

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

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IA No. 20/2019 (AMR) in  
TCP (IB) No. 36/7/AMR/2019  
(CP (IB) No. 79/7/HDB/2018)

Application filed under Section 12-1 of IBC, 2016 and Regulation 30A (1a) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

**In the matter of M/s ANRAK ALUMINIUM LIMITED**

Between

Mr. Madhusudhan Rao Gonugunta,  
Interim Resolution professional  
of M/s Anrak Aluminium Limited  
APIIC Industrial Park, Rachapallu (Village),  
Makavarapalem (Mandal),  
Visakhapatnam – 531 113, Andhra Pradesh.

... **Applicant / Interim Resolution Professional**

and

M/s Anrak Aluminium Limited,  
APIIC Industrial Park, Rachaplalli (Village),  
Makavaraplalem (Mandal),  
Visakhapatnam – 531 113,  
Andhra Pradesh.

... **Respondent No.1 / Corporate Debtor.**

State Bank of India,  
Stressed Assets Management Branch-II (SAMB-II)  
First Floor, TSRTC Bus Stand Complex,  
Kachiguda, Hyderabad – 500 027  
Telangana.

... **Respondent No. 2 / Financial Creditor**

**Date of Order: 01.10.2019**

**CORAM:**

Hon'ble Janab Mohammed Ajmal, Member Judicial

**Appearance:**

For Petitioner & Respodent No. 1 : Mr. R. Raghunathan Rao, Senior Advocate

For Respondent No. 2 : Mr. S. Kesava Rao, Advocate

*9/10/2019*

**ORDER**

This is an Application under Section 12 (A) of Insolvency and Bankruptcy Code, 2016 (the Code) seeking withdrawal of the Company Petition.

2. The State Bank of India (SBI) the lead Bank of the Consortium of Banks brought an Application under section 7 of the Code in CP (IB) No. 79/7/HDB/2018 (TCP (IB) No. 36/7/AMR/2019) against the Corporate Debtor (CD). This Authority by order dated 19.09.2019 admitted the petition and appointed the present Applicant as the Interim Resolution Professional (IRP). The Consortium Lenders in their meeting on 30.09.2019, before the constitution of the Committee of Creditors (CoC) and public announcement, approved the One Time Settlement (OTS) proposed by the Corporate Debtor. The Consortium of Financial Creditors with 100 voting share sanctioned the OTS proposal and unanimously resolved to seek withdrawal of the Company Petition. The Interim Resolution Professional (IRP) accordingly filed the present Application.
3. The parties have agreed to the settlement proposal and the Financial Creditors have received part of the payment. Section 12 (A) of the Code *inter alia* provides that the Adjudicating Authority may allow withdrawal of the Application under section 7 of the Code, on an application made by the Applicant with approval of the 90% share of the CoC in the manner prescribed under Rule 30 (A) of the Insolvency and Bankruptcy Board of India (IBBI) (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Regulation 30 (A) provides that an application for withdrawal shall be placed before the CoC and if the application is approved by the CoC with 90% voting share the IRP or the Resolution Professional (RP) as the case may be shall submit the application to the Adjudicating Authority. In the present case the withdrawal is sought before the constitution of the CoC or any further action could be taken in furtherance of the Corporate Insolvency Resolution Process (CIRP).
4. The Hon'ble Apex Court in **Swiss Ribbons Pvt Ltd & Anr. v. Union of India & Ors** (decided on 25.01.2019 in WP (Civil) No. 99 of 2018) observed as follows.

*"It is clear that once the Code gets triggered by admission of a creditor's petition under Section 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*

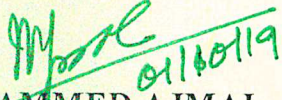
*M. J. J. J.*  
*01/10/19*

*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 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."*

5. The Hon'ble NCLAT in **Jogendra Kumar Arora v. Dharmender Sharma and Ors** (in IA Nos. 312, 336 of 2019) have also permitted withdrawal under section 11 of the NCLAT Rules, 2016.
6. In the instant case Consortium of Banks with 100% voting share has approved the OTS proposal and have resolved to seek withdrawal of the Company Petition. In view of the law settled the present petition can be allowed. Hence ordered.

### ORDER

The Application be and the same is allowed on contest. The Company Petition in TCP (IB) No. 36/7/AMR/2019 (CP (IB) No. 79/7/HDB/2018) is dismissed as withdrawn. The Respondent No. 1 (CD) is directed to pay Rs. 50,000/- (Rupees Fifty Thousand), within two weeks, towards the fee of the Interim Resolution Professional and costs, if any, incurred by him.

  
MOHAMMED AJMAL  
MEMBER JUDICIAL