

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

**I.A. 1198/2020
IN
CP (IB) No. 3049/MB-IV/2019**

Under Section 60(5) & 12A of the I&B Code,
2016

**CFM Assets Reconstruction Private
Limited**

...Applicant/Assignee
V/s.

Mr. Vishram Narayan Panchpor

....IRP/Respondent

In the matter of:

Janata Sahakari Bank Limited

...Financial Creditor
V/s

Oasis Alcohol Limited

...Corporate Debtor

Order pronounced on : 01.12.2022

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Mr. Rohit Gupta a/w Ms. Rubina
Khan i/b Fortis India Law.

For the Respondent(s) : Mr. Vidit Dev Kumar, Advocate
Mr. Vishram Panchpore, IRP.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This interlocutory Application has been filed by the “CFM Assets Reconstruction Private Limited”, the Applicant/Assignee under Section 60(5) & 12A of the Code read with Regulations 28 and 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
2. The Applicant filed this Application seeking certain reliefs from this Bench, which are provided as under: -
 - (a) That this Hon’ble Tribunal be pleased to declare that the action of IRP of not accepting Form FA from the Applicant was contrary to law and not in accordance with the provisions of IBC as well as SARFAESI Act, 2002;
 - (b) That this Hon’ble Tribunal be pleased to direct the IRP to accept the request of the Applicant herein for withdrawal of the proceedings and take steps in accordance with law;
 - (c) That this Hon’ble Tribunal be pleased to declare that constitution of COC on 27th August, 2020 i.e. after receiving request for withdrawal

of the proceedings is contrary to law and therefore same may be quashed and set aside;

(d) Pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to restrain the IRP to conduct further meeting of the COC;

(e) Pending the hearing and final disposal of this Application, this Hon'ble Tribunal be pleased to direct the IRP to provide copies of the documents/report submitted by IRP, intimating constitution of COC;

(f) For such further and other orders as this Hon'ble Tribunal may deem fit and proper.

3. This Tribunal has heard this Application and passed an order on 16.12.2020 dismissing the aforesaid application stating that since the CoC has already been constituted in this case, any application for withdrawal of CIRP has to comply with regulations 30A(1)(b) of CIRP regulations read with Section 12A of IBC 2016.

4. Being aggrieved from the order of this Bench dated 16.12.2020, the Applicant preferred an Appeal i.e. Company Appeal (AT)(Ins) No.05/2021 before the Hon'ble NCLAT. The Hon'ble NCLAT set aside the order dated 16.12.2020 and directed this Hon'ble Tribunal to restore the aforesaid I.A. and pass orders afresh on merits.

5. The Hon'ble NCLAT in their order dated 30.11.2021 opine that: -

52“ In view of the detailed upshot and this ‘Tribunal’ keeping in mind a pivotal fact that the Appellant / Assignee of ‘JSBL’ is

an 'Applicant' for the purpose of 'CIRP Regulations' and also considering that fact that the 'person' to whom debt has been legally assigned or transferred is also a 'Financial Creditor' as per Section 5(7) of the I&B Code, 2016, there is no impediment in Law for it to reap the benefit of amendment to Regulation 30A(1) of CIRP Regulations and further that, based on the facts and circumstances of the instant case, comes to consequent conclusion that the contrary views arrived at by the Adjudicating Authority in the impugned order dated 1198/2020 in CP (IB)3049/MB-IV/2019 are clearly unsustainable in the eye of law. Viewed in that perspective this Tribunal interferes with the impugned order passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) and set aside the same. Resultantly the Appeal succeeds."

6. Being aggrieved from the order of NCLAT, the CoC of Oasis Alcohol Limited (Corporate Debtor) moved a Civil Appeal before the Hon'ble Supreme Court in Civil Appeal No. 5803/2022. The Hon'ble Supreme Court vide order dated 29.08.2022 dismissing that Civil Appeal stating that we do not find any reason to entertain the Appeal.
7. The factual matrix of the case is Janata Sahakari Bank Limited, the Original Petitioner has filed an Application to initiate CIRP against the Oasis Alcohol Limited (Corporate Debtor) on 04.08.2020. The Respondent was appointed to act as Interim Resolution Professional in the matter. Subsequently, on 06.08.2020, the IRP made public

announcement for inviting claims and the last date for receipt of claims was 19.08.2020 and the last date for verification of claims was 26.08.2020. On 21.08.2020, the Janata Sahakari Bank Limited (Petitioner) unconditionally and irrevocably assigned the Loans together with the underlying security interest with respect to the Corporate Debtor to the Applicant in terms of Section 5(1) of SARFAESI Act, 2002.

- a) The Financial Creditor vide its letter dated 21.08.2020 informed the IRP along with copy of Assignment Agreement dated 21.08.2020 and intimated the identity of the Assignee as per Regulation 28 of IBBI (Insolvency Resolution Process of Corporate Person), 2016.
- b) Thereafter, the Applicant vide its email dated 25.08.2020 intimated the IRP that the Applicant is in the process of restructuring the debt of the Corporate Debtor and thus do not wish to continue with the CIRP of the Corporate Debtor. The IRP replied to the said email vide its reply email dated 25.08.2020 stating that the IRP will respond to the Applicant's email after considering the position in law and after obtaining necessary legal guidance in the matter.
- c) The Applicant received a letter dated 26.08.2020 vide email by the IRP wherein the IRP alleged that since the terms of the assignment was not provided to him, there is non compliance of section 28(1) of the CIRP Regulation. The IRP also contended in the said letter that to withdraw the CIRP, the Applicant has to get itself impleaded in the captioned Company Petition and get the cause title amended.

- d) On 26.08.2020, the Applicant sent a letter vide its email providing a copy of Assignment Agreement dated 21.08.2020 along with Form FA and demand draft of Rs. 3,00,000.00. Further, on 27.08.2020, the Applicant has delivered by hand delivery, the said letter dated 26.08.2020 along with the original Form FA and Demand Draft. The Applicant stated that the Applicant has duly complied with the provisions the Code and the Regulations by requesting the IRP before constitution of CoC, to file an application for withdrawal of CIRP proceedings, within 3 days of receipt of Form FA, as per term Regulation 30A (1)(a) and 30A (3) of the CIRP Regulations.
- e) Then after, the Applicant received a letter from IRP vide email contending that since the Applicant (Assignee) is not an Applicant in the captioned petition, the Form FA cannot be filed by the IRP since the CoC has been constituted and the report has also been filed before this Tribunal on 27.08.2020.
- f) The Applicant submitted that the last date of submission of claim was 19.08.2020 and the last date for verification of claims was on 26.08.2020 (i.e. with 7 days from the last date submission of claims), the IRP had time till 28.08.2020 for constituting the CoC and filed documents certifying the constitution of CoC before this Tribunal on 27.08.2020 (i.e. a day prior).
8. Mr. Vishram Narayan Panchpor, Interim Resolution Professional, filed his affidavit in reply dated 12.09.2020 and submitted as under:

- a) The IRP stated that the Applicant relied upon section (5) SARFAESI Act, 2002 which has no application to the present proceedings under I&B Code, 2016. The only option given to an asset reconstruction company upon acquiring the financial assets of an originator is with respect to obtaining the prior consent of such originator before filing substitution application and certainly does not give the Applicant an option whether to file a substitution application or not.
- b) This Tribunal has passed an admission order in the matter of TJSB Sahakari Bank Limited against the same Corporate Debtor. TJSB Sahakari Bank Limited is a member bank of consortium of banks of which the Financial Creditor in the present matter was the lead Bank. In this case, the Applicant has entered into a Deed of Assignment with TJSB Sahakari Bank Limited post the order of admission dated 06.03.2019 passed by this Tribunal in the above-mentioned Petition. Further, the Applicant filed MA No. 1043/2019 for being substituted in the place of TJSB Sahakari Bank Limited and MA No. 1044/2019 for withdrawal of CIRP before this Tribunal. The Tribunal had allowed both the MAs on 01.04.2019 given the extent position in law as on that date.
- c) The Applicant sent an email to the IRP stating that the Applicant have already acquired 39.57% share from 4 banks and the applicant is in the process of acquiring the debt of one more Bank and also the Applicant will submit its claim within 2-3 days after the said acquisition together.

- d) On 21.08.2020, the IRP received an email along with the attached Deed of Assignment from the Financial Creditor informing that the Financial Creditor wanted to withdraw its claim which was filed with the IRP on 18.08.2020 since the Financial Creditor had assigned the debt in respect of Corporate Debtor in favour of the Applicant.
- e) The IRP has confirmed the email dated 25.08.2020 sent by the Applicant. The IRP has also confirmed the detailed reply sent to the Applicant vide email dated 26.08.2020. The IRP notified to the Applicant about the constitution of CoC vide its email dated 27.08.2020 and on 28.08.2020, the IRP was served with a copy of the Interlocutory Application filed by the Applicant.
- f) On 02.09.2020, the Applicant sent an email to the IRP stating that the CoC constituted by IRP is incomplete and the Applicant has not been included as the Financial Creditor. Further, the Applicant stated that the Applicant is in the process to submit its claim and the same is delayed due some unavoidable reasons which are beyond control. The IRP replied to the said email on the same day contending that the constitution of CoC is legal and convened strictly in accordance with the law.
- g) On the 04.09.2020, this Tribunal directed to the Applicant to add the CoC as necessary party to the Application and accordingly the Application was amended and served upon the IRP on 06.09.2020 by the Advocate's letter of the Applicant.

9. Mr. Amir Arsiwala, Learned Counsel of CoC has filed Affidavit and submitted as under:

- a) The Application filed by the Applicant is not maintainable. The Assignment Agreement filed by the Applicant is purported to have been executed on 21.08.2020. This document shows that it evidences the stamp duty of Rs.100/-. As per Maharashtra Stamp Act, 1958, agreement of this nature requires stamp duty of 0.1% of the amount of debt being assigned subject to cap of Rs. 1,00,000/-. In the absence of appropriate amount of stamp duty being paid the said Assignment Agreement cannot be taken into cognizance.
- b) It is submitted by the Learned Counsel for the CoC that the amount owed by the Corporate Debtor towards the Original Petitioner as well as the other consortium members arises from an award passed by consent by an arbitrator on 23.03.2017. As per the terms of this arbitral award, some of its related parties agreed to be jointly and severally liable to make payment of an amount of Rs.52,58,36,865/- to the member of the consortium. The original petitioner which was obliged to receive the installments from the Corporate Debtor under the terms of the consent award and thereafter to distribute the same amongst the other consortium lenders. To this extent the Original Petitioner was appointed as an agent of all the consortium lenders through the terms of consent award dated 23.03.2017.
- c) The Learned Counsel for the CoC submitted that section 6&7 of the Transfer of Property Act, 1882, which restrict the right of a

person to effectuate a transfer of property. Therefore, the nature of the right created in favour of the Original Petitioner in terms of the consent award cannot be transferred.

- d) The Applicant cannot file the present application as an Assignee as the Assignment Agreement between the Financial Creditor and the Applicant dated 21.08.2020 is insufficiently stamped which makes the same unenforceable in law. The Respondent No. 2 relied upon the Judgment laid down in the case of **“Garware Wallropes Limited V. Coastal Marine Construction and Engineering Limited”**:

“16. A close look at section 11(6A) would show that when the Supreme Court or High Court considers an application under section 11(4) to 11(6), and comes across an arbitration clause in an agreement or conveyance which is unstamped, it is enjoyed by the provisions of the Indian Stamp Act to first impound the agreement or conveyance and see that stamp duty and penalty (if any) is paid before the agreement, as a whole, can be acted upon. It is important to remember that the Indian Stamp Act applies to the agreement or conveyance as a whole. Therefore, it is not possible to bifurcate the arbitration clause contained in such agreement or conveyance so as to give it an independent existence, as has been contended for by the respondent.

19. When an arbitration clause is contained “in a contract”, it is significant that the agreement only

becomes a contract if it is enforceable by law. We have seen how, under the Indian Stamp Act, an agreement does not become a contract, namely, that it is not enforceable in law, unless it is duly stamped. Therefore, even a plain reading of section 11(6A), when read with section 79(2) of the 1996 Act and section 2(h) of the Contract Act, would make it clear that an arbitration clause in an agreement would not exist when it is not enforceable by law.”

10. Written Arguments on behalf of the Applicant/Assignee are as follows:

- a) There are two option available to the Petitioner to seek withdrawal of the Petition. First being before constitution of CoC and second after constitution of CoC. In the present case the Applicant has made request to the IRP for withdrawal before constitution of CoC. However, the IRP deliberately proceeded to constitute the CoC.
- b) It is admitted position that the request was initially made, by seeking the details of expenses on 25.08.2020 at p.61 and as on that date no CoC was constituted.
- c) As far as substitution is concerned, admittedly, Applicant is assignee of Janata Sahakari Bank, the original Financial Creditor who is the Applicant in the Petition. Regulation 2(1)(a) defines “applicant” which means the person filing an application under section 7, 9 or 10 of the Code. The term Financial Creditor defined under section 5(7) of the Code

which includes a person to whom such debt has been legally assigned or transferred to. Since the Applicant is an Assignee of the original Financial Creditor and is included in the definition of “Financial Creditor”, by no stretch of imagination it can be said that the Applicant is not covered in the definition of Financial Creditor or Applicant in terms of section 5(7) and Regulation 2(1)(a).

- d) The Applicant is an Asset Reconstruction Company and has acquired the debt from the original Financial Creditor under section 5 of the SARFAESI Act, 2002. Section 5(4) of the SARFAESI Act, 2002 provides that no proceedings filed by or against the assignor bank or financial institution shall in any way be prejudicially affected by reason of acquisition of financial asset by an asset reconstruction company.
- e) Section 5(5) of the SARFAESI Act, 2002 provides for substitution application in the pending proceedings. In the present case, the Petition has been disposed on 04.08.2020 and there is no provision either under the SARFAESI Act, 2002 or under the Code that mandates the Applicant to first get itself substituted to be recognized as an Applicant in the place of original Petitioner. In fact, as per Regulation 28, the IRP/RP has to inform this Tribunal regarding the Assignment.
- f) The withdrawal of the Petition on earlier occasion will not impact this withdrawal. It was discretion of the Tribunal as contemplated in the Judgment of *Swiss Ribbon*, which was

prior to the amendment coming into force where there was no provision for withdrawal before constitution of CoC.

- g) Section 5(1A) of the SARFAESI Act, 2002 provides clear exemption on payment of stamp duty on assignment of debt under the provision of section 5(1) of SARFAESI Act, 2002. Under the Registration Act, time provided to register the documents is more than 3 months which in the present case did not elapse when the IRP admitted the claim of Applicant or when the Applicant sought for withdrawal of the Petition. Hence, no registration of the said Assignment Agreement required at that time. The Agreement is now registered which is a prima facie proof that the document is properly stamped.
- h) The debt which assigned, and the debt is defined the section 2(h)(a) of SARFAESI Act, 2002 and section 2(g) of Recovery of Debts and Bankruptcy Act, 1993 and inter alia includes not just the uncrystallized debt but the debt in the form of award also. Therefore, the award as well as the decree with respect to the debt can be assigned.

11. The submissions on behalf of IRP are as follows:

- a) The Applicant is not entitled to file the Form FA or seek withdrawal of the original Petition as the Applicant is the "Applicant". Section 12A r/w Regulation 2(1)(a), 30A, states that the Applicant can withdraw the original Petition. Relying on the Judgment in *Feroze N. Dotivala V. P.M Wadhawani & Ors*

(2003) 1 SCC 433 para 13, Regulation 2(1) defines an Applicant in the following words:

“‘Applicant’ means the person(s) filing an application under section 7, 9 or 10, as the case may be;”

- b) As regards to the contention of the Applicant based on section 5A of SARFAESI Act, 2002, it is submitted that reliance on the said provision is misplaced. There is no dispute with the contention that the assignee does not need to come on record in every proceeding and the assignor can continue with the proceeding for the benefit of the assignee, however, in the present case, the Applicant wants to and has elected to step into the shoes of the assignor and has sought withdrawal on its own. In this scenario, the Applicant as Assignee ought to come on record before this Tribunal and thereafter make an appropriate application. The provision of IBC shall prevail over the SARFAESI Act, 2002 as held by the NCLAT in para 14 and 15 in *Encore Asset Reconstruction Co. Pvt. Ltd vs. Charu Sandeep Desai*, 2019 SCC Online NCLAT 284 and hence the assignee of a debt is required to come on record in the proceedings.

“14. Decision in ‘M/s. Transcore v. Union of India & Anr.’ was rendered in the year 2008 when the ‘I&B Code’ was not in existence. The ‘I&B Code’ came into force w.e.f. 1st December 2016 and Section 238 reads as follows: “238. Provisions of this Code to override other laws. —

“The provisions of this Code shall have effect, notwithstanding anything inconsistent & Company Appeal (AT) (Insolvency) No. 719 of 2018 therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.””

“15. ‘SARFAESI Act, 2002’ being an existing law, Section 238 of the ‘I&B Code’ will prevail over any of the provisions of the ‘SARFAESI Act, 2002’ if it is inconsistent with any of the provisions of the ‘I&B Code’

12. The Written Submissions on behalf of the CoC is as under:

- a) The Applicant has submitted Form FA after the last date for verification of claims. Therefore, the Form FA could have to be put before the CoC for voting in accordance with Regulation 31A of CIRP Regulations and section 12A of IBC. Notable, the CoC stood constituted before expiry of the time period given to IRP to take action on the Form FA submitted by the Applicant.
- b) The Learned Counsel for the CoC has summarized the scope of the Application in the following points:
 - i. No prayer for withdrawal given in the IA No. 1198/2020 filed by the Applicant either under section 12A of IBC, Regulation 31A of CIRP Regulations, or Rule 11 of NCLT Rules.

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- ii. Relief being sought to direct RP to act upon Form FA. However, if Form FA is to be acted upon today, it would have to compulsorily be put up before the CoC for voting.
 - iii. No relief sought by the Applicant for admission to CoC as member. Thus, no desire to participate in the CIRP of the Corporate Debtor.
- c) It is clear that, CIRP once commenced is for the benefit of all creditors and not just the original Petitioner. It is a proceeding in rem. Therefore, the law requires discussion and consent amongst the CoC. It is further stipulated that preferably a petition should only be withdrawn if there is an omnibus settlement considering the interest of all creditors. In the present case, there is no settlement. The remaining members of the CoC do not wish for withdrawal under section 12A.
- d) The NCLAT in the case of *Jai Kishan Gupta v. Green Edge Buildtech LLP*, has also held that the Adjudicating Authority need not allow withdrawal under section 12A r/w Rule 11 of NCLT Rules in every case, but may direct the proposal to be placed before the CoC where felt necessary.
13. Mr. Dinesh Inani, member of the Suspended Board of Directors filed Submissions supporting this Interlocutory Application by the Applicant in the following terms:
- a) A reading of section 12A of the IBC r/w Regulation 30A (1), (2), (3) and (4) demonstrate that there is no difference in the status of

the right to seek withdrawal of the section 7 Application either pre or post constitution of the CoC. This is apparent from the fact that in both Regulations 30A (3) and in Regulation 30A (4); the word used is “shall”. It is clear that if the conditions of Regulation 30A (1)(a) and (2) are fulfilled, the IRP “shall submit the application to the Adjudicating Authority, within three days of its receipt”. Similarly, if the conditions of Regulation 30A (1)(b) are fulfilled, the committee “shall consider the application, within seven days of its receipt”.

- b) Hence, there is no statutory or regulatory preference to either a pre-CoC constitution withdrawal under section 12A or a post-CoC constitution withdrawal. The plain language of Regulation 30A demonstrates that an Applicant is entitled to seek withdrawal under section 12A either pre or post CoC constitution.
- c) The contention that there is nothing which precludes a CoC constitution in the three days contemplated by Regulation 30A (3) is based on what will render the provisions of Regulation 30A (1)(a) otiose and nugatory. It would lead to an absurd outcome. The present case is demonstrative of the consequence of such an interpretation. The Form FA was submitted to the IRP on 26.08.2020. If a withdrawal application was made to the NCLT within 3 days, a withdrawal pre-CoC constitution would have been possible. However, by constituting the CoC on 27.08.2020, the IRP has sought to defeat the attempt. He could not have done so. The law mandates that what is to be filed in the NCLT is an

application under Regulation 30A (1)(a). It therefore necessarily requires the IRP to not constitute the CoC once the Form FA is submitted to him. Otherwise, in every case, an IRP upon being furnished with a Form FA, would proceed with CoC constitution and withdrawal under Regulation 30A (1)(a) r/w section 30A (3) would become impossible. The CoC constitution cannot take precedence over the right of withdrawal under section 12A r/w Regulation 30A (1)(a).

Findings:

14. We have heard the Ld. Counsel for the parties and perused the materials available on records.
15. The Hon'ble NCLAT vide order dated 30.11.2021 has remanded back the matter to this Tribunal to look into the matter afresh.
16. After hearing both the parties and perusal of records this Bench is of the considered view that the Assignment Agreement was dated 21.08.2020 and the assignee has given an intimation to RP on 25.08.2020. The RP replied to its intimation on 26.08.2020. Despite the knowledge of the Assignment Agreement dated 21.08.2020 and the debt assigned by the Financial Creditor Janta Sahakari Bank Limited (assignor) to CFM Asset Reconstruction Private Limited (assignee) and the intimation by the Financial Creditor and the assignee, the RP constituted COC on 28.08.2020.
17. The Assignee issued Form-FA alongwith Demand Draft (DD) on 27.08.2020 for the CIRP costs. In spite of that submission of Form-FA by

Assignee, the RP deliberately neglected to file an Application for withdrawal u/s 12 A of the Code.

18. The RP has to act as per Regulation 30A(1)(a) and 30A (3) of the IBBI Regulations, 2016. In the light of the Regulation 28 of IBBI Regulations 2016, dealing with the transfer of debt to a creditor, Assignee was required to intimate only to the RP regarding such assignment. The action of RP of constituting the COC despite having knowledge of the assignment and regularization of the account of the Corporate Debtor, is illegal and the same is liable to be set aside.
19. Even after the knowledge of assignment, the RP did not file an Application u/s 12A read with Regulation 30A of IBBI Regulations 2016, which is arbitrary and in violation of statutory regulations. Therefore, the Application filed by the Creditor Assignee is maintainable.
20. In view of *Sukhbeer Singh Vs. D.C. Agarwal (RP) in Company Appeal (AT)(Ins) 259/2019*, the IRP is a facilitator of the resolution and has only administrative powers. His duties under IBC and its regulations are restricted to an extent of collating the documents and applications later to submit before the Adjudicating Authority or the CoC.
21. The Hon'ble Supreme Court has discussed the concept of withdrawal for proceedings under section 12A on the IBC in the Judgment in *Swiss Ribbons V. Union of India [para 52-53 on page 100]*, as:

“52. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating

Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. 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 each case.”

“53. The main thrust against the provision of Section 12A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject. If the committee of creditors

arbitrarily 102 rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12A also passes constitutional muster.”

22. In view of the Judgement referred *supra*, this Bench is of the considered view that while exercising the powers under Rule 11 of NCLT Rules, this is a fit case for allowing the withdrawal of CIRP as per Regulation 30A of IBBI Regulations 2016.
23. The Corporate Debtor is by this order relieved from the rigours of CIRP. The RP is directed to hand over the charge and assets of the Corporate Debtor to the suspended Board of Directors.
24. The ROC is directed to change the status of the Company in their record.
25. Accordingly, I.A. 1198/2020 is allowed.

Sd/-
Manoj Kumar Dubey
Member (Technical)

01.12.2022.

/NP/

Sd/-
Kishore Vemulapalli
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

3. **IA-1025/2021, IA-1198/2020,
IA-1648/2020, IA-175/2022 /
IN C.P. (IB)/2833(MB)2019**

CORAM:

SHRI MANOJ KUMAR DUBEY
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **01.12.2022**

NAME OF THE PARTIES: Janata Sahakri Bank Limited
Vs.
Oasis Alochol Limited

SECTION: 7, 60 (5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Dhananjayrao Rananaware, Ld. Counsel for the Applicant in IA no. 175/2022 present. Mr. Rohit Gupta a/w Ms. Rubina Khan, Mr. Mohammed Varawala i/b Fortis India Law, Ld. Counsel for the Applicant in IA-1198/2020 and Respondent in other IAs present.
2. **IA-1025/2021:** This is an application filed by the Interim Resolution Professional (IRP) for reimbursement of the expenses incurred by IRP during CIRP of the Corporate Debtor.
3. The Corporate Debtor admitted into CIRP on 04.08.2020. The Applicant in IA-1198/2020 is the assignee of the debt. The Assignment of the debt taken on 21.08.2020 and intimated the Resolution Professional on 25.08.2020 and further stated that he has restructured the loan. In view of the restructuring of the loan, the Resolution Professional is requested to file petition before this Tribunal for withdrawal of the CIRP proceedings and submitted form

FA as per terms of CIRP Regulation 30A(1)(b), but the Resolution Professional acknowledged the restructuring of the loan of the Corporate Debtor by the Assignee, instead of filing petition for withdrawal. Resolution Professional constituted the CoC on 28.08.2020. The Resolution Professional has not cooperated with the assignee for filing Application for withdrawal and proceeded further. Thereafter, the Assignee filed the Application u/s 12A for withdrawal of the CIRP. This Tribunal Allowed IA-1198/2020 filed by the Assignee and set aside the Constitution of the CoC. In view of the above reasons, the Resolution Professional is not entitled for any fee or expenses regarding CIRP. Hence, **IA-1025/2021 is dismissed.**

4. **IA-175/2022:** This is an application filed by the Applicant for exclusion of some property as claimed by the Applicant from the Corporate Debtor. In view of the withdrawal of the CoC proceedings and the Corporate Debtor brought out from the CIRP and the property belongs to the Petitioner can be excluded from the CIRP proceedings. Accordingly, the IA-175/2022 is **allowed.**
5. **IA-1648/2020:** This is an application filed by one Financial Creditor seeking rejection of the claim of the other Financial Creditor. In view of allowing the IA-1198/2020 and Corporate Debtor is brought out of CIRP, IA-1648/2020 is **dismissed as infructuous.**

Sd/-
MANOJ KUMAR DUBEY
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)