

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

MA 1339 of 2019

In

CP (IB) 1792 of 2017

Under section 12A of the Insolvency and
Bankruptcy Code, 2016 r/w Regulation 30A
of the Insolvency and Bankruptcy Board of
India (Insolvency Resolution Process for
Corporate Persons) Regulations, 2016

IN THE MATTER OF

Minita D Raja

A-100, Krishna Tower Kanda Colony
Sector-9, New Panvel. Maharashtra.

... Resolution Professional/ Applicant

IN THE MATTER OF

The Cosmos Co-op Bank Limited

... Financial Creditor

V/s.

Crystal Clear Veg Oil Refinery Pvt. Ltd.

S.No. 48/1A at / Post Dabha, Tal.
Nandgaon Peth, Amravati – 444701.

... Corporate Debtor

Order delivered on :- 23.01.2024

Coram:

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

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Applicant/RP : Adv. Sandeep Bajaj a/w Aakankash
Nehra and Minita D Raja.

ORDER

Per: - Anil Raj Chellan, Member (Technical)

1. The present Miscellaneous Application has been filed by the Resolution Professional ('RP') under Section 12A of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations') for approval of the withdrawal application made by the Applicant in the matter of Crystal Clear Veg Oil Refinery Private Limited ('the Corporate Debtor'), to close Corporate Insolvency Resolution Process ('CIRP'), to discharge the RP and to withdraw the moratorium declared under Section 14(1) of the Code.

Facts of the case:-

2. On a Petition filed before this Tribunal under Section 7 of the Code, CIRP was initiated against the Corporate Debtor pursuant to an order dated 16.04.2018 and the Applicant was appointed as Interim Resolution Professional ('IRP'). The IRP has initiated the process as contemplated under the Code by preparing the list of creditors and constituted the Committee of Creditors ('CoC').
3. The CoC consists of Cosmos Co-operative Bank Limited ('Cosmos

Bank') with 93.2% voting share and Shreerang Films with 6.8% voting share. The IRP was subsequently confirmed as Resolution Professional ('RP') who conducted the resolution process as per the Code, and wherein one Resolution Plan was received on 06.03.2019. The said Resolution Plan was discussed in the CoC meetings held on 13.03.2019 and 19.03.2019. At that stage, Cosmos Bank, the Financial Creditor who initiated the CIRP proceedings against the Corporate Debtor, decided to withdraw the CIRP proceedings and submitted its application dated 03.03.2019 for withdrawal in Form A. The matter was discussed in the CoC held on 04.04.2019 and the RP was requested to file an Application for withdrawal of CIRP under Section 12A of the Code before this Tribunal, the Adjudicating Authority.

4. As per the decision taken in the CoC, the RP filed this Miscellaneous Petition before this Tribunal seeking withdrawal of Application against the Corporate Debtor. However, this Tribunal passed an order dated 04.01.2021 whereby the Adjudicating Authority referred the matter to the Reserved Bank of India to take an appropriate decision in the facts and circumstances of the case.
5. Against the impugned order dated 04.01.2021, the Cosmos Bank preferred an appeal before the Hon'ble NCLAT under Company Appeal (AT) (Insolvency) No. 247 of 2021. The Hon'ble NCLAT in the aforesaid case, was pleased to set aside the impugned order and the matter is remitted with the following directions;

(i) *The Adjudicating Authority is directed to consider the Application on its merit and pass a reasoned order in accordance with law within a period of 45 days from receipt of copy of this order.*

(ii) *The period spent before this Tribunal from the date of filing of this Appeal and till this date is excluded for the purpose of CIRP.*

6. In the circumstances, the present Miscellaneous Application has come up for reconsideration of this Tribunal.

Submissions of the Applicant:-

7. The Applicant submitted that Section 12A of the Code allows for the withdrawal of an insolvency application against a corporate debtor with the approval of at least 90% of the committee of creditors in cases admitted under section 7 or section 9 or section 10 in the manner specified. The Regulation 30A of the CIRP Regulations in force when the Miscellaneous Application was filed, specified that an application for withdrawal under Section 12A may be made to the Adjudicating Authority by the applicant through the interim resolution professional or the resolution professional, as the case may be, before issue of invitation of expression of interest. However, after the amendment of Regulation 30A w.e.f. 25.07.2019, the Adjudicating Authority may allow the withdrawal of Application even after the constitution of the committee provided the applicant state the reasons justifying withdrawal after issue of expression of interest, with the approval of ninety percent voting share of the Committee of Creditors. The Applicant, therefore, submitted that the Application is in accordance with the provision of statute.

8. The Applicant further submitted that as per Regulation 30A (2) of CIRP Regulations, the application shall be accompanied with a bank guarantee towards estimated expenses incurred till the date of filing of the application. With respect to the above stipulation, the Applicant submitted that Cosmos Bank who holds 93% voting share have borne and paid all the bills of CIRP till the date of Application and has undertaken to bear the CIRP cost and made a request to do away with

the requirement of furnishing the bank guarantee since the CIRP cost had been borne till the date of filing of the Application and it has undertaken to meet the entire CIRP cost.

9. The Applicant further submitted that the proposal for withdrawal of Application was resolved with 100% voting of CoC. The Applicant also requested to consider the fact that CIRP period of 270 days has got over way back on 07.04.2019 (including the exclusion period) and that withdrawal of Application would grant a final opportunity to the stakeholders to receive the maximum value of assets vis-à-vis the amount to be recovered from the Resolution Applicant on acceptance of Resolution Plan for the Corporate Debtor.

Analysis and Findings:-

10. We have heard the Counsel appearing for the Applicant as also the Counsel for the Cosmos Bank and also perused the documents on record.
11. It is seen from the records that the decision to withdraw the Application under Section 12A of the Code was proposed by Cosmos Bank who is the Applicant/Financial Creditor who initiated CIRP proceedings. The Cosmos Bank holds 93.2% voting share in the CoC. The order of this Tribunal dated 04.01.2021 was also taken in appeal by Cosmos Bank before the Hon'ble NCLAT. However, during the Appeal pending before the Hon'ble NCLAT, Cosmos Bank filed an additional affidavit before this Tribunal stating that the Application for withdrawal of Petition has been pending for long and it had incurred enormous cost as CIRP costs, and taking into account the above facts, liquidation may be the way forward and suggested the name of the Liquidator for appointment in liquidation process. In the

circumstances, this Tribunal specifically sought clarification from the Cosmos Bank on 18.01.2024 when it confirmed its continued interest to pursue withdrawal of Application instead of taking the Corporate Debtor for Liquidation. We, therefore, consider it appropriate to examine the Application on merits.

12. Section 12A of the Code provides that the Adjudicating Authority may allow the withdrawal of Application admitted under Section 7 or Section 9 or Section 10 on an Application made by the Applicant with the approval of ninety percent voting share of the Committee of Creditors in the manner specified. The Regulation 30A of the CIRP Regulations, then in force when the Miscellaneous Application was filed, specified that an application for withdrawal under Section 12A may be made to the Adjudicating Authority by the applicant through the interim resolution professional or the resolution professional, as the case may be, before invitation of expression of interest. However, the view that the Hon'ble Supreme Court took in the matter of Swiss Ribbons (P) Limited and Anr v. Union of India is that 'withdrawal cannot be permitted after issue of invitation of EoI can only be construed as directory depending on the facts of each case'. Further, the legal provision on withdrawal has been changed after the amendment of Regulation 30A w.e.f. 25.07.2019 so that the Adjudicating Authority may allow the withdrawal of application even after the constitution of the committee, provided the applicant states the reasons justifying withdrawal after issue of expression of interest. We are, therefore, of the view that the Adjudicating Authority may, for justifiable reasons, allow the withdrawal even after the constitution of the committee and/or invitation of expression of interest.
13. The proceedings of the 15th meeting of the CoC clearly show the reason for opting for withdrawal of CIRP process, when the Resolution Plan was already in place. The members of the Committee informed in the

meeting that the Resolution Plan was not acceptable on the grounds that same was not viable either value wise nor on consideration of the time value of money. Thus, the Applicant has given justifiable reasons for withdrawal of application at this stage.

14. It is also pertinent to observe that CoC has passed a resolution with hundred percent voting to withdraw the Application and the Applicant has submitted the Application for withdrawal in the form and manner specified. The Hon'ble Supreme Court in Vallal RCK v. Siva Industries and Holdings Limited; (2022) SCC Online SC 717 has categorically observed that:

“24. When 90% and more of the creditors, in their wisdom after due deliberations find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, in our view the adjudicating authority or appellate authority cannot sit in an appeal over the commercial wisdom of the CoC. The interference would be warranted only when the adjudicating authority or the appellate authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provision of the statute or the rules.”

15. In the present set of circumstances, Cosmos Bank, the financial creditor who initiated the CIRP proceedings took a decision to withdraw the Application admitted under Section 7 of the Code for justifiable reasons. The said decision was also approved by 100% of voting share. When CoC has taken a decision after the members of CoC, has had due deliberation on the resolution plan as well as the withdrawal proposal, the commercial wisdom of the CoC should prevail since no irregularity or violation of the provisions of the Code/Regulations has been observed.

16. Having regard to the above discussion, this instant MA No. 1339 of 2019 is hereby **allowed**. Consequently, the CIRP initiated against the Corporate Debtor and the moratorium declared under Section 14(1) of the Code shall stand withdrawn. RP is also discharged with a direction to handover management of the Corporate Debtor to the Board of Directors whose powers were suspended upon initiation of the CIRP.

Sd/-
ANIL RAJ CHELLAN
Member (Technical)

Sd/-
KULDIP KUMAR KAREER
Member (Judicial)

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