committee of Creditors, in its first meeting, either resolve to appoint the Interim Resolution Professional as the Resolution Professional or to replace the same with another RP. The respondent has not only failed to appoint the resolution professional in the first meeting but has also



failed to tent and find the resolution professional in the second and third meetings of the CoC. Due to non-approval by the CoC for the appointment of RP, CIRP work is suffering, and it is prayed to direct Members of the CoC to attend meetings and take appropriate decisions as per the provisions of the code.

17. We have heard learned counsel for the applicant and respondent and have perused the record carefully.

18. It is apparent that no interest has been shown by the member of the CoC in taking the Resolution Process to its logical conclusion under the relevant provisions of the IBC. Even if the financial creditor has decided to withdraw the petition/claim in terms of Section 12A read with Regulation 30A of IBC 2016, procedures laid down for the same under IBC need to be followed. The proceedings once initiated and when IRP has already been appointed, cannot be abandoned without making compliance with due procedure. Thus, the financial creditor, i.e the sole member of the CoC, is directed to comply with the provisions of Section 12A read with Regulation 30A of CIRP Regulations if it decides to withdraw the application. In the event of a decision to the contrary, the relevant provisions for the same are to be strictly followed. We have already directed a meeting of the members of the CoC within 15 days of the order made in IA No. 775/2020. This meeting is also to decide the future course of action regarding the withdrawal of the application or, alternatively, the continuation of the resolution process and the necessary steps to implement the same as per the provisions of the IBC.

19. In the result, IA No. 29/2020 is allowed with aforesaid directions and is disposed of accordingly.



IA No. 65/2020

20. The present application has been filed by the Interim Resolution Professional of M/s TechCon Labs Private Limited against Mr Sudeep Sharma and Mr Puneet Yadav- Suspended Board of Directors under Section 19(2) of the Insolvency and Bankruptcy Code, 2016.

21. It is prayed by the applicant to issue necessary directions to the respondents to cooperate with the Interim Resolution Professional/ Resolution Professional in handing over the financial records of the corporate Debtor w.e.f. 0509.2016 and to hand over the possession of the registered office of the corporate debtor and extend necessary cooperation and required information during the CIRP process. It is further prayed to issue directions not to leave the country without the permission of this tribunal.

22. The brief facts of the case, as stated in the application, are that after the appointment of the applicant as Interim Resolution Professional, the applicant requested all the directors of the suspended board of directors to hand over the financial records of the corporate debtor w.e.f. 05.09.2016, as the same was required during the CIRP process of the corporate debtor and to determine the transactions under Sections 43, 45, 49, 50 and 66 of the IBC, 2016. A copy of the E-mail dated 30.09.2019 written and sent to suspended directors is attached as Annexure A-3 of the application. The applicant/IRP reminded several times the respondents, i.e. the suspended board of directors, to provide the necessary documents/detail/records Information. The respondents failed to provide the required information and used to delay the same on one pretext or the other. It is further averred that On several occasions, the respondents assured to hand over the required information to the applicant; however, till now, the complete information, as requested by Interim



Resolution Professional, has not been handed over to the applicant. The respondents also failed to hand over the possession of the registered office of the corporate debtor, where the financial records of the corporate debtor reportedly have been placed.

23. We have heard the learned counsel for the parties and perused the available record carefully.

24. We have already directed for convening a meeting of the CoC in our order in IA No. 775/2020, IA No.191/2021 & IA No. 29/2020. The CoC is to decide first whether to withdraw the application under Section 12A of the IBC or not. If it decides to continue with the resolution process, the RP is directed to email to the respondent-the suspended Board of Directors, the details of the information required from them. In such an event, the respondent-Suspended Board of Directors are directed to cooperate with the RP and furnish the information requisitioned within 15 days of the receipt of the email from the RP.

25. In the result, IA No. 65/2020 is allowed and disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

April 17, 2023
SA

Sd/-

(Harnam Singh Thakur)
Member (Judicial)