

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-02-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

IA (IBC) 143/2022
CP(IB) No.105/9/HDB/2020
U/s 9 of IBC, 2016

IN THE MATTER OF:

Trutech Constructions Pvt Ltd **...Operational Creditor**

Vs

Vensar Constructions Company **...Corporate Debtor**

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

O R D E R

IA No.143/2022

Learned IRP Shri Saini Keshav Rao, along with the Learned Counsel appeared via video conference and submitted that this application is filed under Section 12A. Pursuant to the settlement that has been reached, the day next after this Tribunal has passed the order putting the Respondent/ corporate debtor in CIRP. Learned Counsel prayed that the petition to be allowed.

In view of settlement and CIRP ordered against the Corporate Debtor hence forth will be withdrawn.

IA No.143/2022 is allowed.

Sd/-

Sd/-

MEMBER (T)

MEMBER (J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 143 of 2022

In

CP (IB) No. 105/9/HDB/2020

*Application under Section 12-A of the IBC, 2016 r/w Regulation
30A(1)(a) of IBBI (IRPCP) Regulations, 2016*

In the matter of **Trutech Constructions Private Limited Vs Vensar
Constructions Company Limited**

By

Mr. Bolisetti Jaya Babu,
Interim Resolution Professional of
M/s. Vensar Constructions Company Limited.

...Applicant/
Interim Resolution Professional

Date of order: 15.02.2022

Coram

Dr N. Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri P. Vikram, Advocate



PER BENCH

ORDER

1. The Interim Resolution Professional. (for short IRP) appointed by this Tribunal pursuant to our order dated 07.02.2022 directing initiation of Corporate Insolvency Resolution Process (For short "CIRP") against the Corporate Debtor (Vensar Constructions Company Limited) vide CP No. 105/9/HDB/2020, has filed this application under Section 12A of Insolvency & Bankruptcy Code, 2016 ("Code"), r/w Regulation 30A(1)(a) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") Read with Rule 11 of the NCLT Rules, 2016 praying this Tribunal to set aside the order dated 07.02.2022 ordering CIRP against the Corporate Debtor, citing post CIRP settlement between the operational creditor and the corporate debtor.
2. It is stated in the application that this Tribunal admitted the Company Petition in CP No. 105/9/HDB/2020 filed by the Operational Creditor vide its order dated 07.02.2022 and ordered CIRP against the Corporate Debtor. The IRP received the said order of admission on 11.02.2022.



3. It is further stated that the Applicant has been informed by both the parties that an amicable settlement for a full and final amount of Rs.80,00,000/- including costs, expenses, interest etc., was arrived and infact issued form FA to the IRP in accordance with the CIRP regulations. Copy of the settlement agreement dated 08.02.2022 is filed herewith as **Annexure-2**.
4. It is submitted that on the first day after coming to know about the orders passed by the Hon'ble Adjudicating Authority, the corporate debtor had informed the Applicant through email stating that dispute has been settled and had filed compromise memo before the Adjudicating Authority dated 09.02.2022 and requested not to proceed further and also requested the applicant to file appropriate application under Section 12A of the I&B Code, 2016. In view of the fact that operational creditor had issued form FA, and thus Applicant did not proceed further and filed the present application to withdraw the Company petition.
5. In the above background, the point that arises for consideration of this AA is;
Whether the Resolution Professional can be permitted to withdraw the CIRP against the Corporate Debtor.
6. We heard the Ld. Counsel for IRP, perused the record and the case law.
7. At the outset, it may be stated that the following provisions under the I&B Code besides the Regulation, provide for the exit of the corporate debtor from CIRP, both at pre and post admission stages,





before or after constitution of COC, besides confer *discretionary* power on the AA ,to either allow or dismiss the prayer for such withdrawal.

8. Section 12A of the Code and 30A of CIRP Regulations which have came into force with effect from 06.06.2018 and 25.07.2019 respectively, are as follows: -

Section 12A of IBC

“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”.

Regulation 30A (1) of the CIRP Regulations

Regulation 30A (1) of the CIRP Regulations **requires that an application for withdrawal under section 12A shall be submitted to the Interim Resolution Professional (IRP) or Resolution Professional (RP)**, as the case may be, in Form FA of the Schedule to the said Regulations, before issue of expression of interest (EoI) under regulation 36A.

Thus, while Section 12A of the Code confers power on the Adjudicating Authority to allow the withdrawal of the petition admitted under Section 7 or 9 or 10 of the Code, when the application is made by the Applicant with the approval of 90% voting share of the CoC, in such manner as may be specified, Regulation 30A of CIRP Regulations provides for withdrawal of a petition *before the constitution of the Committee by the Applicant*



through the IRP as well as after constitution of the Committee by the Applicant, as per procedure stated therein. Thus, the power under the above is discretionary while considering the Application filed by IRP for withdrawal of the Company Petition.

15. Hon'ble Supreme Court of India in Civil Appeal No 324/2020 in the matter of Ess Investments Private Limited vs Lokhandwala Infrastrutuure Private Limited and Anr, in identical situation held as follows:-

Para.6: Since the disputes between the Respondent No.1 and Dalmia Group Holdings has been settled and the order dated 19.09.2019 has been set aside, it will be open to the appellant to proceed against the Respondent No.1 before the NCLT by seeking recall of the order dated -4.09.2018 and revival of its application no. CP (IB) No. 4000/MP/2018

16. In that view of the matter, the Tribunal is of the opinion that no prejudice much less serious will be caused to any intending financial/operational creditors who are entitled to move their claims before the IRP, if the withdrawal of CIRP is ordered pursuant to any settlement/compromise.
17. Therefore, in view of our discussion above and on careful consideration of the facts and circumstances of the case, this Tribunal is of the opinion that it is a fit case to exercise the inherent power under Rule 11 of NCLT Rules, 2016 by this AA, and accordingly hold that the application deserves to be allowed. As a

ABR...

J

sequel, we allow the withdrawal of CIRP against the Corporate Debtor, forthwith.

18. In the result, this application is allowed and CIRP ordered on 07.02.2022 in CP No. 105/9/HDB/2020 against the Corporate Debtor is hereby withdrawn. The Corporate Debtor is released from all the rigour of law and is allowed to function independently through its Board of Directors with immediate effect.

(Veera Brahma Rao Arekapudi)
Member (Technical)

(Dr N.V. Ramakrishna Badarinath)
Member (Judicial)

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Stamp: NCLT HYD BENCH-1
Date: 15/02/2022