

**NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, MUMBAI BENCH**

(Under Section 12A of the IBC, 2016 and Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016)

**I.A. 1449 OF 2023 &  
I.A. 1824 of 2023  
In  
C.P. (IB) 1206 OF 2020**

**I.A. 1449 OF 2023**

**Nayana Savala,**

1/101-A, Vishal Susheel CHS, Nariman  
Road, Vile Parle East, Mumbai – 400057

**Interim Resolution Professional**

*..... Applicant/IRP*

**I.A. 1824 of 2023**

**Dhiraj Shah and Hemlata Shah**

*..... Applicant*

*Vs.*

**Resolution Professional of Balan and  
Chheda Developers Private Limited**

*..... Respondent No. 1*

**Committee of Creditors of Balan and  
Chheda Developers Private Limited**

*..... Respondent No. 2*

**Neeta Navin Nagda**

*..... Respondent No. 3*

**In the matter between**

**Mrs. Neeta Navin Nagda**

13, Vasant Breeze Chambers, Opp.  
Maheshwari Udyan, Matunga (C.R.),  
Mumbai – 400019

**..... Financial Creditor/ Petitioner**

**Vs**

**Balan and Chheda Developers Private  
Limited**

A.F.F. 83/A, N. G. Acharya Marg, Chembur,  
Mumbai - 400 071

**..... Corporate Debtor/  
Respondent**

**Order Dated : 03.08.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**Appearances**

**I.A. 1449 OF 2023**

**For the Financial Creditor:** Adv. Janani Swaminathan  
Mrs. Neeta Navin Nagda

**I.A. 1824 of 2023**

**For the Petitioner:** Mr. Jayom Shah

**For the Suspended Directors:** Ms. Riya Shetty

**For the IRP:** Mr. Ranit Basu

**PER: Kuldip Kumar Kareer, Member (Judicial)**

## **ORDER**

1. By way of this order, this Bench proposes to dispose of **I.A. bearing no. 1449 of 2023** filed by the Interim Resolution Professional under section 12A of the Insolvency and Bankruptcy Code, 2016 ("**Code**") and regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**CIRP Regulation**") and **I.A. 1824 of 2023** filed by the Dhiraj Shah and Hemlata Shah one of the members of the Committee of Creditors objecting the I.A 1449 of 2023 u/s 12A of the Code.

### **Facts of I.A. 1449 of 2023**

2. The applicant in the present I.A. has prayed for the following reliefs:
  - a. That the present Interlocutory Application for withdrawal of Company Petition be allowed under section 12A of the Insolvency and Bankruptcy Code, 2016 and regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Condone the delay of 3 days in filing this Application by the Applicant before this Hon'ble Tribunal.
3. It is submitted that this Tribunal vide order dated 3rd February 2023, had admitted the Company Petition no. 1206/2020 filed by Mrs. Neeta Navin Nagda against Balan And Chheda Developers Private Limited u/s 7 of the Code for initiation of Corporate Insolvency Resolution Process ("**CIRP**") and appointed **Nayana Savala/** Applicant as the IRP.
4. Thereafter, the IRP made a public announcement in respect of commencement of CIRP of Corporate Debtor on 7th February, 2023 in Financial Express (English language) and Navakal (Marathi language) in FORM A under Section 15 of the Code and under regulation 6 of the CIRP.

5. In pursuance to the above public announcement, this Applicant received claims from financial creditors and after duly examining and verifying the claims, has admitted the same on 23rd February, 2023. After the receipt of the claims, the COC was constituted.
6. In the meanwhile, the Suspended Director of the Corporate Debtor filed an appeal before the Hon'ble National Company Law Appellate Tribunal, New Delhi, ("**NCLAT**") i.e. *Comp. App. (AT) (Ins) No. 245 of 2023*, wherein the Appellant submitted that he was ready to deposit the financial debt and would approach the concerned persons for entering into the settlement. The Hon'ble NCLAT directed the Appellant to deposit an amount of Rs. 1,08,62,693 with the Pay and Account Officer, Ministry of Corporate Affairs and upon agreement of settlement terms.
7. Pursuant to above, the Suspended Director of the Corporate Debtor vide Settlement Agreement dated 20th March, 2023, entered into a settlement with 95.49% Financial Creditors on 20th March, 2023.
8. During the second hearing on 21 March, 2023, the Appellant submitted that he had already settled the matter with the Financial Creditors of the Corporate Debtor. Therefore, the Hon'ble NCLAT allowed placing of the settlement terms and Form FA before the Committee of Creditors.
9. Pursuant to above, the Financial Creditor submitted Form FA to the Applicant/IRP under regulation 30A of the CIRP Regulation on 27 March, 2023 and recorded that the Financial Creditor has deposited an amount of Rs. 5,00,000 with the Applicant in Compliance with the order dated 3 February, 2023.
10. Thereafter, the Applicant received Form FA from the Financial Creditor on 27th March, 2023 and the first meeting of Committee of Creditors was held on 3rd April, 2022. The e-voting for the first meeting concluded on 6th April, 2023 wherein, the CoC had approved the Resolution for filing the present Application under section

12A of the Insolvency and Bankruptcy Code, 2016 and regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

**Facts of I.A. 1824 of 2020**

11. The present Application has been filed by Dhiraj Shah and Hemlata Shah one of the members of the Committee of Creditors, aggrieved by the Interim Resolution Professional's fixation of its claim at 4.91% of the total voting share in the Committee of Creditor whereas his correct voting share should be 40.21% as per the claim filed by him with the Interim Resolution Professional against the Corporate Debtor.
12. It is submitted that the Interim Resolution Professional has failed to properly verify the Applicant's claim as per Form-C submitted by the Applicant.
13. It is submitted that the suspended Director of the Corporate Debtor had himself acknowledged the debt owed to the Applicant vide allotment letter dated 06.09.2012.
14. It is further submitted that the Applicants are entitled to full claim as sought in Form-C submitted to IRP on 15.02.2023. The Corporate Debtor, taking advantage of wrong admission of the Applicant's claim which reduced his voting share, has settled the claims of the other creditors, except the applicant which has caused great prejudice to him. The applicant has requested that the IA for the withdrawal may not be allowed as his admitted claim be revised from 4.91% to 40.21%.

**Findings: -**

15. We have heard the Counsel for the parties and have gone through the record.
16. The Application bearing no. 1449 of 2023 has been filed by the Interim Resolution Professional seeking withdrawal in terms of settlement between the parties.
17. It has been observed by this Bench that the suspended Director of the Corporate Debtor preferred an appeal before the Hon'ble National Company Law Appellate Tribunal, New Delhi, ("**NCLAT**") in *Comp. App. (AT) (Ins) No. 245 of 2023*, wherein the Applicant had submitted that he was ready to deposit the financial debt and wanted to enter into the settlement. Thereafter, the Corporate Debtor entered into a settlement with the Financial Creditor vide Settlement Agreement dated 20.03.2023 and the Applicant mentioned this fact before the Hon'ble NCLAT during the second hearing on 21.03.2023 that it had settled the matter with the Financial Creditor.
18. Pursuant to the above, the first meeting of the Committee of Creditor held on 03.04.2022 had approved the filing of the present Application under Section 12A of the IBC Code. Since the matter has been settled between the Corporate Debtor and the Financial Creditor and the COC has also approved the filing of the withdrawal application, we are of the view that it should be just and fair if the IA for withdrawal is allowed.
19. The IA bearing no. 1842 of 2023 has been filed by Dhiraj and Hemlata Shah raising objection against withdrawal of the Company Petition under Section 12A of the Insolvency and Bankruptcy Code, 2016 on the contention that the applicant's claim has been fixed by the Interim Resolution Professional at 4.91% of the total voting share of the CoC though as per the claim submitted against the Corporate Debtor the applicant wants percentage should have been 40.21%. However, for the claim being raised by the applicant regarding the quantity of his claim cannot be allowed

to stand in the way of allowing the IA for withdrawal which has been approved by the COC. In our considered view, no prejudice is going to be caused to the applicant if the Company Petition is allowed to be withdrawn following the settlement Agreement dated 20.03.2023 as the applicant has a distinct and definite remedy to file a separate petition under Section 7 or 9 of the Code as the case may be, to seek redressal of his grievances with regard to his claim against the Corporate Debtor.

20. In view of the IA No. 1449 of 2023 deserved to be **allowed** and C.P. (IB) 1206 OF 2020 is dismissed as withdrawn and the Corporate Debtor shall stand relieved of all the rigours of the admission order dated 03.02.2023 while IA 1824 of 2023 is **dismissed** being devoid of any merit.

SD/-

**ANURADHA SANJAY BHATIA**  
**MEMBER (TECHNICAL)**

SD/-

**KULDIP KUMAR KAREER**  
**MEMBER (JUDICIAL)**