

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

**I.A. No. 921 of 2023
IA No. 1891 of 2023
IA. No. 1985 OF 2023
In
C.P. No. 879 of 2020**

Under Section 12A of Insolvency & Bankruptcy Code,
2016

In the matter of

Premnarayan Baliarsingh

....Operational Creditor

V/s.

M/s Rao Edusolutions Private Limited

.... Corporate Debtor

I. A. No. 921 of 2023

Mr. Vikas Gopichand

....Applicant/IRP

IA No. 1891 of 2023

Premnarayan Baliarsingh

....Applicant/ Operational Creditor

IA. No. 1985 OF 2023

Avendus Finance Private Limited

...Applicant/ Financial Creditor

Order Pronounced On: 30.06.2023

Coram:

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

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

Appearance (through video conferencing):

For the Applicant in I.A. No. 921 of 2023: Mr. Deep Dighe, Counsel

For the Applicant in I.A. No. 1985 of 2023: -Mr. Nausher Kohli a/w.
Mr. Darshit Dave, Mr. Ativ Patel, Mr. Harshad Vyas i/b. AVP Partners,
Ld. Counsels

Per: Kuldip Kumar Kareer (Judicial)

ORDER

1. The present Interlocutory Application is filed by Mr. Vikas Gopichand, the Interim Resolution Professional (IRP) of the Corporate Debtor viz., M/s Rao Edusolutions Private Limited under Section 12A of the Insolvency & bankruptcy Code, 2016 (IBC, 2016) r/w Regulation 30A of the Insolvency and Bankruptcy Board of India (insolvency Resolution Process for Corporate Persons) Regulations, 2019 seeking withdrawal of the Company Petition filed in CP(IB)879/MB/2020 by the Financial Creditor.

FACTS OF THE CASE

2. This Tribunal vide order dated 01.03.2023, admitted a Company Petition filed under Section 9 of the Code by Premnarayan Baliarsingh (Operational Creditor) and Corporate Insolvency Resolution Process (CIRP) was initiated against M/s Rao Edusolutions Private Limited (Corporate Debtor). Pursuant to this order, Mr. Vikas Gopichand (hereinafter referred to as **“Applicant”**) was appointed as Interim Resolution Professional having *IBBI No. IBBI/IPA-001/IP-P-02738/2022-2023/14194* to carry out the functions as mentioned under IBC, 2016.
3. The Applicant has submitted that subsequent to the admission order dated 01.03.2023, the suspended director of Corporate Debtor informed the Applicant about the ongoing settlement talks between the suspended director of the Corporate Debtor and the Operational Creditor.

4. The Applicant has further submitted that a settlement was arrived at between the Operational Creditor and the Corporate Debtor vide Settlement Memorandum Dated 03.03.2023.
5. Subsequently, the Applicant received Form FA dated 03.03.2023 from the Operation Creditor under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 stating that the Operational Creditor proposed to withdraw the CP. No. 879 of 2020.
6. It has been submitted by the Applicant that since the matter has already been settled vide settlement memorandum dated 03.03.2023, the Applicant has not proceeded to publish FORM A (Public Announcement) in the newspaper.
7. The Applicant has further submitted that as per the Settlement Memorandum dated 03.03.2023, the Corporate Debtor has paid its first instalment of Rs. 11,92,549/- to the Operational Creditor on 03.03.2023 along with the post-dated cheque no.151956 and has further undertaken to pay the final instalment of Rs. 11,92,549/- on or before 03.04.2023. Apart from this, the Corporate Debtor has also paid an amount of Rs. 3,00,000/- towards the CIRP costs.
8. The Applicant has submitted that since Form FA has been received and CIRP cost also stands paid by the Corporate Debtor, the instant application is filed for the withdrawal of the CIRP against the Corporate Debtor.

INTERLOCUTORY APPLICATION NO. 1985 OF 2023

9. The captioned Application is filed by Avendus Finance Private Limited (hereinafter referred to as **“Financial Creditor”**)(Applicant in 1985 of 2023) opposing and objecting to withdrawal of CIRP against the M/s. Rao Edusolutions Pvt. Ltd. (**“the Corporate Debtor”**).

10. The Financial Creditor has advanced the credit facilities by way of (i) Rupee Term Loan - 1 of Rs. 55,00,00,000/- under the facility agreement dated 12.01.2018 ("Facility 1") and (ii) Rupee Term Loan-2 for Rs. 4,50,00,000/- under the facility letter dated 05.02.2020 read together with facility agreement dated 24.12.2020 ("Facility 2").
11. The Corporate Debtor had requested the Financial Creditor to restructure its debts with respect to the Resolution Framework promulgated by the Reserve Bank of India on 06.08.2020.
12. Accordingly, on 30.12.2020, the Financial Creditor agreed to a one-time restructuring (OTR) in respect of the outstanding dues under Facility 1 and 2.
13. The Financial Creditor further has sanctioned an Additional Rupee Term Loan of Rs. 8,50,00,000/- under the facility agreement dated 30.12.2020 ("Additional Facility").
14. It has been submitted that scheduled payment in respect of the aforementioned Facilities that was due on 01.12.2022 aggregating to Rs. 7,56,76,872/- which includes the principal payment of Rs. Rs. 5,28,27,624/- and interest payment of Rs. 2,28,49,249/- payable by the Corporate Debtor under the aforementioned Facilities. However, the Corporate Debtor has failed to make the aforementioned payment to the Financial Creditor and defaulted under the Facility Agreements.
15. Consequently, the Financial Creditor issued default notice dated 02.12.2022 informing the Corporate Debtor with regard to the occurrence of default and commencement of review period of 30 days as per the RBI Restructuring Guidelines, which expired on 31.12.2022.

16. Since the Corporate Debtor has failed to address the default, the Financial Creditor vide a notice dated 12.12.2023 informed the Corporate Debtor that the account of the Corporate Debtor was declared as **“Non-Performing ‘Asset”** and its loan account has been classified as **“Doubtful Asset”** with effect from 31.12.2022.
17. The Financial Creditor was in process of initiating appropriate remedies against the Corporate Debtor. However, in the meantime, vide order dated 01.03.2023, this Tribunal had admitted the Corporate Debtor into CIRP and appointed Mr. Vikas Gopichand Khiyani as the IRP of the Corporate Debtor. It has come to the knowledge of the Financial Creditor that the Operational Creditor and Corporate Debtor had arrived at a settlement and IRP has received FORM FA from the Operational Creditor and has filed the Interlocutory Application no. 921 of 2023 under Section 12A of the Code for withdrawal of CIRP.
18. The Financial Creditor has filed the present Interlocutory Application opposing / objecting to the Interlocutory Application No. 921 of 2023 for withdrawal of CIRP. The Financial Creditor is constrained to approach the Hon'ble Adjudicating Authority by way of the present Interlocutory Application since an order of Moratorium is in effect against the Corporate Debtor.
19. The Financial Creditor has submitted that the Corporate Debtor is under tremendous financial stress and owes a huge amount of debt to the Financial Creditor as well as other financial creditors as well as operational creditors.
20. With the above averments, the Financial Creditor has prayed for the rejection of the IA. No. 921 of 2023.

FINDINGS

21. We have heard the Ld. Counsels appearing for the parties and perused the records.
22. It is an undisputed fact of the case that the Company Petition no. 879 of 2020 was admitted vide the order of this Tribunal dated 01.03.2023 and CIRP was initiated against the Corporate Debtor. Pursuant to this order, the Applicant Resolution Professional was appointed as the IRP of the Corporate Debtor. However, subsequently, a settlement was arrived between the Operational Creditor and the Corporate Debtor vide Settlement Memorandum Dated 03.03.2023. In this regard, The Applicant received Form FA dated 03.03.2023 from the Operation Creditor under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 proposing the withdrawal of the said Company Petition.
23. It is pertinent to note that since the matter was settled vide settlement memorandum dated 03.03.2023, the Applicant has not proceeded to publish FORM A (Public Announcement) in the newspaper. Since the FORM A has not been published, the Committee of Creditors was also not constituted.
24. We have considered the facts as stated above. The present petition has been filed before constitution of the Committee of Creditors. Here, it is worth noting that in ***Abhishek Singh v. Huhtamaki PPL Ltd. and Anr (CIVIL APPEAL NO(s). 2241 OF 2023 (Arising out of SLP (Civil) No.6452 of 2021)***, the Hon'ble Supreme Court has held that an application for withdrawal of the Corporate Insolvency Resolution Process under Section 12A of the Insolvency and Bankruptcy Code, 2016 ("IBC") can be allowed by the Adjudicating Authority before the constitution of the committee of creditors in terms of Regulation 30A of the IBBI Regulation (Insolvency

Resolution Process for Corporate Persons), 2018 (“IBBI Regulations”). In the light of the law laid down by the Hon’ble Supreme Court in the cited case and considering the fact that the matter has been settled between the Operational Creditors and Corporate Debtor, we are of the considered view that the instant application for withdrawal of the Company Petition deserves to be allowed. So far as the question of infringement of any rights of the Financial Creditor is concerned, in our considered view, no prejudice is likely to be caused to the Financial Creditor as the remedy to file an application under Section 7 of the Code is always available in case of any default has been committed by the Corporate Debtor with respect to financial Debt availed by him. Therefore, IA. No. 1985 OF 2023 is hereby **dismissed and disposed of.**

25. In the light of the above discussion, the Interlocutory Application no. 921 of 2023 is **allowed** and **disposed of.** Accordingly, the Company Petition no. CP(IB)879/MB/2020 is **dismissed** and **withdrawn.**
26. Since the IA no. 921 of 2023 filed by the Interim Resolution Professional has been allowed, as stated above, the IA. No. 1891 of 2023 filed by the Operational Creditor seeking withdrawal of the Company Petition is rendered **infructuous** and **disposed of.**

Sd/-

**ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**