

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Web-based Video Conferencing Platform)

I.A. No.559/2023 &
I.A NO. 655/2023
C.P. (IB) No.01/BB/2019
U/s 12A of I&B Code, 2016
R/w Regulation 30A of the IBBI(CIRP) Regulation 2016
& Us/ 60(5) (c) of I&B Code,
R/w Rule 11 of the NCLT Rules

IN THE MATTER OF:

Jayanthi G Ravi

.....Petitioner/Financial Creditor

Versus

Chemizol Additives Private Limited

.....Respondent/Corporate Debtor

I.A No. 559 of 2023

Hari Babu Thota
Interim Resolution Professional
Having Office at #41/1, 2nd Floor, 11th Cross
8th Main, 2nd Block, Jayanagar, Bengaluru- 560011

....Applicant

Versus

NIL

....Respondent

I.A No. 655 of 2023

- 1) Shri Praful Kulkarni
39 years, S/o Anil Kulkarni
D-607, Century Indus, Pattangere,
Near Jnanakshi School, Rajarajeshwari Nagar,
Bangalore- 560098
- 2) Smt Aarti Seshadri
55 years, D/o A S Vardarajan
No 118, 1st n block,
19th main, 4th cross, Rajajinagar,
Bangalore – 560010
- 3) Shri Shashank HS
43 YEARS, s/O h s Sudhindra,
157, 37th Cross, 26th Main,
9th Block Jayanagar,
Bangalore- 560069

I.A 559/2023

I.A 655/2023

- 4) Shri Sunl Kadur
46 years, S/o Vijayakumar,
#37, 10th Main, Ideal Homes,
Rajarajeshwari Nagar,
Bangalore- 560098
- 5) Shri Shashi Kumar B V
39 years, S/o Veerappa
No.26, Veerabhadra Swamy Prasana,
Bidadi to Ittamadu Road,
Bidadi, Banandur,
Ramnagar, Karnataka – 562109
- 6) Shri Bharath Kumar C M
31 years, S/o Maraiiah
#40 Chinegowdana dhodhi,
Shanumangala post,
Bidadi Hobli, Ramanagaram,
Karnataka- 562109
- 7) Shri Kirankumar T H
30 years, S/o Honnagangaiah,
#22, Thalakuppe, Shanumangala,
Ramanagaram,
Karnataka- 562109
- 8) Shri Puttaraj P P
32 years, S/o Puttamaraiah
Pichakuntarapalya, Shanumanagala,
Ramanagaram, Karnataka – 562109
- 9) Shri Puttaraj K
39 years, S/o K T Krishnappa,
#2288/1245, 11th Cross,
Bannerghatta Road,
Wavers Colony, Bangalore South, Gottigere
Bangalore- 560083

.....Applicants

Versus

Shri Hari Babu Thota
Resolution Professional of Chemizol
Additives Pvt Ltd
41/1, 2nd Floor, 11th Cross
8TH Main, 2nd Block, Jayanagar,
Bengaluru- 560011

.....Respondent/Resolution Professional

Order delivered on: 28/03/2024

CORAM: Hon'ble Shri. K. Biswal, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For I.A 559 of 2023

Applicant : RP, Shri Hari Babu Thota
Shri Chandramaouli Prabhakar Adv

For I.A 655 of 2023

Applicant : MD & T Partners

ORDER**Per: Manoj Kumar Dubey, Member(Technical)**

1. The present application in I.A No. 559 of 2023 in CP(IB) No. 01/BB/2019 was filed on 01/08/2023 by the Resolution Professional Shri Hari Babu Thota under Section 12A of the I&B Code inter alia praying for withdrawal of CIRP in question, for cessation of effects of moratorium imposed on the Corporate debtor.
2. Further I.A No. 655/2023 was filed by the Employees/ Operational Creditors *inter alia* seeking to set aside the 4th COC held on 28/07/2023 and to issue direction to the RP to reconstitute COC as per the Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
3. **IA NO. 559/2023**
 - i. Initially, CP(IB) No. 01/2019 was filed by Smt Jayanthi Ravi, U/s 7 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016. After considering the matter, the Adjudicating Authority, admitted the case by an order dated 23/02/2022 by initiating CIRP, appoint Shri Hari Babu Tota as the IRP, imposing moratorium etc.
 - ii. Accordingly, the Interim Resolution Professional, caused Public Announcement dated 11/03/2022, intimating the order of Adjudicating Authority, calling upon the Creditors of Chemizol Additivies Private Limited to submit their claims.
 - iii. The claims received have been duly verified by the IRP/RP, by admitting the claim of the Financial Creditor to the extent of Rs 5,67,87,500/-. Employees and Workmen claims of 5,66,34,083/. Government dues of Rs 65,54,393/- and Amounts of various Operational Creditor to the extent of Rs 23,36,252/-. Hence the Committee of Creditors (COC) was constituted with sole Financial

Creditor consisting of Mrs Jayanthi G Ravi. However it is noted that suspended directors have disputed the amount of claim of the employees and workmen stating that the amount of claim is different from the dues as per the Provisional Financial Statements as on 23rd Feb 2023.

- iv. Writ Petition was filed by Ms Sudha Reddy Punuru and Shri Rajappa Kantharaja, Directors of suspended Board of the Corporate Debtor, before the Hon'ble High Court Karnataka, Bengaluru Bench vide W.P No. 9600 of 2022. Hon'ble High Court imposed an interim stay over the order of this Bench dated 23/02/2022 and lifted the stay imposed vide its Order dated 30/06/2023. Further, the undersigned resumed the CIRP Process with effect from 30/06/2023.
 - v. Further, the Applicant (IRP) received signed application for withdrawal of CIRP in Form FA along with a copy of the Settlement Agreement dated 19/07/2023, entered between M/s K. N Biosciences (India) Private Limited and Mrs Jayanthi Ravi, and a Bank Guarantee towards the CIRP Costs of Rs 33,00,000/- on 27/07/2023. The entire liability of Mrs Jayanthi G Ravi to the extent of Rs 5,67,00,000/- was settled by K.N Biosciences (India) Private Limited, shareholder of the Corporate Debtor, on behalf of the Corporate Debtor.
 - vi. On request of K. N Biosciences (India) Private Limited, the RP facilitated for deposit of an amount of Rs 6,00,00,000/- (Rupees Six Crore) in CIRP Bank Account vide DD Nos. 688209 and 688210 drawn on Punjab National Bank, in favour of 'Chemizol Additives Pvt Ltd in CIRP'.
 - vii. CoC in its 4th meeting dated 28/07/2023, has approved for withdrawal of Application under Section 12A r/w Regulation 30A of IBBI, admitted under Section 7, by the Financial Creditor. Accordingly Form FA dated 26/07/2023 has been filed by the RP vide Diary No.1192 dated 01/08/2023.
4. The Interim Resolution Professional vide Diary No. 5349 dated 18/10/2023, has submitted Citations, wherein the applicant has relied on the decisions of

Hon'ble Supreme Court in *Vallal Rck v. M/s Siva Industries and Holdings Limited and Ors*, [(2022) ibclaw.in 63 SC] and *Abhishek Singh v. Huhtamaki Ppl Ltd*, [(2023) ibclaw.in 37 SC] and the order of the Hon'ble NCLAT in *Anuj Tejpal v Rakesh Yavad and anr* [CA(AT)(Ins) No. 298/202]. Further, written Submissions vide Diary No 330 dated 16/01/2024 was filed, wherein it is submitted that the Employees/Operational Creditors of the Corporate Debtor are apprehensive of the outcome before this Bench, approached Hon'ble High of Karnataka Bengaluru in W.P 23735/2023 praying that the Hon'ble High Court to issue Writ quashing the order likely to be passed by NCLT, Bengaluru in I.A 559/2023. However, the Hon'ble High Court of Karnataka on 17/11/2023 has dismissed the Writ Petition stating, "the company has been revived and petitioners herein are in no way connected with the same." The Order of the Hon'ble High of Karnataka was submitted vide Memo dated 12/01/2024 in Diary No. 295.

5. I.A No. 655/2023

In this application, it has been submitted by the applicants as under:

- i. The Applicants in I.A 655/2023 are employees and Operational Creditors who have filed their respective Proofs of Claim under Regulation 17 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, and whose claims have been admitted. The Applicants collectively are Operational Creditors having aggregate dues of more than 10% of the debt of the Corporate Debtor.
- ii. On 31/07/2023 the Applicants received an email from the IRP, that Ms Jayanthi G Ravi/Financial Creditor, the Petitioner, has furnished an application in Form FA on 27/07/2023 withdrawal of CIRP of the Company, along with a settlement agreement dated 19/07/2023 between KN Biosciences (India) Private Limited and the Financial Creditor.
- iii. The Applicants immediately addressed a notice to the Respondent herein contending that, upon settlement with the Petitioner creditor, Mrs Jayanthi Ravi on 19/07/2023, the corporate debtor has no financial debt as defined under IBC. Resultantly, in terms of Regulation 16 IRPCP Regulations, where the corporate debtor

has no financial debt, the CoC shall consist of 18 of the largest operational creditors by value or all of the operational creditors and one representative elected by all workmen.

- iv. The Applicants further contends that the CoC, not being reconstituted as on 19/07/2023, thus Coc meeting held on 28/07/2023, was not a validly constituted CoC given that the Petitioner Creditor, was not even a financial creditor as on that date. Hence, the invalidly and illegally constituted CoC did not have any right to consider and approve withdrawals of the CIRP on the basis of the sole vote of such financial creditor.
- v. The notice dated 07/08/2023 was served on the Respondent RP on the same day via email. However, the Respondent RP issued an untenable reply dated 09/08/2023 denying all allegations made under the notice and further contending that CIRP was carried out as per the provisions of the IBC. The Respondent RP has further contended that an application for withdrawal of the CIRP, filed under Section 12 A of the IBC and Regulation 30A of the Regulations, has been received from the Petitioner on 27/07/2023, which application was placed before CoC on 28/07/2023, and which came to be approved by the COC, whereby the Respondent RP was authorised to file the application before this Hon'ble Tribunal. In light of the above, the Respondent RP has contended that reconstitution of the CoC at this stage does not arise.
- vi. In the present case, as on 28/07/2023, the Financial has no interest and was not a creditor or stakeholder in the company and was hence not legally authorised to have a seat on the CoC. The CoC ought to always comprise of only the creditors to the corporate debtors, and cannot, at any point in time, comprise of persons having no interest in the corporate debtor.
- vii. The IBC Code, do no contemplate a situation where the CoC comprises of a single creditor. This goes against the very concept and spirit of a "Committee" and impermissible in law. It is submitted that a Committee can never comprise of a single individual or entity, and must comprise of more than one person. It

is submitted that, the moment the Committee of Creditors would potentially comprise of only one member, the RP is mandated to resort to the provision of Regulation 16 under the IRPCP Regulations and constitute the CoC accordingly. The RP has no discretion to constitute the CoC with only one member.

- viii. The Respondent RP has failed to convene the 4th meeting of the purported CoC, where the resolution was allegedly passed permitting withdrawal of the petition, in accordance with law. Not only was the meeting convened without necessary members of the CoC but was also convened without providing adequate notice of 5 days to the members. Hence the 4th CoC meeting held on 28/07/2023 is void and contrary to law as the said meeting was convened without giving notice of such meeting to the employees as contemplated under Section 24 of the IBC.

6. The Respondent (RP) has filed written submissions vide Diary No 5331, dated 17/10/2023, and contended as under:

- i. The sole Financial Creditor has mandatorily prescribed in settlement agreement dated 19/07/2023 that she would require payment of her dues prior to consenting the withdrawal and hence the same cannot be construed as a case which would require reconstitution of the Committee by 'extinguishing' the claim of Financial Creditor. Such settlement was made as a pre-requisite satisfying regulation 30A CIRP and the same does not require reconstitution of CoC.
- ii. In regard to Regulation 16 of the IBBI (CIRP) Regulations, 2016, it is stated that Regulation only prescribes instances for formation of COC with operational Creditor, when the Corporate Debtor has no claim of Financial Creditor. In the present case as there is existence of the Financial Creditor, invocation of Regulation 16 is does not arise. That as per Section 21(2) of the Code only unrelated Financial Creditors of CD can form CoC, and that the Code does not validate that the settlement done for the purpose of withdrawal of CIRP shall result in reconstitution of CoC.

- iii. Further, that a sole member cannot constitute the Committee of Creditors is absurd, as the Committee of Creditors only requires to consist of unrelated Financial Creditors of the Corporate Debtors as per Section 21(2) of the Code. In the present matter, only Ms Jayanthi G Ravi was eligible to be included in CoC. Hence the CoC was constituted with sole unrelated financial creditor.
 - iv. The employees of the Corporate Debtor filed a Writ Petition 23735/2023 before Hon'ble High Court of Karnataka, Bengaluru Bench praying that Hon'ble Court to issue a Writ or pass suitable order or provide directions quashing the order dated 19/10/2023 likely to be passed by NCLT, Bengaluru Bench in I.A 559/2023. The Hon'ble High Court of Karnataka in this regard, having understood the Corporate Debtor is being revived passed orders that the employees being no way connected with revival of Corporate Debtor dismissed the Writ Petition 23735/2023 and accordingly disposed the matter.
7. The Applicants have filed written submission vide Diary No. 5475 dated 30/10/2023, wherein the applicant have contested the reliance on the judgement of Hon'ble Supreme Court in *Siva Industries & Abhishek Singh* (supra) stating that the case pertains only to the commercial wisdom of the CoC. However in the present case RP ought have followed Regulation 16 of CIRP and reconstituted CoC and that the judgments do not address the issue that the erstwhile Financial Creditors cannot be a part of CoC. Further the Applicant have relied the decisions of Hon'ble NCLAT in *Dauphin Cables v Praveen Bansal (RP) CA(AT)(Ins)No. 634-636/2023*, and *Bhushan Shrigapure and ors v BK Mishra and others CA(AT)(Ins)No.1504/2022*.
 8. We have heard the Learned Counsels for both the parties and perused the matter in record.
 9. The word "Committee" has not been defined either in the Part 1 or Part 2 of the Code which deals with Insolvency Resolution and Liquidation for Corporate Persons. With regard to constitution of Committee of Creditors, provisions have been made in Section 21(2) of the Code which provides that Committee of Creditors that shall comprise of all Financial Creditors

(unrelated) of the Corporate Debtor. Section 21 of the Code, only deals with the constitution of the CoC. The Code contemplates meeting of CoC for the purpose of taking all decisions with regard to insolvency resolution of the corporate debtor. The committee in the IBC is to form a consensus of Financial Creditors. However, in the instant case since the Corporate Debtor has only one Financial Creditor and the CoC has been constituted with a Sole Financial Creditor, the same is “Valid” and cannot be termed as to defeat the purpose of formation of “Committee.”

10. The main contention of the Applicants is that the Petitioner – Financial Creditor was ineligible to conduct and vote in the CoC held on 28/07/2023, since the debt owed to the Financial Creditor was already settled and she did not fit the criteria of being a ‘Financial Creditor’ and that the IRP in the present matter ought to have reconstituted the said CoC with the Applicants/employees as the Creditors, as per Regulation 16 of the CIRP rules. In this regard this Tribunal relies on the judgement of Hon’ble NCLAT in the matter of *Mr. K.N Rajkumar v V Nagarajan, (2021) ibclaw.in 223 NCLAT*, which was further affirmed by Hon’ble SC in *Mr. K.N Rajkumar v V Nagarajan [(2021) ibclaw.in 150 SC]* wherein it was clearly held that,

“On a careful consideration of the respective contentions advanced on either side, this Tribunal is of the considered view that the ‘Resolution Professional’ has no ‘Adjudicatory Power’ under the I & B Code, 2016 and further that when once the ‘Committee of Creditors’ is/was formed, the ‘Resolution Professional’ cannot change the ‘Committee of Creditors’. Suffice it for this Tribunal to make a pertinent mention that the Resolution Professional/ 1st Respondent cannot constitute a ‘Committee of Creditors’ afresh, in negation of the earlier constituted ‘Committee of Creditors’”

Further, it is observed that as per the provisions of Section 12A and Regulation 30A of the IBC (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the mandatory requirement for filing withdrawal, is to obtain 90% approval from the Committee of Creditors. Since the Corporate Debtor has only one Financial Creditor, the withdrawal has been approved by the sole Financial Creditor, the role of

the RP simply had become limited to forwarding the withdrawal application to the adjudicating authority and cannot judge over the validity of such withdrawal. Hence, this Tribunal is of the Opinion that the contention of reconstitution of CoC is not a matter to be judged by the Resolution Professional.

11. Regulation 16 of the CIRP Regulation, are to be implemented when the Corporate Debtor has no Financial Creditors and only Operational Creditors and cannot be used as a loophole to re-constitute the Committee of Creditors. In the present case, the Corporate Debtor has a sole Financial Creditor, and the RP has constituted CoC. Hence invocation of Regulation 16 of CIRP is not necessary.
12. As per Section 12A of the Code an application seeking 'withdrawal' can be allowed only if the 90 % of the Creditors voted for the same. Also, previously in various of judgements it's already established that the Adjudicating Authority cannot meddle with the 'Commercial Wisdom' of the Committee of Creditors, when the Creditors have positively established and prayed for withdrawal of the CIRP. In present case, since Committee consists of sole financial Creditor and such owing to the settlement, the Financial Creditor has passed the resolution for withdrawal in the 4th CoC and accordingly, the RP has filed form FA and seeking withdrawal under section 12A of the Act, we do not find it necessary to meddle with the settlement arrived by the Corporate Debtor and the Financial Creditor.
13. Reliance is placed on the judgment of Hon'ble Supreme Court *Mr. K.N Rajkumar* (supra) wherein it was stated that, "16. *It could thus be seen that one of the principal objects of the IBC is providing for revival of the Corporate Debtor and to make it a going concern. Every attempt has to be first made to revive the concern and make it a going concern, liquidation being the last resort.*" In light of the same this Tribunal is inclined to provide keep the Corporate Debtor has a going concern.
14. It is reiterated that the debt claims of the Applicants/employees is not affected in any manner and they are at liberty to raise their own independent claims in appropriate proceedings which would be dealt in accordance of law. **Accordingly I.A 655/2023 is hereby dismissed.**

15. Since the conditions for withdrawal for CIRP u/s 12A of the Code r/w Regulation 30A of the IBBI (IRP for Corporate Persons) Regulations, 2016 and Rule 11 of the NCLT Rules, 2016 have been satisfied, this Adjudicating Authority has no objection for withdrawal of this Petition. Therefore, the instant Applicant is hereby allowed. Therefore,
16. Consequently, the Corporate Debtor is hereby released from the rigours of CIRP and the IRP so appointed, is directed to handover the charge of the assets and affairs of the Corporate Debtor back to the Suspended Members of the Board of Directors of Corporate Debtor. Subsequently, IRP is discharged from his duties of the Corporate Debtor, and moratorium shall be ceased to have effect, from the date of this order.
17. Accordingly, **I.A.No 559 of 2023 is hereby allowed** and consequently, the Petition bearing **C.P.(IB)No.01/BB/2019** stands closed along with pending I.As, if any.

Sd/-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

Sd/-

**(K. BISWAL)
MEMBER (JUDICIAL)**