

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 29-04-2021 AT 10.35 A.M THROUGH
VIDEO CONFERENCING:

PRESENT: SMT. R. SUCHARITHA, MEMBER (JUDICIAL)
SHRI B. ANIL KUMAR, MEMBER (TECHNICAL)

APPLICATION NUMBER : IA/348(CHE)/2021
IN
PETITION NUMBER : IBA/436/2020
NAME OF THE PETITIONER : Edelweiss Asset Reconstruction Company Ltd
NAME OF THE RESPONDENTS : Auromatrix Hotels Pvt Ltd
UNDER SECTION : Sec 12A of IBC, 2016 Reg 30A(3) CIRP Reg

ORDER

This application is filed by the Interim Resolution Professional under Section 12A of the IBC, 2016 read with Regulation 30A (3) of CIRP Regulations for withdrawal of CIRP proceedings.

This Adjudicating Authority vide order dated 08.04.2021 admitted IBA/436/2020 and appointed the Applicant herein as the IRP for commencement of CIRP proceedings in respect of M/s. Auromatrix Hotels Private Limited. Immediately, the Corporate Debtor and the Applicant in IBA/436/2020 has arrived at a consent agreement and settled dues between them. The CoC is yet to be constituted and public announcement is not issued. Prior to this, the entire dues have been settled by the Corporate Debtor. The Applicant has also filed Form FA dated 12.04.2021 as per the regulations.

The present application IA/348(CHE)/2021 has been filed for withdrawal of application IBA/436/2020 which is admitted vide order dated 08.04.2021.

*The Hon'ble Supreme Court in **Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Others [2018] ibclaw.in 35 SC** – Insolvency Application that is admitted can be withdrawn at any point during the insolvency process. The Hon'ble Supreme Court while hearing the matter ruled that the parties are allowed to withdraw the application at any point of time during insolvency process. It is stated that the Regulation 30A states that withdrawal cannot be permitted after issue of invitation for expression of interest. However, this Regulation has to be read along with the main provision of Section 12A which contains no such stipulation and thus this stipulation can only be construed as directory depending on the facts of each case.*



-Page 2-

In Swiss Ribbons Pvt. Ltd. & Another Vs. Union of India & Others [2019] ibclaw.in 03 SC, the Hon'ble Supreme Court has cleared in the above mentioned case that at any stage where the CoC 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 of settlement. This will be decided after hearing all the concerned parties and considering all relevant facts on the facts of each case.

In view of the terms above, IA/348(CHE)/2021 is **allowed** and the Corporate Debtor is removed from the rigors of IBC and permitted to function by their own Board.

IBA/436/2020 is **closed** and sent to records.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-

(R. SUCHARITHA)
MEMBER (JUDICIAL)

vs