IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

I.A. No. 665 of 2022
IN
Company Petition (IB) No. 158/ND/2020

In the matter of:
The Insolvency and Bankruptcy Code, 2016

AND
In the matter of:
Application under Section 12A of the Insolvency and Bankruptcy Code, 2016, read with regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

AND
In the matter of :

Ashmira Housing Private Limited .....**Operational Creditor**

Versus

Vibrus Homes Private Limited ....**Corporate Debtor**

AND
In the matter of :

Mr. Vivek Kumar
(Interim Resolution Professional of Vibrus Homes Pvt. Ltd.)
... **APPLICANT**

ORDER DELIVERED ON: 23.05.2022

CORAM :
Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)
Sh. Hemant Kumar Sarangi, Hon'ble Member (Technical)

PRESENT: -

For the Applicant: Adv. Shantanu Agarwal, Adv. Chandreyee Maitra and Adv. Sulekha Agarwal for IRP, Vivek Kumar IRP

For the Respondent: Adv. Tarranjit Singh Sawhney, Adv. Udit Gupta

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

By filing this application, the applicant has prayed for :-

a) Allow the present application under Section 12A of the Code read with regulation 30A and withdraw the Corporate Debtor from the Corporate Insolvency Resolution Process, and
b) Pass any other or further order(s) as may be deemed fit and proper in the interest of justice.

2. We have heard the Learned Counsel for the Applicant and perused the averments made in the application. The learned Counsel appearing for the applicant submitted that though the IRP has received the claim of EHFL on 16th January, 2022. He further submitted that before constitution of the CoC, the IRP has received the form FA from the applicant and accordingly, the present application is filed for withdrawal of the Company Petition 158/ND/2020 in terms of the settlement.

3. Before considering the prayer, we would like to refer to Section 12A of the IBC, 2016 and Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person), Regulation 2016 and the same are reproduced below: -

Section 12A of the IBC, 2016

3 [12A. Withdrawal of application admitted under section 7, 9 or 10. –

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 specified.]

Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person), Regulation 2016

8[30 A. 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 subregulation (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 subregulation (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.]

4. On conjoint reading of these two provisions show that though under Section 12A, the withdrawal is permitted subject to the approval of the CoC by 90% voting share but as per the Regulation 30A **Insolvency Resolution Process for Corporate Person), Regulation 2016,** before the Constitution of CoC, the applicant through the Interim Resolution Professional may file an application under Section 12A and accordingly, the present application is filed by the IRP, on the basis of Form-FA received from the applicant, on whose application the CIRP has been initiated against the Corporate Debtor.

5. We further noticed that it is mentioned in the Form-FA that the IRP cost has already been paid and in the course of hearing, the Learned Counsel

appearing for the IRP has also admitted that the cost and fees have been received by him. So, considering this, we permit the applicant to withdraw the application. Accordingly, **IB-158/ND/2020** is dismissed as withdrawn with this the **IA-665/2022** is also stands disposed off.

6. However, the Financial Creditor who had submitted the claim before the IRP is at liberty to file a fresh application in accordance with the provision of law.

-Sd-

Hemant Kumar Sarangi

(Member Technical)

-Sd-

23.05.2022

Abni Ranjan Kumar Sinha

(Member Judicial)