

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

CP(IB) 2781/(MB)/2018
MA 2746/2019

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAJESH SHARMA
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 14.8.2019

NAME OF THE PARTIES: A.K. Corporation
V/s
Anupam Extraction Ltd

Section 7 of the Bankruptcy and Insolvency Act, 2016

ORDER

2. **MA 2746/2019 In C.P(IB)2781(MB)/2018**

MA 2746/2019 has been filed under Section 60(5) of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 to withdraw the Company petition No.2781/2018.

The applicant contends that the petition filed under Section 7 of IBC, 2016 was admitted by order of this Bench dated 16.7.2019 and Mr CharuduttaMarathe has been appointed as the Interim Resolution Professional.

PCS for the Corporate Debtor, relying on the law laid down by the Hon'ble Supreme Court in case of Swiss Ribbons Pvt Ltd Vs. Union of India &Ors contends that the application can be filed directly in the court without approaching the RP.

Regulation 30A of CIRP Regulations provides a procedure for withdrawal of the Company Petition after admission. The said Regulation provides that the application for withdrawal under Section 12A shall be

submitted to the Interim Resolution Professional or the Resolution Professional, as the case may be in Form FA. The Regulation further provides that the application shall be accompanied by a bank guarantee towards the estimated cost incurred for purposes of clauses (c) and (d) of regulation 31 till the date of application.

It is pertinent to mention that in the case of Swiss Ribbon, Hon'ble Supreme Court has held that

*“A question arises as to **what is to happen before a committee of creditors is constituted** (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). **We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.**”*

Admittedly, this Petition was admitted by order of this Bench dated 16.7.2019, and we are not aware of the current status of CIRP proceedings. Unless we get to know about the constitution of CoC, we can't proceed in the matter. However, the PCS for the Financial Creditor submitted that CoC has already been constituted. Therefore, the application can only be filed to the RP and not directly in the court under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016.

Thus application is not maintainable hence rejected. The applicant is directed to approach IRP/RP and file a claim in prescribed Form FA.

MA 2746/2019 is hereby rejected.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V. P. SINGH
Member (Judicial)