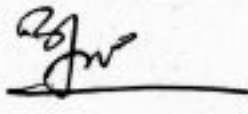


Allahabad Bench

CA No. 255/2019 in
CP No.(IB)379/ALD/2018ATTENDANCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON 30.08.2019

NAME OF THE COMPANY: M/s IFB Industries Ltd V/s M/s Attero Recycling Pvt Ltd

SECTION OF I & B CODE: 9, 12A IBC

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
1.	Babita Jain	IRP	RP	
2.				

CA NO.255/2019 IN CP No.(IB)379/ALD/2018

Ms. Babita Jain, IRP is present.

The present CA No.255/2019 has been filed by IRP U/s 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 for withdrawal of petition filed U/s 9 of the IBC on the basis of Form FA received from the Operational Creditor.

Heard IRP Ms. Babita Jain and perused the averment made in the application as well as the annexures annexed in the application.

On perusal of the same, I find in terms of order dated 23.08.2019, the IRP made a public announcement of the CIRP in Form A.

Thereafter, on 28.08.2019, IRP received Form FA by one Mr. Karthik Mulchanid, Senior Finance Manager, who was authorized to submit the Form FA for withdrawal of CP No.(IB)379/ALD/2018.

I further find that as per the averment made in the application, CoC has not been constituted and so this application has been filed U/s 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.

Relevant provision of Section 12A of the IBC and Regulation 30A is quoted below :-

Withdrawal of application admitted under section 7, 9 or 10.

"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 specified."

The relevant provision of Regulation 30A are reproduced hereunder:-

"30A. Withdrawal of application.

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

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(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).

Mere plain reading of provision contained U/s 12A shows that withdrawal application U/s 12A can be permitted only when it is approved by 90% voting share of the CoC but here in this case CoC is not constituted and so question of approval of 90% voting share of the CoC does not arise, but under Regulation 30A(1)(a) an application can be filed by the applicant through IRP, if the IRP made it within three days from the receipt of application as required under Regulation 30A(3). I further find that IRP received Form FA on 28.09.2019 and filed application on 29.09.2019 i.e. within three days as required under Regulation 30A(3).

Regulation 30A(2) shows that the application under sub Regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee, but here in this case, the bank guarantee has not been enclosed, rather in para 7 of the application, it is mentioned that IRP confirmed the receipt of an amount of Rs.1,00,000/- (Rupees One Lakh only) towards estimated cost incurred for the purpose of clauses (c) and (d) of Regulation 31 CIRP Regulation, 2016 vide UTR No.ORBCH19241095822 dated 29.08.2019.

So, considering these facts, in my opinion, since the amount has been paid to the IRP towards the cost as referred in Regulation 31. Hence, there is no need to file the bank guarantee and that is the reason the bank guarantee has not been annexed along with this application as required under Regulation 30A(2).


Considering the aforesaid facts, since the present application has been filed by IRP on the basis of Form FA submitted by the Operational Creditor and the same is filed by IRP within three days as required under Regulation 30A(3).

Therefore, this Adjudicating Authority think proper to approve the withdrawal application filed by IRP on the basis of Form FA.

CA No.255/2019 is disposed off accordingly.

CP No.(IB)379/ALD/2018 is dismissed as withdrawn.

Dated: 30.08.2019


A.R.K. SINHA
MEMBER (J)