

**NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(through web-based video conferencing platform)**

**CA Nos. 742/2019 & 743/2019  
In  
CP (IB) No. 243/Chd/Hry/2018  
(Admitted Matter)**

**Under Section 12A & 60(5) of the  
Insolvency and Bankruptcy Code,  
2016 read with Regulation 30A of  
the IBBI (IRP for CP) Regulations,  
2016**

**In the matter of: -**

Brown Multiwall Paper Bags Ltd.                      ...Corporate Applicant

**And in the matter of CA No. 742/2019:-**

Brown Multiwall Paper Bags Limited  
A company undergoing CIRP through  
its Resolution Professional                      ...Applicant

Vs.

Registrar of Companies for Delhi                      ...Respondent

**And in the matter of CA No. 743/2019:-**

Brown Multiwall Paper Bags Limited  
A company undergoing CIRP through  
its Resolution Professional                      ...Applicant-Corporate Debtor

And

Phoenix ARC Private Limited                      ...Respondent-CoC

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

**Present through Video Conferencing:**

Ms. Ateepriya Bhatia, Advocate for the Resolution Professional  
with Mr. Arun Chadha, Resolution Professional in person.  
Mr. Sanjay Bhatt, Advocate for the Promoter.  
None for the respondent-Phoenix ARC Private Limited.

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**ORDER (ORAL)**

**CA No. 742/2019**

This is an application filed by the RP to bring to our notice an order dated 08.08.2018 of the Registrar of Companies, Delhi- Respondent No.1 in the CA, striking the name of the corporate debtor namely Brown Multiwall Paper Bags Limited from the register of companies during the pendency of the Company Petition filed by the Corporate Debtor under Section 10 of the Code. The order has been passed by the RoC invoking the provisions of Sections 252 of the Companies Act, 2013.

2. The notice of the application was issued to the RoC. However, no reply/response has been received till date.

3. Having heard the learned counsels, we are of the considered view that after the CIRP Process has been initiated and moratorium has been imposed as per Section 14 of the Code 2016, there was no room left for continuation of any proceedings against the corporate debtor. A perusal of Section 14(1)(a) of the code places the aforesaid proposition beyond any

controversy. It is patent from a perusal of the aforesaid provision that institution or continuation of any proceedings or suit against the corporate debtor are completely barred. Accordingly, after the imposition of moratorium as contemplated by Section 14 of the code, 2016, the proceeding by ROC against the corporate debtor could not be continued which in fact is in direct contravention of Section 14(1) (a) of the Code, 2016. The Hon'ble Supreme court in the case of ***Innovative Industries Ltd. Versus ICICI Bank and Another; (2018) 1 Supreme Court Cases 407***, has very elaborately brought out the intent and scheme of IBC.

4. The Hon'ble NCLT, Ahmedabad in the matter of **M/s J R Diamonds P Limited (Vinod Tarachand Agrawal) Vs. Registrar of Companies (Co. Appeal No. 53/252(3)/NCLT/AHM/2019)** held that during the pendency of CIRP, the RoC cannot strike off the name of the company. Same view was taken by the **Hon'ble NCLAT in Elektrons Shipping Pte Ltd. Vs. Pierre D'silva & another, Company Appeal (AT) (Insolvency) No. 754 of 2019 dated 06.11.2019**, following its earlier decision in **Mr. Hemang Phophalia vs. The Greater Bombay Co-operative Bank Limited and Anr. – Company Appeal (AT) (Insolvency) No. 765 of 2019 decided on 05.09.2019**.

5. In addition, it is pertinent to mention that Section 238 of the Code, 2016 overrides other legislations and hence all the proceedings during the moratorium under Section 14 of the Code are barred.

6. Therefore, in view of the aforesaid discussions and judicial precedents, we set aside the order dated 08.08.2018 of the ROC, Delhi in respect of Item No. 3833- M/s. Brown Multiwall Paper Bags Limited.

7. This application is disposed of on the terms directed above. Accordingly, the corporate debtor shall be brought back on the register of the RoC. The company is directed to file all the required documents and shall fulfil all other relevant statutory compliances, in accordance with law within 30 days from restoration of its name in the Register of Companies maintained by RoC.

**CA No. 743/2019**

8. This application has been filed by Brown Multiwall Paper Bags Ltd., the corporate applicant through the Resolution Professional under Section 12A of the IBC, 2016 seeking withdrawal of the CP (IB) No. 243/Chd/Hry/2018.

9. It is stated that the CIRP proceedings were initiated against the corporate applicant on 11.12.2018 by order of this Adjudicating Authority.

10. It is further stated that the corporate debtor, through one of the guarantors had entered into a settlement with the sole COC Member i.e. Phoenix ARC Pvt. Ltd. on 02.08.2019. The COC members agreed for the settlement proposal given by the corporate debtor during the CIRP process and accordingly vide its meeting held on 14.08.2019, the COC unanimously resolved to withdraw the CP and to file an application under Section 12A to this effect. Hence, this CA.

11. None appeared for the Respondent-Phoenix ARC Pvt. Ltd. However, Ms. Ateepriya Bhatia, the learned counsel appearing for the applicant submits that the respondent-Phoenix ARC Pvt. Ltd. has already submitted its no objection for allowing the instant application by way of its affidavit dated 16.03.2020 stating therein that as the matter has been settled by virtue of the settlement agreement dated 02.08.2019 entered into between the corporate debtor through Mr. Situ Shastri (Guarantor, Ex-Promoter and Suspended

Director of the corporate debtor) and Phoenix ARC Pvt. Ltd. for an amount of ₹2,39,72,603/- and that the payment schedule has been followed by the corporate debtor since then, they have no objection for withdrawal of the instant proceedings. The Ld. Counsel further furnished a copy of the said affidavit today.

12. In the circumstances and in view of the settlement entered into and in view of the COC resolution dated 20.01.2020 and the Form FA dated 20.01.2020, the instant IA No. 743/2019 is allowed.

**CP (IB) No. 243/Chd/Hry/2018**

13. In view of the order passed in CA No.743/2019, the present CP (IB) No. 243/Chd/Hry/2018 is dismissed as withdrawn.

14. Accordingly, CP (IB) No.243/Chd/Hry/2018 is disposed of. In view of the dismissal of the CP, the moratorium is ceased to have effect and the IRP also stands discharged. The IRP shall handover the record and the possession of the corporate debtor to the Board of Directors.

15. All the pending CAs are also disposed of.

Sd/-

(Raghu Nayyar)  
Member (Technical)

(Ajay Kumar Vatsavayi)  
Member (Judicial)

December 15, 2020  
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