NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, BENCH (COURT-II)
IA. NO. 1058/ND/2025
IN
COMPANY PETITION NO. (IB)-204/(ND)/2023

IN THE MATTER OF CP(IB)-204/(ND)/2023:
(Under Section 7 of IBC, 2016)

Central Bank of India **... Petitioner/ Financial Creditor**

Versus

Al Nafees Frozen Food Exports Private Limited **... Respondent/ Corporate Debtor**

AND IN THE MATTER OF I.A. NO. 1058 OF 2025:
(Under Section 12A of IBC, 2016 r/w Reg. 30A of CIRP Regulations, 2016)

Mr. Manohar Lal Vij
Resolution Professional for
Al Nafees Frozen Food Exports Pvt. Ltd.
8/28, 3rd Floor, Abdul Aziz Road,
Karol Bagh, New Delhi-110005 **... Applicant/ RP**

Order Delivered on: 15.12.2025

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)
MS. REENA SINHA PURI, HON'BLE MEMBER (T)

PRESENT:

For the Applicant	**:** Sr. Adv. Kunal Tandon, Adv. Tushar Singh, Adv. Aastha Kaushik, Adv. Natasha
For the RP	**:** Adv. Rachit Mittal, Adv. Mrigank Kr., Adv. Parish Mishra, Adv. Kanishk Raj, Adv. Adarsh Srivastava, Adv. Abhishek Sinha
For the SRA	**:** Sr. Adv. Abhijat, Adv. Nidhi Mohan Parashar, Adv. Vikrant Kumar, Adv. Deepak Yadav

PER: SHRI ASHOK KUMAR BHARDWAJ, MEMBER (J)

ORDER

I.A. No. 1058/ 2025: Stating succinctly, the CP(IB) No. 204/(ND)/2023 could be preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Central Bank of India (hereinafter, referred to as the "**Financial Creditor/ Petitioner**") with prayer to initiate the corporate insolvency resolution process qua Al Nafees Frozen Food Exports Private Limited (hereinafter, referred to as the "**Corporate Debtor/ Respondent**"). The captioned I.A. has been preferred by Mr. Manohar Lal Vij (hereinafter, referred to as the "**Resolution Professional/ Applicant**") for withdrawal of the aforementioned company petition. The prayer made in the I.A. reads thus: -

a) *"allow the present Application considering present stage of CIRP;*
b) *pass necessary order(s)/direction(s) under Section 12A of the Code read with Regulation 30A(1)(b) of CIRP Regulations, i.e. for withdrawal of CIRP of Al Nafees Frozen Food Exports Private Limited (Corporate Debtor) which has been approved by the COC with 97% vote casted in favour of the Resolution;*
c) *pass necessary order(s)/direction(s) vacating the moratorium on Corporate Debtor imposed under Section 14 of the Code;*
d) *pass necessary order(s)/direction(s) discharging the Resolution Professional Mr. Manohar Lal Vij from the duties of the Resolution Professional of the Corporate Debtor.*
e) *pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case."*

2. The brief factual matrix of the matter is as under: -

i. The financial creditor had sanctioned loan for an amount of Rs. 115 Crore comprising of Working Capital of Rs. 73.00 Crore @ interest of 12.50% p.a., Term Loan of Rs. 10 Crore @ interest of 12.5% p.a., and Forward Contract (Exports) of Rs. 32.00 Crore for meeting working capital requirement and setting up of meat processing plant at Dasna Distt. Gaziabad, Uttar Pradesh. Subsequently, there were other financial facility extended by the FC to the CD. The details of financial facilities as mentioned in the list of dates and events are:-

Date	**Financial Facility**
01.09.2010	Rs. 115 Crore comprising of Working Capital limit of Rs. 73.00 Crore @ interest of 12.50% p.a., Term Loan of Rs. 10 Crore @ interest of 12.5% p.a., and Forward Contract (Exports) of Rs. 32.00 Crore for meeting working capital requirement and setting up of meat processing plant at Dasna Distt. Gaziabad, Uttar Pradesh.
14.12.2011	At the request of Corporate Debtor, the Financial Creditor sanctioned Ad-hoc Fund based Working Capital Limit of Rs. 9.00 Crore.
19.03.2012	At the request of Corporate Debtor, the Financial Creditor agreed to sanction additional working capital facilities in the nature of Packing Credit, EBP/EBN, Cash Credit cum Overdraft for an aggregate limit of Rs. 93.00 Crore @ interest of 15.25% p.a. and agreed to revalidate the earlier sanction term loan facility of Rs. 10.00 Crore @ interest of 15.25% p.a.
14.07.2012	In addition to the existing credit/loan facilities, fresh EBN (Export Bills Negotiation) facility of Rs. 25.00 Crore and forward contract (export) facility of Rs. 0.64 Crore

	was sanctioned by Financial Creditor, at the request of the Corporate Debtor.
20.06.2019	Corporate Debtor proposed to enter into One Time Settlement vide OTS Proposal letter and offered to pay Rs. 60.00 Crore to settle the loan account of the Corporate Debtor with the Financial Creditor.
16.11.2019	Financial Creditor approved the compromise proposal of the Corporate Debtor at Rs. 61.82 Crore, to be paid as per the repayment schedule prescribed in the OTS Acceptance letter.
04.05.2022	Financial Creditor issued a fresh demand notice under Section 13(2) of SARFAESI Act, 2002 demanding repayment of Rs. 157,24,25,712.60 as on 04.05.2022 along with further interest till the date of payment.

ii. To capture the complete picture of financial facility, we reproduce the brief synopsis filed by the Central Bank of India / Financial Creditor along with the petition as under:-

> Central Bank of India ("Financial Creditor") vide sanction letter dated sanctioned loan for an amount of Rs. 115 Crore comprising of Working Capital limit of Rs. 73.00 Crore @ interest of 12.50% p.a., Term loan of Rs. 10. Crore @ interest of 12.5% p.a., and Forward Contract (Exports) of Rs. 32.00 Crore for meeting working capital requirement and setting up of meat processing plant at Dasna Distt. Gaziabad, Uttar Pradesh. Consequently the members of the Board of Directors of the Corporate Debtor on 03.09.2010 passed a resolution for availing the credit facilities. Further, the Corporate Debtor and/ or the guarantors executed the loan and security documents in favor of the Financial Creditor.
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> Further, at the request of Corporate Debtor, the Financial Creditor sanctioned Ad-hoc Fund Based Working Capital Limit of Rs. 9.00 Crore. Consequently the members of the Board of Directors of the Corporate Debtor on 14.12.2011 passed a resolution for availing the credit facilities. Further, the Corporate Debtor and/ or the guarantors executed the loan and security documents in favor of the Financial Creditor to avail and secure the Working Credit Facility of 82.00 Crore.

Thereafter, the Corporate Debtor sought for additional working credit facilities and after due-diligence the Financial Creditor agreed to sanction additional working capital facilities in the nature of Packing Credit, EBP/ EBD/ EBN, Cash Credit cum Overdraft for an aggregate limit of Rs. 93.00 Crore @ interest of 15.25% p.a. and agreed to revalidate the earlier sanctioned term loan facility of Rs. 10.00 Crore @ interest of 15.25% p.a. Consequently, the Corporate Debtor and/ or guarantors executed the loan and security documents in favor of the Financial Creditor to avail and secure the Working Capital of Rs. 93.00 Crore and revalidated Term Loan of Rs. 10.00 Crore.

Further, the Corporate Debtor again sought for additional credit facility and at the request of the Corporate Debtor, Financial Creditor sanctioned additional EBN facility of Rs. 25.00 Crore and forward Contract (exports) facility of 0.64 Crore. Consequently, the Corporate Debtor and/ or guarantors executed the loan and security documents in favor of the Financial Creditor to avail and secure the loan facility of Rs, 128.64 Crore, including Working Capital of Rs. 93.00 Crore, Term Loan of Rs. 10.00 Crore, EBN facility of Rs. 25.00 Crore and forward contract (export) facility of Rs. 0.64 Crore.

The Credit facilities were renewed from time to time and on 16.10.2017, the Credit facilities availed by the Corporate Debtor in the form of Packing Credit/ EBP/ EBD/ EBN/ CC/ ODBD were reduced from Rs. 118.00 Crore to Rs. 97.00 Crore.

In the year 2017, Corporate Debtor failed to maintain financial discipline and defaulted in repayment of the loan facility. The loan accounts of the Corporate Debtor were not being operated in accordance with the terms & conditions of sanction of the facilities and applicable banking norms, consequently, the loan account of the Corporate Debtor was classified as NPA on 30.10.2017.

Subsequently Financial Creditor issued Recall Notice dated 23.07.2018, calling upon the Corporate Debtor to make payment of entire dues as on 30.06.2018 plus further interest. However due to non payment of such debt, the Financial Creditor on 25.10.2018 was constrained to initiate proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFEASI) against the Corporate Debtor by issuing demand notice u/s 13(2) demanding a total outstanding of Rs 94.77 Crore due as on 25.10.2018 within 60 days.

Thereafter, the Corporate Debtor vide letter dated 20.06.2019 proposed to enter into One Time Settlement vide OTS Proposal letter and offered to pay Rs. 60.00 Crore to settle the loan account of the Corporate Debtor with the Financial Creditor. Subsequently, the Financial Creditor approved the compromise proposal of the Corporate Debtor at Rs. 61.82 Crore, to be paid as per the repayment schedule prescribed in the OTS Acceptance letter dated 16.11.2019. The sanctioned OTS Scheme was accepted by the Corporate Debtor and the Corporate Debtor acknowledged the receipt of debt.

That the Corporate Debtor miserably failed to comply with the terms & conditions of the OTS scheme and hence, the OTS scheme failed. Accordingly, the Financial Creditor issued a fresh demand notice under Section 13(2) of SARFAESI Act, 2002 demanding repayment of Rs. 157,24,25,712.60 as on 04.05.2022 along with further interest till the date of payment.

Hence the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

iii. In terms of order dated 04.07.2023, this Tribunal admitted the CP(IB) No. 208/(ND)/2023 and Mr. Manohar Lal Vij was appointed as the Interim Resolution Professional.

iv. As a sequel of admission of the application preferred for initiation of CIRP, the IRP made the Public Announcement on 06.07.2023 in two newspapers i.e. Financial Express (English) and Jansatta (Hindi) inviting claims from creditors of the Corporate Debtor, and in pursuance of the same, he received claims from numerous creditors which were subsequently collated, verified, and provisionally admitted.

v. The Committee of Creditors ("**CoC**") was constituted on 26.07.2023 under Section 21 of the Code, initially comprising Union Bank of India (57.17% voting), Central Bank of India (41.23%), and Piramal Capital & Housing Finance Limited (1.60%).

vi. The claims of the financial creditors were later revised in terms of Regulation 14(2) of the CIRP Regulations on the basis of additional information received. The revised composition of the COC is provided hereunder:-

S. No.	Name of Financial Creditor	Voting%
1	Central Bank of India	50.59%
2	Union Bank of India	46.41%
3	Piramal Capital & Housing Finance Limited (erstwhile DHFL)	3.00%
Total		**100%**

vii. The Applicant convened the first CoC meeting on 02.08.2023, updating members on activities undertaken and discussing agendas. Union Bank of India suggested that, due to non-operational status of the Corporate

Debtor and ongoing property litigation, liquidation might be preferable to pursuing CIRP. Two major CoC members, jointly holding over 98% voting share, sought time to internally decide whether to continue CIRP or initiate liquidation.

viii. The second CoC meeting was held on 18.08.2023, where the Applicant informed members about constraints caused by non-submission of information/documents by the erstwhile management and financial creditors. The CoC, after deliberation, asked the Applicant to place resolutions for initiating liquidation under Section 33(2) of the IBC, to save time and costs and maximize value.

ix. Resolution for liquidation was proposed and put to e-voting at the CoC's request. The voting window closed on 22.09.2023, and the resolution to initiate liquidation failed to secure the requisite 66% majority, which is evident from the following voting results:-

Sl. No.	Name of CoC Member having Voting Power	Voting %age of CoC Member	% of Votes in favour of Resolution	% of Votes against the Resolution	Abstained from Voting
		(1)	(2)	(3)	(4)
1	Union bank of India (earlier known as Corporation Bank)	57.17	57.17	-	-
2	Central Bank of India	41.23	-	-	41.23
3	Piramal Capital & Housing Finance Ltd.	1.60	-	-	1.60
	Total	100%	57.17%	-	42.83

x. Due to the CoC's indecision, approval for valuers' fees was withheld which delayed the publication of Form "G" for inviting expressions of interest and related CIRP activities.

xi. The Applicant convened the 3rd CoC meeting on 06.10.2023, wherein Central Bank of India opposed liquidation without attempting resolution of the CD. After detailed discussion, other members concurred, and the CoC unanimously directed the Applicant to proceed with CIRP in accordance with the Code. The 4th CoC meeting was held on 27.10.2023, where the Applicant's confirmation as Resolution Professional was unanimously approved.

xii. In compliance of Regulation 27 of the CIRP Regulations, the Applicant appointed two registered valuers for each class of assets after inviting competitive quotations. The CoC ratified their appointment and fees. In the same meeting, the CoC also approved the eligibility criteria for inviting Expressions of Interest (EOIs) from Prospective Resolution Applicants (PRAs). Pursuant thereto, on 06.11.2023, the Applicant published Form G inviting EOIs from PRAs, with the last date for submission fixed as 28.11.2023. The publication was made in *Financial Express* (English, Delhi NCR Edition) and *Jansatta* (Hindi, Delhi NCR Edition).

xiii. The 5th CoC meeting was held on 21.11.2023, wherein the draft Request for Resolution Plan (RFRP) including the evaluation matrix, earnest money deposit, and other major terms was extensively discussed and duly approved. Out of 27 enquiries received, only three Prospective Resolution Applicants (PRAs) submitted EOIs along with Earnest Money Deposit. After due diligence, a Provisional List of PRAs was published on 08.12.2023. Certain prospective buyers, through emails dated 08.12.2023, expressed willingness to submit EOIs beyond

the deadline. Union Bank of India advised the Applicant on 09.12.2023 to explore legal options to allow their participation in the resolution process.

xiv. The 6th CoC meeting was convened on 14.12.2023, wherein the CoC approved publication of a fresh Form-G and resolved to extend the CIRP period by 90 days. Pursuant thereto, the Applicant filed IA No. 137/2024 seeking extension of CIRP by 90 days, which was allowed by the Tribunal vide order dated 17.01.2024. Pursuant to the 6th CoC meeting decision, the Applicant published fresh Form-G on 18.12.2023 inviting EOIs, in compliance with Regulation 36A of the CIRP Regulations. The publication was made in *Financial Express* (English, Delhi NCR Edition) and *Jansatta* (Hindi, Delhi NCR Edition).

xv. Since the earlier Form-G dated 06.11.2023 was annulled before issuance of Information Memorandum and RFRP, the CoC revised the evaluation matrix. The revised matrix was approved under Agenda Item No. C-2 in the 7th CoC meeting.

xvi. Following the fresh publication, the Applicant received seven EOIs, out of which five were included in the provisional list of PRAs published on 12.01.2024 and noted in the 7th CoC meeting held on 15.01.2024. The final list of PRAs, comprising six applicants, was published on 22.01.2024. Despite multiple EOIs, only two Resolution Plans were ultimately received from Mr. Anuj Goyal and Metrro Waste Handling Private Limited. These were opened and key financial figures were presented in the 8th CoC meeting held on 06.03.2024.

xvii. The Applicant vetted the two Resolution Plans to check compliance with the Code and regulations. In the 9th CoC meeting on 25.03.2024, it was noted that the plan submitted by Metrro Waste Handling Pvt. Ltd. appeared compliant, while that of Mr. Anuj Goyal lacked clarity regarding funding source and capability. Final Resolution Plans with pending queries were shared with CoC members. The Applicant requested the CoC members to assess the feasibility and viability of the plans and to deliberate on the financial aspects with the Resolution Applicants.

xviii. In the 10th CoC meeting on 28.03.2024, the CoC noted a substantial difference of more than 25% in the land and building valuation between the two registered valuers and accordingly appointed a third valuer, Mr. B.D. Sharma, under Regulation 35(1)(b).

xix. The Applicant further informed the CoC about the impending expiry of the CIRP period on 30.03.2024. An extension of 60 days was recommended and unanimously approved in the 10th CoC meeting. The Applicant filed IA No. 1733/2024 seeking extension of the CIRP period by 60 days from 30.03.2024, which was allowed by the Tribunal vide order dated 25.04.2024.

xx. In compliance of Regulation 35(1)(a) proviso, the third valuer, Mr. B.D. Sharma, was invited in the 11th CoC meeting on 17.04.2024 to explain the methodology adopted in the valuation of land and building. In the same meeting, the Applicant informed that copies of the Resolution Plans with financial synopsis had been shared with CoC members who

furnished undertaking to maintain confidentiality. Both PRAs were also invited to present their plans for negotiation.

xxi. Mr. Anuj Goyal, one of the PRA, assured availability of funds and undertook to furnish proof and immediately revised his plan value to ₹10 crores with a possibility of further increase. The representative of Metrro Waste Handling Pvt. Ltd., who had submitted a plan of ₹12.06 crores, sought time to improve the offer. To maximize value, the CoC resolved to adopt the Swiss Challenge mechanism as per Clause 1.13.14 of the RFRP dated 22.01.2024.

xxii. On 23.04.2024, Metrro Waste Handling Pvt. Ltd. submitted its final offer of ₹12.33 crore (₹12.1696 crore NPV), which was placed before the 12th CoC meeting held on 30.04.2024 (concluded on 10.05.2024). The CoC discussed and adopted the Swiss Challenge mechanism, providing three days for the challenger PRA to submit a counter bid and three days thereafter for the anchor bidder to match or update its bid.

xxiii. In the adjourned 12th CoC meeting on 10.05.2024, the final bids of both PRAs were presented along with the draft evaluation matrix. Details of the final offer along with the absolute scores of the PRAs are provided hereunder:-

PRA Name	Bid Value (Rs.)	NPV Value (Rs.)
Metro Waste Handling Private Limited	20,05,00,000/-	19,75,49,020/-
Mr. Anuj Goyal	12,33,00,000/-	12,16,96,254/-

PRA Name	Absolute score	Percentile score	Status
Metro Waste Handling Private Limited	2.41	100	H-1
Mr. Anuj Goyal	1.54	64.06	H-2

xxiv. Thereafter, both PRAs were directed to submit revised resolution plans incorporating responses to pending queries and final bid amounts for CoC's assessment.

xxv. After receipt of the third valuer's report, the average of the two closest estimates was taken for determining fair and liquidation values in compliance with Regulation 35(1)(c). A summary of the valuations was shared with CoC members on 27.04.2024.

xxvi. In the 13th CoC meeting on 14.05.2024, the Applicant confirmed receipt of revised plans from both PRAs, which were found compliant with the Code and the RFRP. Both plans were considered feasible and viable and were put to e-voting, with the voting window initially set till 23.05.2024. Some of CoC members sought extensions of the voting window citing the need for internal corporate approvals. The voting window was extended multiple times at their request. Voting extensions continued until 28.06.2024, the resolution plan of Metrro Waste Handling Pvt. Ltd. (H-1 bidder) was approved with 97% votes while one CoC member with 3% share abstained from voting.

xxvii. As the extended CIRP period of 330 days was to expire on 29.05.2024, the Applicant convened the 14th CoC meeting to seek a 30-day

extension, which was unanimously approved. IA No. 2919/2024 was filed and allowed by the Tribunal on 10.06.2024, extending the CIRP period up to 28.06.2024.

xxviii. To comply with CIRP timelines, the 15th CoC meeting was held on 28.06.2024, where members unanimously approved a further 30-day extension to issue the Letter of Intent and file the plan with the Tribunal. IA No. 3380/2024 was filed accordingly and allowed by the Tribunal vide order dated 12.07.2024, granting extension till 06.07.2024 for submission of the Resolution Plan application. In the same meeting, the CoC also approved, under Regulations 38(4) and 38(5), the constitution and duties of the monitoring committee, with the Applicant RP designated as its head to oversee day-to-day affairs and distribution of resolution plan proceeds.

xxix. Following CoC's approval of the Resolution Plan, the RP issued a Letter of Intent on 29.06.2024 to the Successful Resolution Applicant (SRA), which was unconditionally accepted on same day. On 05.07.2024, the SRA furnished performance security in the form of a ₹2.5 crore bank guarantee. Consequently, the Applicant filed IA (Plan) 35/2024 before this Tribunal on 06.07.2024 seeking approval of the Resolution Plan.

xxx. The application for approval of Resolution Plan was listed on 26.07.2024 wherein this tribunal issued notices to the Suspended Board of Directors. The Suspended Board thereafter filed IA No. 4205/2024 seeking rejection of the Resolution Plan on grounds of alleged contravention of the Hon'ble NCLAT's order dated 09.08.2024.

xxxi. The Applicant convened the 16th CoC meeting on 27.08.2024 to apprise members of the status of the approval application and ongoing litigation before the Hon'ble Delhi High Court, Hon'ble NCLAT, and this Tribunal. During the meeting, the Suspended Director informed that a revised OTS proposal had been submitted to the Banks and expressed willingness to present a higher-value Resolution Plan. The representative of Union Bank of India clarified that a new plan could not be considered since the approved plan was already pending before the Tribunal, which was concurred by the Applicant. The Applicant/RP apprised the CoC that the decision on the OTS proposal rests solely with the Banks, who may consider it in light of applicable judicial pronouncements. Accordingly, Union Bank of India requested Central Bank of India to convene a Joint Lenders Meeting to deliberate on the OTS proposal.

xxxii. The 17th CoC meeting was held on 05.11.2024, wherein the Suspended Director informed that an OTS proposal with 10% advance had been submitted to the Banks. Union Bank confirmed receipt of OTS proposal and informed that they have forwarded the OTS to the competent authority, while Central Bank acknowledged receipt but clarified that appropriation of the advance could be made only after approval of this tribunal.

xxxiii. On 19.11.2024, when the matter was listed before this Tribunal, Central Bank informed that its Management Committee was considering the settlement proposal. Counsel for the Suspended Director and the Central Bank's representative further submitted that

Union Bank was also agreeable, and both Banks together held 97% voting share. The Tribunal accordingly directed the Applicant to file an affidavit reflecting the Creditors' stand. Pursuant thereto, the Applicant sought confirmation from the Banks via emails dated 30.11.2024 and 01.12.2024. Union Bank, vide email dated 05.12.2024, conveyed its decision to continue with CIRP and reduction of OTS proposal, while Central Bank stated that the proposal was still under consideration with its Management Committee. The Applicant accordingly filed an affidavit on 05.12.2024 in compliance with the Tribunal's directions.

xxxiv. Central Bank of India informed the Applicant that it had approved the OTS proposal submitted by the Suspended Director vide letter dated 06.12.2024. On 09.12.2024, the Applicant's counsel apprised the Tribunal that Union Bank of India, holding 46.41% voting share, had rejected the OTS proposal. Subsequently, the counsel for Suspended Director/ Personal Guarantor submitted that Union Bank was reconsidering the proposal.

xxxv. The 18th CoC meeting was held on 30.12.2024, in which Union Bank of India informed that its higher authorities approved the OTS proposal on 28.12.2024. The Suspended Director requested the Applicant to file an application under Section 12A for withdrawal of CIRP, and the Applicant explained the procedure under Regulation 30A. The representative of Piramal Capital & Housing Finance Limited stated that no OTS proposal had been received by them and opined that acceptance of OTS was unlikely to revive the Corporate Debtor.

xxxvi. On 31.12.2024, Union Bank of India formally confirmed approval of the OTS proposal submitted by the Suspended Director via letter dated 21.12.2024. The Suspended Director filed IA No. 309/2025 seeking directions for the Applicant to file an application under Section 12A for withdrawal of CIRP. The matter is pending adjudication before the Tribunal. On 31.01.2025, Central Bank of India (50.59% voting share) requested the Applicant to convene a CoC meeting to move the Section 12A application, as both Consortium Banks had sanctioned the OTS proposal submitted by the Directors.

xxxvii. The 19th CoC meeting was held on 04.02.2025 to discuss the way forward for filing the Section 12A application. Representatives of Central Bank and Union Bank, holding 97% voting share, confirmed approval of the OTS. Union Bank noted that it had yet to receive the initial payment of ₹8.65 crore and required ECGC approval. Central Bank confirmed that members holding over 90% voting share agreed to withdraw the CIRP, and the resolution was placed for approval.

xxxviii. The Applicant highlighted Regulation 30A and informed that submission of FORM FA, a prerequisite for withdrawal, had not been completed. The Applicant also referred to judicial precedents, including the one in ***Ebix Singapore Pvt. Ltd. v CoC of Educomp Solutions Ltd.*** **and** ***Mandava Holdings Pvt. Ltd. v PTC India Financial Services Ltd***., relevant to CIRP withdrawal post CoC approval of a Resolution Plan.

xxxix. Union Bank of India informed via email dated 14.02.2025 that it had received the ₹8.65 crore initial amount, which was a condition for OTS acceptance. Subsequently, Central Bank submitted FORM FA on 17.02.2025 and remitted the outstanding CIRP cost. The 20th CoC meeting was held on 21.02.2025, in which the Applicant placed FORM FA before the CoC and confirmed that the entire outstanding CIRP cost, along with estimated further CIRP cost of ₹19,73,909/-, had been paid by the Applicant.

xl. In line with Regulation 30A, the Applicant requested Central Bank to provide justification for withdrawal of CIRP post-EOI issuance. The Central Bank stated that value maximization was the reason, as the amount receivable under the OTS (for both the corporate debtor and release of personal guarantees) was approximately four times the amount offered under the Resolution Plan.

xli. The following resolution was placed before the CoC for approval:

> *"**RESOLVED THAT** the consent of the Committee of Creditors be and is hereby accorded for the withdrawal of the Corporate Insolvency Resolution Process (CIRP) of Al Nafees Frozen Food Exports Private Limited pursuant to the submission of a duly signed Form FA and the remittance of unpaid CIRP costs by the applicant, in compliance with Regulation 30A of the CIRP Regulations, 2016.*
>
> ***RESOLVED FURTHER THAT** the Resolution Professional be and is hereby authorized to file the necessary application before the Hon'ble National Company Law Tribunal (NCLT), New Delhi Bench, for the submission of Form FA received from the applicant in the matter of Al Nafees Frozen Food Exports Private Limited."*

xlii. Central Bank and Union Bank, holding 97% combined voting share, voted in favor. Piramal Housing (3% voting share) requested e-voting, and subsequently abstained from voting on the resolution for withdrawal of CIRP. The resolution for withdrawal of CIRP was thus approved by CoC members holding 97% voting share, and voting results were shared on 24.02.2025.

Legal Proceedings before Hon'ble Delhi High Court and Hon'ble NCLAT

a. Company Appeal before Hon'ble NCLAT

xliii. Aggrieved by the Hon'ble NCLT order dated 04.07.2023 initiating CIRP, the Suspended Directors filed Company Appeal (AT) (Insolvency) No. 1034/2023 before Hon'ble NCLAT, seeking dismissal of the Section 7 petition filed by Central Bank of India.

xliv. The Appeal was first listed on 09.08.2023, during which Union Bank of India, as a consortium lender, informed that it was willing to consider the OTS proposal. The NCLAT directed Union Bank to consider the OTS and bring its decision on record, and ordered that no final decision on the Resolution Plan be taken in the meantime.

xlv. The Hon'ble NCLAT, by order dated 07.12.2023, reiterated that CIRP proceedings could continue but no final decision on the Resolution Plan should be made. Subsequently, neither Central Bank nor Union Bank approved the OTS and both filed affidavits placing their decisions on record. The NCLAT, on 10.01.2024, recorded the affidavits and maintained the interim order until the next hearing.

xlvi. On 12.02.2024, the NCLAT noted completion of pleadings and posted the Appeal for arguments. The interim order was not extended on said date and therefore stood vacated. Effective hearing occurred on 21.03.2024. The NCLAT took note of the Hon'ble Delhi High Court's order dated 19.02.2024 in Writ Petition (Civil) No. 2418/2024 filed by the Suspended Director, and posted the Appeal for 01.08.2024, hearing qua which was later adjourned to 23.09.2024.

b. <u>Legal proceedings before Hon'ble Delhi High Court</u>

xlvii. The Suspended Director filed CM No. 60881/2024 before Hon'ble Delhi High Court seeking direction to banks to execute OTS payment terms and terminate CIRP. The application was listed on 16.10.2024, during which the banks' counsel stated that the OTS proposal had been forwarded to their central office and was yet to be accepted. Counsel for the SRA raised objections. The Hon'ble Court granted liberty to file reply and posted the matter for 14.11.2024, and subsequently for 19.12.2024.

xlviii. The SRA filed Writ Petition W.P. (C) No. 14992/2024 before Hon'ble Delhi High Court seeking injunction against the banks from considering the OTS of the Corporate Debtor, citing approval of the Resolution Plan by the CoC on 29.06.2024. On 25.10.2024, the Court directed that any OTS approved by the banks must be routed through the IRP in accordance with CIRP Regulations, and the matter was posted for 14.11.2024, later for 19.12.2024.

xlix. The SRA subsequently filed LPAs Nos. 1166/2024 and 1167/2024 challenging the Orders dated 16.10.2024 and 25.10.2024 passed by the Hon'ble Single Judge. The Hon'ble Division Bench, vide order dated 27.11.2024 (with correction Order on 04.12.2024), stayed ongoing proceedings before the Hon'ble Single Judge in W.P.(C) Nos. 2418/2024 and 14992/2024.

c. <u>Contempt Case and other Applications before the Hon'ble NCLAT</u>

l. Meanwhile, the Suspended Directors filed Contempt Case (AT) No. 28 of 2024 before Hon'ble NCLAT alleging contravention of the Order dated 09.08.2024. On 28.10.2024, the NCLAT noted that the Resolution Plan had been filed before this Tribunal for approval and directed that you should be guided by the Order dated 09.08.2024, and no final decision be taken until disposal of the Appeal.

li. The SRA filed Intervention Applications IA Nos. 8094/2024 and 8093/2024 before Hon'ble NCLAT seeking impleadment in the Company Appeal and contempt proceedings, and vacation of the Order dated 28.10.2024. The matter was listed on 22.11.2024, and the parties sought time to file replies; it was subsequently posted for 06.12.2024.

lii. On 06.12.2024, the Applicant informed that Union Bank of India had rejected the OTS submitted by the SRA, while the OTS remained pending before Central Bank of India. The Central Bank informed that prior OTS was rejected, but thereafter fresh OTS proposals were being submitted by the Suspended Directors. NCLAT directed Central Bank to take a final decision by 10.12.2024.

liii. The matter was listed on multiple occasions thereafter, but no effective orders could be passed. Finally, the Applicant filed the present Application seeking withdrawal of CIRP of Al Nafees Frozen Food Exports Private Limited under Section 12A of the Code read with Regulation 30A(1)(b) of the CIRP Regulations.

3. The Successful Resolution Applicant (hereinafter referred to as 'SRA'), Metrro Waste Handling Private Limited, has vehemently opposed the captioned application. In reply, the SRA has raised several objections to the maintainability of the application. The said objections, as averred by the SRA, are:-

i. The application filed by the Resolution Professional (RP) for withdrawal of CIRP is not maintainable since the CoC has already approved the resolution plan submitted by Metrro Waste Handling Pvt. Ltd. (SRA). Following CoC's approval, a Letter of Intent dated 29.06.2024 was issued in favor of the SRA, and in compliance with RP's directions, the SRA submitted a Performance Bank Guarantee (PBG) of ₹2.5 Crores, establishing binding obligations.

ii. Once the resolution plan has been duly approved by the CoC, it becomes binding and cannot be revoked, altered, or substituted by any subsequent OTS proposal.

iii. The OTS proposals submitted by the suspended directors, and their purported acceptance by Central Bank of India and Union Bank of India, are legally untenable and unenforceable under the provisions of the IBC, 2016.

iv. The SRA relies on settled judicial precedents (Supreme Court and NCLAT) affirming that once a resolution plan is approved, the CoC cannot subsequently reconsider or substitute it, including cases such as:

- ***Hem Singh Bharana v. Pawan Doot Estate Pvt. Ltd.*** **(2023 SCC Online SC 769)**
- ***Nehru Place Hotels and Real Estate Pvt. Ltd. v. Sanjeev Mahajan*** **& Ors. [2024 SCC Online NCLAT 49]**
- ***Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd.*** **& Anr. (2022 2 SCC 401)**
- ***Kalinga Allied Industries India Private Limited vs. Committee of Creditors & Anr. Company Appeal (AT) (INSOLVENCY) No. 689 of 2021***

v. The resolution plan of the SRA was considered by the CoC from the 8th meeting (06.03.2024) to the 13th meeting (14.05.2024), when it was put to vote. The suspended director attended and actively participated in all these meetings but raised no objection to the plan's consideration or approval.

vi. During the 16th CoC meeting (27.08.2024), the suspended director proposed submitting a higher-value resolution plan. However, the CoC unanimously rejected this, affirming that under the IBC, 2016, once a resolution plan has been approved, no subsequent plan or OTS can be considered. In the same meeting, Union Bank of India explicitly confirmed that, given the approval already granted to the SRA's

resolution plan, it was legally impermissible to entertain any fresh resolution plan or OTS.

vii. In the 19th CoC meeting (04.02.2025), the Resolution Professional clarified that the OTS approvals by Central Bank of India (CBI) and Union Bank of India (UBI) were conditional, subject to approval by the Hon'ble Tribunal and prior approval of ECGC, which was never obtained. The RP also cited judicial precedents and stated that once a resolution plan is approved by the CoC and filed under Section 30(6) of the Code, any subsequent OTS is impermissible.

viii. The present application relies on OTS proposals dated 08.10.2024 and 09.10.2024 submitted by the suspended director, Arham Qureshi, but these proposals were withheld from the record of the Tribunal and not annexed to the application, amounting to suppression of material facts.

ix. The OTS proposals show that the suspended director intended to raise settlement funds by disposing assets of the Corporate Debtor and third parties, which directly violates Section 14(1)(b) of the IBC, 2016 that prohibits transfer or disposal of assets during the moratorium. Hence, the OTS proposals and their approvals by CBI and UBI are illegal and void pending NCLT approval.

x. Despite being aware that the suspended director's OTS proposals involved dealings with the Corporate Debtor's assets, Central Bank of India (CBI) sanctioned an OTS of ₹52.32 crores (06.12.2024), and Union Bank of India (UBI) sanctioned an OTS of ₹26 crores (21.12.2024). Such approvals are contrary to the IBC and hence invalid.

xi. The application is filed in contempt of the Delhi High Court's Division Bench order dated 27.11.2024 in LPA Nos. 1166 & 1167/2024. That order stayed the earlier single judge's direction dated 25.10.2024 requiring routing of any OTS through the RP. Therefore, pursuing withdrawal under Section 12A based on OTS, despite the stay, is impermissible and renders the application liable for dismissal.

xii. The claim that OTS ensures maximization of value is false and misleading. The assertion that the OTS amount is four times higher than the Resolution Plan consideration is specifically denied.

xiii. Under the approved Resolution Plan, the SRA is entitled only to five specified assets of the Corporate Debtor. Other properties of the Corporate Debtor do not fall within its share. The Resolution Plan value of ₹ 20,05,00,000/- exceeds the liquidation value of ₹20,01,51,667 /-., as per the information in Form H.

xiv. The One-Time Settlement (OTSs) are cumulatively worth Rs 78,32,00,000/-. The said sum is being paid to discharge liabilities of Rs. 428,27,14,155/-as per Form H. As can be seen from the letters dated 8.10.2024 and 9.10.2024, the OTSs seeks discharge of the following assets-

Sr. No.	**Component**	
i.	Discharge of liability	Rs. 428,27,14,155/-
Assets		**Realizable Value (Minimum anticipated)**
ii.	Corporate Debtor	Rs. 20,05,00,000/-
iii.	Third property properties	Rs. 150,00,00,000/-
Iv	Personal Guarantors (4)	Unknown
v.	PUFE Transactions	Rs. 56,55,00,000/- (at 15 percent)
Total Worth		Rs. 654,87,14,155

xv. The above table can be further explained as below :

a) **As per Form H:** Compliance Certificate, the total debt claimed by CBI and UBI amounts to Rs. 428,27,14,155/-.

b) **Other Mortgaged Assets:** As per the valuation conducted by the Banks in 2013 (reproduced in the Forensic Audit Report dated 07.02.2020 filed by the Resolution Professional), the total security coverage, excluding stocks and receivables and after deducting the value of assets allegedly sold (i.e., Rs. 70 Crores), is more than Rs. 150 Crores (excluding assets of CD, Personal Guarantees with unascertained assets). This can be seen from the sample sale notices issued by the Banks whereby reserve price for 2 properties not belonging to the CD is as follows-

Details of sample other mortgaged assets	Reserve price as per notices
Auction notice of CBI dated 20.05.2024	Rs. 15,06,00,000/-
Auction notice of UBI dated 31.03.2023 and dated 05.07.2024	Rs. 110,00,00,000/-

c) **Personal Guarantees:** There are 4 matters pending before this Tribunal wherein the personal guarantees of the suspended directors have been invoked under the provisions of the Insolvency and Bankruptcy Code, 2016. The details of the same are:-

Sr. No.	Case No.	Case title
1.	IB-610/ND/2023	Central Bank of India, Nitin Narang (RP) Vs. Mohd. Muqeem Qureshi (Guarantor)
2.	IB-613/ND/2023	Central Bank of India, Nitin Narang (RP) Vs. Mohd. Atif Qureshi (Guarantor)
3.	IB-608/ND/2023	Central Bank of India, Nitin Narang (RP) Vs. Mohd. Mushrafeen Qureshi (Guarantor)
4.	IB-623/ND/2023	Central Bank of India, Nitin Narang (RP) Vs. Mohd. Arham Qureshi (Guarantor)

d) **Corporate Debtor (CD):** According to Form H Compliance Certificate submitted by the Resolution Professional, the liquidation value is ₹20,01,51,667/- and the Resolution Plan is for Rs. 20,05,00,000/-.

e) **Preferential, Undervalued, Fraudulent, and Extortionate (PUFE) Transactions:** The Forensic Audit Report of dated 07.02.2020 reveals that the promoters/directors of the Corporate Debtor have committed substantial fraud and misappropriation of funds, causing financial loss of approximately Rs. 377 Crores to the banks, including Respondent Nos. 2 and 3. The anticipated minimum recovery from PUFE transactions, even if estimated at lowest say, 15% of the value of transactions under Section 66 of the IBC, amounts to Rs. 56.55 Crores.

xvi. The Suspended Board is misleading the Tribunal by relying on interim orders dated 09.08.2023, 07.12.2023, and 28.10.2024, claiming an embargo on plan approval. When the Resolution Plan was considered and voted upon, no such objection was raised, nor any order was disclosed to the SRA. It is contended that these interim orders only

directed this tribunal not to pass a final decision, they did not restrict the CoC from considering or approving the Resolution Plan.

xvii. The Suspended Director has misinterpreted the NCLAT order dated 09.08.2023 as a bar on CoC approval. In reality, it was only an ad-interim order, which is evident from the following:-

a) The order dated 09.08.2023 was extended till 07.12.2023.

b) On 10.01.2024, the order dated 07.12.2023 was extended till the next date of hearing i.e. till 12.02.2024.

c) After 12.02.2024, the order was not continued

20.02.2024	Matter not taken up due to paucity of time
21.03.2024	Notes order of High Court keeping rejection of OTS in abeyance
01.08.2024	Notes a Writ Petition is pending *Note - **This hearing was after approval of the Plan and no objection to approval of the Plan was raised during the hearing.***
23.09.2024	Re-notifies the appeal. *Note - **This hearing was after approval of the Plan and no objection to approval of the Plan was raised during the hearing.***

d) The Resolution Professional and COC has also recorded in the notice dated 04.03.2024 that there exists no stay order post 12.02.2024.

e) A limited time interim order ceases to be effective once the period for which it was granted expires, unless expressly extended. Reliance in this regard is placed on-

1. Ashok Kumar & Ors. Vs. State of Haryana & Anr reported in (2007) 3 SCC 470 (Para 11,12, 13 and 18)

2. ***Searle (India) Limited, rep. by its president Dr. K.K. Maheswari vs. M.A. Majid reported in 2003 (1) CTC 397 (Para 2,4 and 12)***

3. ***Karam Chand Thapar Brothers (C.S.) Ltd vs. Nandini Roofing System pvt. Ltd. & ors. reported in 2010 SCC Online ALL 2603 (Para 4,7,14 and 15)***

xviii. It is submitted by the SRA that after receiving the Letter of Intent on 29.06.2024, it has blocked its funds by depositing ₹10 lakhs as Earnest Money and furnishing a Performance Bank Guarantee of ₹2.5 crores. Allowing OTS after plan approval undermines the IBC framework, deters resolution applicants, and risks destabilizing the resolution process by enabling SRAs or others to walk away from commitments.

xix. It is contented by the SRA that Suspended Director is a habitual defaulter and has only attempted to delay the CIRP. Despite being eligible as an MSME to submit a plan under Section 240A read with Section 29A, no resolution plan was filed. Instead, he attempted to introduce a new plan under the garb of OTS, which was declined by the CoC in its 16th meeting.

xx. The Corporate Debtor's account was declared NPA in 2017. Two earlier OTSs of the Suspended Board also failed due to default. Having avoided participation between January and August 2024, the Suspended Director belatedly filed fresh OTS proposals in October 2024, only to stall the resolution process.

xxi. It is averred that Suspended Director indulged in forum shopping by simultaneously approaching the NCLAT and the writ court, taking

adjournments from one forum while pursuing remedies in another. After securing an investor, he filed a second round of OTS proposals only to delay adjudication and stall the approval of the resolution plan.

ANALYSIS & FINDINGS:-

4. I carefully examined the application filed by the Resolution Professional under Section 12A of the IBC seeking withdrawal of the CIRP against Al Nafees Frozen Food Exports Private Limited, alongside the objections raised by the Successful Resolution Applicant (SRA), Metrro Waste Handling Private Limited.

5. At the inception of the IBC, 2016, there was no provision permitting withdrawal of applications under Sections 7, 9, or 10 after admission into CIRP. The situation was later addressed through the introduction of Section 12A and amendments to Regulation 30A of the CIRP Regulations, 2016. The Hon'ble Supreme Court has elaborately examined this legislative evolution in *GLAS Trust Company LLC v. Byju Raveendran & Ors.* (Civil Appeal No. 9986 of 2024, judgment dated 23.10.2024, paras 45–62).

> *"ii. Legal framework for withdrawal and settlement of claims*
>
> ***a. Evolution of the legal framework***
>
> *45. Introduced less than a decade ago, the IBC and the various rules and regulations promulgated under the Act constitute a relatively nascent legal framework. On several occasions, the legislature and the executive have responded to the lacunae in the framework identified by this Court and sought to fill the gaps by legislating, in the form of amendments to the IBC or promulgating rules or regulations, if necessary. The evolution of the legal framework in relation to the withdrawal of CIRP after the admission of an application moved by a creditor is a classic example of this delicate coordination.*

46. Under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the NCLT may permit the withdrawal of applications made by a creditor (under Sections 7, 9 or 10) on a request by the applicant before the admission of the application. When the IBC was originally enacted in 2016, it did not contain any provisions, in the text of the Act or its allied rules and regulations, for the withdrawal of CIRP after the application had been admitted. Although there was no express provision in this regard, in several instances, this Court invoked its powers under Article 142 of the Constitution and permitted withdrawal of the CIRP on account of a settlement between the creditor and the corporate debtor after the application had been admitted by the NCLT.

47. In one such decision of this Court, namely, ***Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP****, a two-judge bench of this Court invoked its power under Article 142 to record the settlement of the parties and allow the compromise between the creditor and the corporate debtor after the admission of the concerned application. While doing so, this Court also prima facie agreed with the proposition that in view of Rule 8 of the CIRP Rules, the NCLAT cannot use its inherent powers under Rule 11 of the NCALT Rules 2016 to allow a settlement or withdrawal after the admission of the application.*

48. The above position was followed by the same Bench of this Court in ***Uttara Foods & Feeds (P) Ltd. v. Mona Pharmachem****, while allowing another settlement between the parties under Article 142. However, on this occasion, the bench also observed that instead of all such orders coming to this Court to utilize its powers under Article 142, the relevant rules may be amended to account for cases where an agreement has been reached after admission of the application. This Court observed as follows:*

> *"2. … this Bench had observed that in view of Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the National Company Law Appellate Tribunal prima facie could not avail of the inherent powers recognised by Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 to allow a compromise to take effect after admission of the insolvency petition.* ***We are of the view that instead of all such orders coming to the Supreme Court as only the Supreme Court may utilise its powers under Article 142 of the Constitution of India, the relevant Rules be amended by the competent authority so as to include such inherent powers. This will obviate***

unnecessary appeals being filed before this Court in matters where such agreement has been reached*. On the facts of the present case, we take on record the settlement between the parties and set aside the NCLT order …"*

49. Against this backdrop, the Ministry of Corporate Affairs of the Government of India set up the Insolvency Law Committee, to address the early teething challenges arising from the implementation of the IBC. The ILC Report, submitted on 26 March 2018, also dealt with the issue of withdrawal of CIRP proceedings and discussed the existing practice of this Court of granting "judicial permission" for withdrawal of CIRP after the admission of the application of the creditor. In this context, the report discussed the objectives of the IBC, drawing from the report of the Bankruptcy Law Reforms Committee which preceded the enactment of the IBC, and concluded that:

"29.1 …it was agreed that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. ***The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.****"*

(emphasis supplied)

50. The ILC Report found that in several cases, a settlement may be reached amongst "all creditors and the debtor" for withdrawal, and not only between the individual applicant creditor and the debtor. In light of this, the ILC unanimously agreed that the relevant rules may be amended to provide for withdrawal postadmission if the CoC approved of such an action by a voting share of ninety per cent. Significantly, the report states that the ILC specifically discussed and concluded that Rule 11 of the NCLAT Rules, 2016 may not be adopted for withdrawal of CIRP, and instead Rule 8 of the CIRP Rules may be appropriately amended. The observations in the ILC Report on this aspect are as follows:

"29.2. On a review of the multiple NCLT and NCLAT judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action

by a voting share of ninety per cent. It was specifically discussed that rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage (as observed by the Hon'ble Supreme Court in the case of Uttara Foods and Feeds Private Limited v. Mona Pharmacem) and even otherwise, as the issue can be specifically addressed by amending rule 8 of the CIRP Rules."

51. Accepting the recommendation of the ILC, the legislature introduced Section 12A in the IBC by the Insolvency and Bankruptcy (Second Amendment) Act, 2018 with effect from 6 June 2018. It reads as follows:

*"**12A. Withdrawal of application admitted under section 7, 9 or 10.** – 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 per cent. voting share of the committee of creditors, in such manner as may be specified."*

(emphasis supplied)

*52. The provision provides for the withdrawal of an application under Sections 7, 9 and 10 **after** it has been admitted, with the approval of ninety-percent voting share of the CoC. Evidently, Section 12A was made more stringent in comparison to Section 30(4) of the IBC, which pertains to approval of the Resolution Plan by the CoC. Whereas under Section 30(4) of the IBC, the voting share of the CoC for approving the Resolution Plan is sixty-six percent, the requirement under Section 12A of the IBC for withdrawal of CIRP is ninety percent. The reason for this divergence and high threshold appears to be rooted in the reasoning provided in the ILC report that once an application is admitted it is no longer a proceeding only between the applicant creditor and the corporate debtor but is a proceeding involving all creditors of the debtor. Significantly, the text of Section 12A only details the procedure for the withdrawal of the application after the formation of the CoC (with ninety percent of the voting share), but is silent about the withdrawal of an application after the application is admitted, but before the CoC is formed.*

53. With the introduction of Section 12A in the IBC, the CIRP Regulations were also amended to include Regulation 30A which delineated the detailed procedure to withdraw an application under Section 12A. At the time of its introduction, the regulation read as follows:

*"**30A. Withdrawal of application.—** (1) An application for withdrawal under Section 12-A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under Regulation 36-A.*

(2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application.

(3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.

(4) Where the application is approved by the committee with ninety per cent voting share, the resolution professional shall submit the application under sub-regulation (1) to the adjudicating authority on behalf of the applicant, within three days of such approval.

(5) The adjudicating authority may, by order, approve the application submitted under sub-regulation (4)."

54. Regulation 30A(1), as it stood originally, required that an application for withdrawal shall be submitted to the IRP or the RP in the prescribed form, before the invitation for expression of interest under Regulation 30A. It did not provide the procedure for withdrawal after the invitation of expression of interest had been issued. Regulation 30A(2) provided that the application for withdrawal shall be accompanied by a bank guarantee towards the specified estimated costs. Regulation 30A(3) mandated that the CoC must consider the application within seven days of its constitution or the receipt of the application, whichever is later. Finally, Regulation 30A(4) provided that once the CoC approved the application with ninety percent voting share, the RP shall submit the application to the NCLT on behalf of the applicant, within three days of the approval. Finally, under Regulation 30A(5), the NCLT could approve the application submitted by an order.

55. Notably, akin to Section 12A, Regulation 30A in its original form, was silent about withdrawal in cases where the application had been admitted, but the CoC had not been formed. Similarly, Regulation 30A(1) only spoke of withdrawal before the invitation of expression of interest had been issued and there was no provision

which provided for withdrawal after it had been issued. Both these gaps were identified in subsequent judgements of this Court.

*56. In **Brilliant Alloy Private Limited vs S Rajagopal and Ors**, a two-judge bench of this Court observed that the requirement in Regulation 30A, as it stood then, that the application must be made before the issuance of an invitation for expression of interest was only directory. The regulation, it was held, has to be read along with Section 12A, which does not contain any bar on withdrawal after the issuance of an invitation for expression of interest.*

57. The constitutional validity of various provisions of the IBC, including Section 12A was challenged before this Court. In Swiss Ribbons (supra), a two-judge bench of this Court, speaking through Justice Rohinton Fali Nariman, inter alia upheld the constitutionality of Section 12A. One of the questions that arose before this Court, in this context, was what happens if withdrawal is sought after admission of the application, but before the CoC is constituted. This Court observed:

> *"82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 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 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 NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case**.*

*58. From the above observations of this Court in **Swiss Ribbons** (supra), the following positions of law may be deduced:*

a. Once the petition instituted by a creditor is admitted, the proceedings before the NCLT become a 'collective proceeding' or a proceeding in rem. Thus, the body which oversees the resolution process, i.e. CoC must be consulted before allowing the claim to be settled;

b. This Court recognized that there was a lacuna in relation to cases where the CoC had not been formed. Accordingly, it was held that, in such cases, the party can approach the NCLT directly, and the NCLT may exercise its inherent powers under Rule 11 to allow or disallow the application for settlement/withdrawal. However, given the in rem nature of the proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case;

c. This high threshold of a ninety-percent voting share of the CoC is not arbitrary. The idea is that the financial creditors have to put their heads together to allow such withdrawal; and

d. Under Section 60 of the IBC, the decision of the CoC to reject or accept the settlement claim can be challenged before the NCLT and then, the NCLAT.

59. In response to the lacunae identified by this Court in ***Swiss Ribbons*** *(supra) and* ***Brilliant Alloy Private Limited*** *(supra), an amendment was made to Regulation 30A of the CIRP Regulations. This amendment came into effect on 25 July 2019 and Regulation 30A in its present form reads as follows:*

"30A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under

regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule-I accompanied by a bank guarantee-

> *(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub- regulation (1); or*
>
> *(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).*

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

(6) The Adjudicating Authority <u>may</u>, by order, approve the application submitted under sub-regulation (3) or (5).

(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code."

60. Regulation 30A (1) now provides for the procedure to make an application for withdrawal before the NCLT under Section 12A, both before and after the constitution of the CoC. Sub-clause (a) of Regulation 30A (1) states that in cases where the CoC has not been constituted, the applicant may place an application for withdrawal before the NCLT, through the IRP. Similarly, subclause (b) of Regulation 30A (1) states that in cases where the CoC is constituted, the applicant may place an application for withdrawal before the NCLT, through the IRP or the RP, as the case may be. In essence, at both stages – before and after the constitution of the CoC – the application for withdrawal may only be made through the person appointed to oversee the insolvency proceedings, i.e. the IRP or the RP.

*61. The proviso to Regulation 30A (1) provides that when the application is made after the CoC has been constituted and after the invitation for expression of interest has been issued, the applicant shall state the reasons for withdrawal at this stage. In essence, the regulation in its amended form, deviates from its earlier form by also responding to the decision of this Court in **Brilliant Alloy Private Limited** (supra). Unlike the unamended regulation, the regulation acknowledges the possibility of withdrawal even after the invitation for expression has been issued. However, it mandates that an application for withdrawal in such cases must be accompanied by reasons.*

62. Regulation 30A (2) provides that the application must be made in the manner prescribed in Form FA of Schedule-I, and must be accompanied by a bank guarantee towards the specified expenses. Regulation 30A(3) provides that in cases where the application for withdrawal is moved before the constitution of the CoC, the IRP shall submit the application to the NCLT on behalf of the applicant within three days of receipt. Regulations 30A (4) and (5) deal with the situation where the CoC has already been constituted. They provide that the CoC shall consider the application within seven days of receipt, and subsequently, if the application is approved by the CoC with a ninety-percent voting share, the RP must submit the application with the approval to the NCLT within three days of the approval. Finally, regulation 30A(6) provides that on the receipt of the application under both mechanisms (before the CoC and after), the NCLT may pass an order approving the application submitted by the RP or IRP, as the case may be."

6. The law that emerges from the aforesaid judgment regarding the withdrawal of an application filed under Section 7, 9 or 10 of the Code after issue of invitation for Expression of Interest (EoI) under Regulation 36A can be summarized as follows:

(I) When the application filed under Section 7, 9 or 10 of the Code is admitted and CoC is constituted, the Regulation 30(1)(b) r/w Regulation 30A(4) of CIRP Regulations, 2016 would be applicable. As per said regulations, the CoC shall consider the Form FA-application for withdrawal within 7 days of its receipt. Thereafter, the application may be submitted before the Adjudicating Authority by the Applicant through RP/ IRP after ascertaining approval of 90% voting share of the CoC qua the application, provided that when the application is made after issue of invitation for expression of interest under Regulation 36A, the Applicant shall state the reasons justifying the withdrawal after issue of such invitation.

7. It is pertinent to note that when the CoC stands constituted, the law clearly provides the threshold percentage of vote-share required from the CoC for placing the application of withdrawal of CIRP before the Adjudicating Authority by the RP/ IRP.

8. In ***Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. & Anr. (2022) 2 SCC 401,*** the Hon'ble Supreme Court could deal with proposition as to whether after its approval, the Resolution Plan could be withdrawn by SRA or not. There is no provision in IBC which provides for withdrawal of Resolution Plan by the SRA, thus taking a view that the

Resolution Plan is in the nature of contract between CoC and SRA, Hon'ble Supreme Court took a view that after approval of CoC, the SRA could not withdraw the Resolution Plan. As far withdrawal of application with approval of CoC is concerned, unlike the withdrawal of Resolution Plan by SRA, there is a statutory provision in the law viz. Section 12A of the Code. As per the provision of Section, this Tribunal may allow withdrawal of application admitted under Section 7 of the Code, on an application made by the Applicant with the approval of 90% share of the Committee of Creditors. Thus, the position of law regarding withdrawal of application by the Applicant is different. Besides, the proviso to Regulation 30A(1) of the Code, does not draw any distinction between the stage which emerges after approval of the Resolution Plan by CoC and before such approval. In terms of the proviso, the single stage identified is that after invitation for Expression of Interest under Regulation 36A, the Applicant should state reasons justifying withdrawal. In the present case, the reason given by the Applicant is that the amount offered in settlement is almost four times of the plan value, thus acceptance of settlement would maximize the value of the Corporate Debtor.

9. Though, the SRA tried to espouse that the total market value of the secured assets available with bank is Rs. 561.73 Crores, but the Ld. Sr. Counsel for the Applicant (Central Bank of India) submitted that the fair value of the properties of the CD not yet sold are 79.07 Crores while the distress value thereof is Rs. 62.055 Crores. Mr. Tondon, the Ld. Counsel for Central Bank of India also espoused that the plea raised on behalf of the SRA regarding the assets available with the Personal Guarantors is also not correct and the aforementioned value includes even the assets available with the

promoters. If according to SRA the secured assets pledged with the banks, owned by CD is 561.73 Cr. and a large sum of money is involved in PUFE transaction then we are unable to appreciate that how and why the value of the Resolution Plan offered by it is mere Rs. 20,05,00,000/-. At this stage, when the members of CoC have taken the call, to withdraw the CIRP/CP(IB)-204/2023, the Applicant is not wrong in comparing the amount offered by the suspended management in settlement and the plan value. Apparently, when the amount of OTS proposal mentioned in Annexure A-32 and Annexure A-35 is Rs. 52.32 Crores for the Central Bank of India and Rs. 26 Crores for Union bank of India, the amount offered in Resolution Plan is only Rs. 20,05,00,000/-.

10. As per funds of the settlement, the borrower was to pay an amount of Rs. 8.65 Crores (out of OTS amount of Rs. 26 Crores) in no lien account before filling the present application under Section 12A of IBC, 2016 and the amount is to be adjusted towards borrower account only upon receipt of NCLT approval.

11. Thus, when the members of consortium in exercise of their commercial wisdom are more comfortable with the settlement offered by the ex-management than the value of the plan offered by the SRA, we have limited discretion in the matter and would be better advised to go by the commercial wisdom of CoC. As far as the judgment of Hon'ble NCLAT in the case of ***Hem Singh Bharana vs. M/s Pawan Doot Estate Private Limited And Ors.*** is concerned in Civil Appeal No. 443 of 2023, Hon'ble Supreme Court could notice that the Section 12A could not have been invoked in the absence of

requisite concurrence/consent of 90% of the creditors. During the course of hearing, it transpired that in the case of Hem Singh Bharana, the creditors having 90% vote share had not given consent in favour of withdrawal and the resolution to withdraw the application was passed by the CoC with 84% vote share. The brief order dated 30.01.2023 reads thus:-

> *"We do not find any good ground and reason to interfere with the impugned judgment, as the appellant, in our opinion, cannot invoke Section 12A of the Insolvency and Bankruptcy Code, 2016 in the absence of requisite concurrence/consent of 90% of the creditors.*
>
> *In view of the aforesaid position, the appeal is dismissed.*
>
> *We clarity that we have not commented on and on examined the other issues which may arise for consideration.*
>
> *Pending application(s), if any shall stand disposed. Of."*

12. In ***Vallal RCK vs. Siva Industries and Holdings Limited and Others*** in (2022) 9 Supreme Court Cases 803, Hon'ble Supreme Court viewed that when 90% or more of the creditors in their wisdom after due deliberation find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, and this Tribunal or the Appellate Tribunal cannot sit in an appeal over commercial wisdom of CoC. Paras 21 to 24 of the judgment reads thus:-

> *"**21.** This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the*

proposed resolution plan and assessment made by their team of experts. A reference in this respect could be made to the judgments of this Court in K. Sashidhar v. Indian Overseas Bank [K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150 : (2019) 4 SCC (Civ) 222] , Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh [Maharashtra Seamless Ltd. v. Padmanabhan Venkatesh, (2020) 11 SCC 467 : (2021) 1 SCC (Civ) 799] , Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. [Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401 : (2022) 1 SCC (Civ) 233] and Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd. [Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : (2022) 2 SCC (Civ) 165]

22. *No doubt that the aforesaid observations have been made by this Court while considering the powers of the CoC while granting its approval to the resolution plan.*

23. *As already stated hereinabove, the provisions under Section 12-A IBC have been made more stringent as compared to Section 30(4) IBC. Whereas under Section 30(4) IBC, the voting share of CoC for approving the resolution plan is 66%, the requirement under Section 12-A IBC for withdrawal of CIRP is 90%.*

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 the appellate authority cannot sit in an appeal over the commercial wisdom of 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 provisions of the statute or the Rules."*

13. In the present case, in its 19th meeting of CoC, after due deliberation, the CoC could resolve that an application under Section 12A of IBC should be preferred before this Tribunal. The minutes recorded in 19th meeting of CoC are placed on record as Annexure A-37 to application. Relevant excerpt of the minutes reads thus:-

> Representative of both banks requested Mr. Arham Qureshi, present in the meeting, to address Piramal's concerns and provide the necessary clarifications.
>
> Despite chairman's reluctance, both banks insisted that a resolution for withdrawal of CIRP pursuant to Regulation 30A(1)(b) of CIRP Regulations 2016, be placed for CoC's approval and banks would thereafter submit necessary Form FA along with bank guarantee for CIRP Cost for submitting necessary application with Adjudicating Authority.
>
> Representative of Central Bank of India also submitted that there is no requirement in Regulation 30A for submitting FORM FA along BG for meeting CIRP expenses before consideration of withdrawal application by the CoC.
>
> Upon the persistent instance of representatives of Central Bank of India and Union Bank of India, the Chairman sought views of all the COC members regarding withdrawal of CIRP. Subsequently, Central Bank of India and Union Bank of India collectively holding 97% voting share in the COC, approved to submit an application for withdrawal of corporate insolvency resolution process of Corporate Debtor. However, Piramal did not assent to filing of application for withdrawal.

14. We may also be not oblivious of the fact that in the appeal preferred before Hon'ble NCLAT against the order of admission, Hon'ble NCLAT had ordered that though CIRP could continue, but Resolution Plan should not be approved and the appeal is still pending. Though the interim order could not be continued after 12.02.2024, but the same is not specifically vacated also. Thus, on account of pendency of appeal before Hon'ble NCLAT even the order of admission passed by this Tribunal cannot be said to have attained finality and the process in which the Resolution Plan could be approved by CoC is within teeth of the appeal which is pending before Hon'ble NCLAT and is still under examination.

15. The reason given by the Applicant i.e. Central Bank of India, which preferred application u/s 12A through RP is that the settlement offered by ex-management would maximize the value of the CD, is not such reason which we can refuse to accept for allowing withdrawal of the C.P.(IB)-204/ND/2023.

16. We may not be oblivious of the fact that after withdrawal of the IB-204/ND/2023, all the creditors/stakeholders would be entitled to work out their claims against CD in accordance with the remedies available to them outside the IBC, in accordance with law.

17. As far as PIRP qua Personal Guarantors are concerned, a separate and independent view would be taken with regard thereto. While taking a holistic view in the matter, particularly in the wake of the order passed by Hon'ble Supreme Court in ***Hem Singh Bharana vs. M/s Pawan Doot Estate Private Limited And Ors. (supra)*** as also in ***Vallal RCK vs. Siva Industries and Holdings Limited and Others*** (supra), the appropriate approach would be to allow the present application and dismiss the IB-204/ND/2023 as withdrawn. Nevertheless, we may not be oblivious of the fact that the sudden closure of CIRP after approval of plan by the CoC and permitting the FC to withdraw the petition filed for initiating the CIRP would boomerang. Such developments in CIRP may discourage the investors from expressing the interest, qua Resolution of Insolvency of the companies under CIRP. Thus, in such situation, appropriate view need to be taken to do complete justice to all concerned.

18. Since, it is on account of the default committed by the Corporate Debtor that the CIRP had to be ordered to be commenced and a sizeable amount of

judicial time not only of this Tribunal but also of Hon'ble NCLAT is consumed and even in settlement also the Applicant has taken haircut, we deem it appropriate to impose cost upon the Corporate Debtor. As has been noted hereinabove, the SRA is crucial party to resolution of insolvency of Corporate Debtors and if they are surprised by the act of the CoC of entering into settlement after approval of their Resolution Plan by CoC, smacking uncertainty, the investors may feel discouraged in coming forward to submit the EoIs. We also need to take note of the fact that it was on 21.12.2024 that the creditors had accepted settlement and thereafter a period of almost 09 months has passed. During this period, the Suspended Management has not parted with the entire amount of settlement. In any case, to address the issue in a holistic manner and to upkeep the spirit of IBC, I deem it appropriate to impose cost of Rs. 2.25 Cr. upon the Corporate Debtor. Out of which an amount of 2 Cr. should be deposited in Prime Minister's National Relief Fund and the balance amount of Rs. 25 Lakhs would be paid to SRA as solatium for his suffering in the process as also as compensation for losses in arranging the amount to furnish performance security etc.

19. To justify the imposition of cost there is need to highlight certain factual matrix / position (supra) viz:-

a) The amount of debt for which Demand Notice was sent by the CD as mentioned in synopsis as also list of dates filed along with the petition preferred by the Central Bank of India, is 157,24,25,712.60/-

b) As can be seen from Part-IV of the application, the amount of debt defaulted to be paid to the Central Bank of Inda is Rs. 83,17,66,730.65/-. The date of default mentioned in Part-IV is

16.11.2019, while the date of demand as mentioned in list of dates is 04.05.2022. In the wake of the stand taken on behalf of SRA during the course of hearing, while considering the application for withdrawal on account of settlement between the parties, we need to pay due credence to the amount as demanded by Central Bank of India on a date subsequent to the date of default.

c) On 20.06.2019, i.e., before file of application under Section 7 of the IBC, 2016, the Corporate Debtor had offered settlement and the creditor had approved the same in terms of OTS Acceptance Letter dated 16.11.2019. However, the CD failed to implement the OTS, thus it gave rise to multiple litigation, noted hereinabove. To summarise, the particulars of some of the proceedings (supra) are given below:-

I. <u>Proceedings qua Principal Borrower/Corporate Debtor</u>

i. CP(IB)-204/ND/2023

ii. IA-3072/ND/2023

iii. IA-4132/ND/2023

iv. IA-5044/ND/2023

v. IA-5418/ND/2023

vi. IA-5997/ND/2023

vii. IA-6265/ND/2023

viii. IA-6659/ND/2023

ix. IA-137/ND/2024

x. IA-789/ND/2024

xi. IA-985/ND/2024

xii. IA-1252/ND/2024

xiii. IA-1604/ND/2024

xiv. IA-1733/ND/2024

xv. IA-2919/ND/2024

xvi. IA-3380/ND/2024

xvii. IA-35/ND/2024

xviii. IA-4205/ND/2024

xix. IA-4909/ND/2024

xx. Int. Pet.-44/ND/2024

xxi. IA-6051/ND/2024

xxii. IA-309/ND/2025

xxiii. IA-1058/ND/2025

II. <u>Proceedings qua Personal Guarantors of Principal Borrower</u>

i. CP(IB)-608/ND/2023

   a. IA-3890/ND/2024

   b. IA-917/ND/2024

ii. CP(IB)-610/ND/2023

   a. IA-918/ND/2024

   b. IA-3906/ND/2024

iii. CP(IB)-613/ND/2023

   a. IA-920/ND/2024

   b. IA-3899/ND/2024

iv. CP(IB)-623/ND/2023

   a. IA-3560/ND/2024

   b. IA-6053/ND/2024

v. CP(IB)-625/ND/2023

a. RA-87/ND/2024

b. IA-1312/ND/2024

III. <u>Other Proceedings</u>

i. Hon'ble NCLAT – (a) Company Appeal (AT) (Ins.) No. 1034 of 2023

(b) Contempt Case (AT) No. 28 of 2024

ii. Hon'ble High Court of Delhi – (a) W.P.(C) 2418/2024

(b) CM Appl. 9925-9926/2024

(c) CM No. 60881/2024

(d) W.P. (C) No. 14992/2024

(e) LPAs Nos. 1166-1167/2024

iii. Hon'ble High Court of Punjab & Haryana – (a) CWP-30763/2024

d) As the settlement offer accepted by the Central Bank of India on 16.11.2019 was defied by the Corporate Debtor, the aforementioned litigation could crop up and indubitably it is because of approach of Corporate Debtor towards the amount of debt and settlement talk in the year 2019 that the litigation as above emerged and considerable judicial time is consumed and can be perceived as wasted, as again on 08.10.2024, the Corporate Debtor offered the settlement.

e) Today, while examining the application for withdrawal of CIRP, the initiation of which could itself be prevented by CD in the year 2019, I may not avoid forming an opinion that not only the judicial time invested in the proceedings before courts/tribunals, but also the resources in CIRP are used without achieving the purpose for which

they were instituted. Settlement is not the purpose of CIRP and the same could be achieved in the year 2019, without consuming the resources and judicial time, as has been consumed in the present case. The approach and attitude of the debtors/Corporate Debtors to utilise judicial channels to buy time with ulterior motive need to be discouraged, which can be done only by imposing deterrent cost.

f) The CIRP was initiated only by Central Bank of India and as can be seen from Loan Agreement placed on record as Annexure A-9 to the petition preferred under Section 7 of the Code, the same was entered into between Central Bank of India and the Corporate Debtor. No other Bank was party to it. Even in the application preferred under Section 7 (ibid), it is nowhere mentioned that the financial facility was extended by Consortium of Central Bank of India and Union Bank of India. Even the working capital agreements are also between the Central Bank of India and the CD.

g) As can be seen from the Resolution Plan, the amount claimed by the Central Bank of India and Union Bank of India are separate and independent. When the amount claimed by Central Bank of India is Rs. 207,22,44,896/-, the same claimed by Union Bank of India is Rs. 206,10,25,266/-. The relevant excerpt of the Resolution Plan reads thus:-

Summary of claims received and provisionally admitted as on 31st December, 2023 (as provided in information memorandum:

(Amount in Rupees)

S. No.	Type of Creditors	No. of Claims Received	Amount Claimed	No. of Claims Admitted	Provisionally Admitted Claim Amt
1	Financial Creditors				
	(a) Unrelated Party	3	4,28,27,14,155	3	3,75,54,17,797
	(i) Central Bank of India	1	207,22,44,896	1	189,97,96,587
	(ii) Union Bank of India	1	206,10,25,266	1	174,28,28,057
	(iii) Piramal Capital and Housing Finance Ltd.	1	14,94,43,993	1	11,27,93,153
	(b) Related Party	-	-	-	-
Sub- total (a+b)		3	4,28,27,14,155	3	3,75,54,17,797
2	Operational Creditors (c)	2	4,87,26,480	2	1,79,65,779
3	Workmen & Employees (d)	-	-	-	-
4	Statutory Dues (e)	2	46,08,32,540	1	44,30,07,364
5	Other Creditors (f)	1	2,14,50,000	-	-
Sub- total (c+d+e+f)		5	53,10,09,020	3	46,09,73,143
Grand Total (a+b+c+d+e)		8	4,81,37,23,175	6	4,21,63,90,940

h) It is also seen from the certificate given by the RP in Form-H, the amount claimed by Secured Creditors is Rs. 413,32,70,162/-. The clause 7 of certificate reads thus:-

7. The amounts provided for the stakeholders under the Resolution Plan is as under:

(Amount in Rs. lakh)

Sl. No.	Category of Stakeholder*	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
I	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i) who did not vote in favour of the resolution Plan	14,94,43,993	11,27,93,153	56,43,159	3.78%
		(ii) who voted in favour of the resolution plan	413,32,70,162	364,26,24,644	18,24,62,146	4.41%
		Total[(a) + (b)]	4,28,27,14,155	3,75,54,17,797	18,81,05,305	4.39%
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	Nil	Nil	Nil	Nil
		(b) Other than (a) above:	Nil	Nil	Nil	Nil
		(i) who did not vote in favour of the resolution Plan				
		(ii) who voted in favour of the resolution plan				

		Total[(a) + (b)]	Nil	Nil	Nil	Nil
3	Operational Creditors	(a) Related Party of Corporate Debtor	Nil	Nil	Nil	Nil
		(b) Other than (a) above:				
		(i)Government	46,25,66,770	44,30,07,364	22,15,037	0.47%
		(ii)Operational Creditors other than (i)	4,87,26,480	1,79,65,779	1,79,658	0.37%
		(ii)Workmen	-	-	-	-
		(iii)Employees	-	-	-	-
		(iv) Other Creditors	2,14,50,000	-	-	-
		Total[(a) + (b)]	53,27,43,250	46,09,73,143	23,94,695	0.45%
4	Other debts and dues		-	-	-	-
Grand Total			481,54,57,405	421,63,90,940	19,05,00,000	3.96%

*If there are sub-categories in a category, please add rows for each sub-category.
Amount provided over time under the Resolution Plan and includes estimated value of non-cash components. It is not NPV.]

i) Thus, if we take into account the amount claimed by the FC and admitted by the CD, the amount of Rs. 52.32 Crore offered to FC reflect a huge haircut.

j) The offer of settlement given to FC i.e. Central Bank of India and Union Bank of India are separate and independent.

k) After this Tribunal passed orders dated 03.01.2024 and 15.05.2024 in CP(IB)-613/ND/2023 and institution of proceedings against 5 of the Personal Guarantors qua the CD, the Central Bank of India could concede the stand of CD before Hon'ble High Court and Hon'ble High

Court could set aside the aforementioned order. So if the parties to the petition preferred under Section 7 of IBC, 2016 were in talk of settlement in the year 2019, they could have avoided /prevented institution of multiple proceedings. At this stage, a magnanimous view need to be taken, but at the same time imposition of deterrent cost cannot be avoided.

l) While allowing the withdrawal of proceedings initiated by the CP(IB)-675/ND/2024 preferred by Catalyst Trusteeship Limited, at admission stage we had imposed cost of Rs. 10 Lacs on the parties.

m) In CP(IB)-995/ND/2018 filed by VMS Equipment Private Limited, while expecting the CoC to consider the proposal under Section 12A of IBC, 2016 i.e., for withdrawal, this Tribunal imposed cost of Rs. 1 Crore on CD.

20. Apparently, the application for withdrawal under Section 12A could be preferred at a much later stage when the Resolution Plan could also be approved by the CoC. Once CIRP proceeds and a resolution applicant is appointed, the process transcends the private dispute between creditor and debtor and assumes a public character, aimed at maximising asset value and balancing stakeholder interests. Permitting withdrawal at this stage undermines the sanctity of the resolution process and cause financial and administrative prejudice to all participants. But the order of Hon'ble NCLAT in the appeal preferred seeking dismissal of Section 7 cannot be overlooked. When the appeal was still pending before Appellate Authority, the Resolution Plan could not have been approved.

21. Thus, while taking holistic view and keeping the primary object of IBC in mind, i.e. maximisation of value of assets of CD, it is found that the settlement offer amount of Rs. 52.32 Crores for Central Bank of India and Rs. 26 Crores for Union Bank of India which is more than what is offered in the Resolution Plan amounting to Rs. 20,05,00,000/-, will maximise the value CD. In view of the facts and circumstances, it may be appropriate to allow the IA by subjecting the suspended management of CD to cost of Rs. 2.25 Crores. The imposition of cost is needed to establish deterrent message against the parties who misuse IBC/judicial process as a strategic tool rather than a bona fide remedy. The cost imposed also compensates for the unwarranted consumption of judicial time and also the equitable solatium for the disappointment to SRA whose legitimate expectations and the consequent steps could take shape and then frustrated, as the Corporate Debtor took almost 6 years in taking the final call regarding settlement. The concept of judicious approach encompasses not just the attitude of judges but also contemplate that how parties engage with judicial system and utilise the court process. At the cost of repetition, it is noted that the Corporate Debtor had not only thought but also had taken material steps in the direction of settlement in the year 2019, but then it could wait for judicial process to reach the stages of institution of multiple litigation not only before this Tribunal but also before Hon'ble NCLAT and High Court. The process before this Tribunal is not an ordinary process. It led to taking the control of CD by IRP/RP as also to steps required to be taken by him in terms of the provisions of Section 6A, 13, 15, 17, 18, 21, 23, 24, 25 and 29, etc. of IBC. Besides, the CoC also had to meet time and again in the process and the process could reach till ultimate

stage of filing an application under Section 30(6) of IBC, 2016 i.e. for approval of resolution plan, by this Tribunal. Ideally, in such situation, there could be no question of allowing the withdrawal of CIRP. Nevertheless, the majority shareholders in CoC being the Banks and the amount of settlement being offered by CD, though less by almost Rs. 10 Crores to the amount which was offered in 2019, but still being more than the amount provided in the Resolution Plan and the order of admission being under challenge in appeal, it is deemed to allow the IA.

22. As can be seen from Rule 8 of the I&B (Adjudicating Authority) Rules, 2016, and Regulation 30A of the IBBI (CIRP) Regulations, 2016, when under Rule 8 (ibid) the Adjudicating Authority may permit withdrawal of application on a request made by the applicant before admission of the application preferred under Rule 4, 6 or 7 of the Rules, the clause (b) or Regulation 30A also provide for withdrawal of the application, through IRP, however the proviso to Regulation 30A(1) says that after issue of invitation for EoI, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

23. From the application containing the prolix factual position, which has been noted hereinabove, it could be deciphered that the provisions of Section 12A could be resorted to because on 28.12.2024, the Union Bank of India could approve the settlement proposal. If the parties were to enter into settlement, then the process was also resorted to in the year 2019. The judicial system in our country is already burdened with a massive backlog of cases faces significant challenges thus, when litigants misuse legal procedure for personal gain or to add explanation to delay in taking decision at their

ends, not only the authority of the court is undermined but also the administration of justice for genuine litigants is affected. It would not be gainsaid that different benches had to conduct hearing in this application on several dates and for several hours at the cost of other litigants. The time could be utilised in consideration of application for approval of resolution plans. The imposition of cost is one of the mechanism the judiciary has developed as a deterrent measure to curb wastage of judicial time, in such process which involves the parties to litigation alone and finally the role of the Court turns only that of post office.

24. It is seen from Regulation 31A (1) of CIRP Regulations, 2016, on approval of resolution plan a regulatory fee calculated at the rate of 0.25% of realisable value to creditors under the resolution plan approved under Section 31 shall be payable to IBBI, where such realisable value is more than the liquidation value. Thus, when the CIRP conducted by IRP/RP is regulated in terms of the Regulations framed by IBBI and on approval of the plan, the IBBI get regulatory fees, which in case of withdrawal of the proceedings is not admissible to it. In the present case when the process by RP could be completed and the application was pending for approval of resolution plan by this Adjudicating Authority, deprival of IBBI of the regulatory fees which could be payable to it in the case of approval of resolution plan need also to be kept in view.

25. One may not be oblivious also to the fact that with admission of application preferred under Section 7 of the Code, the moratorium gets declared and many stakeholders including creditors and statutory authorities are deprived of the remedies available to them because of pendency of CIRP

for a considerable time. In the present case, the statutory dues remained stuck are Rs. 46,08,32,540/-. The CoC can approve the proposal for withdrawal of application with 90% vote shares, but at such belated stage when it had already approved the resolution plan, the interest of other creditors including statutory dues cannot be ignored.

26. Though in terms of the view taken by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1481 of 2022 in the matter of Hem Singh Bharana vs. M/s Pawan Doot Estate Private Limited (para 24), when application for approval of Resolution Plan could be preferred, the settlement may not be permissible, but in the totality of the facts of the case, the IA is allowed, subject to payment of cost of Rs. 2.25 Cr. by the Suspended Management. Out of the aforementioned amount of cost of Rs. 2 Cr. would be deposited in Prime Minister's Relief Fund and the balance amount would be paid to SRA as solatium/ compensation. The application stands disposed of.

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

PER: MS. REENA SINHA PURI, MEMBER (T)

While I concur with the decision to allow the present application and permit withdrawal of IB-204/ND/2023, I respectfully differ from the view of the learned Judicial Member regarding the imposition of costs of Rs. 2.25 crores on the Corporate Debtor. The Corporate Debtor has been contesting the initiation of CIRP since the filing of the application by the Financial Creditor and, once admitted, remained under the control of the Resolution Professional. The OTS proposals were pursued by the suspended directors with the Central Bank and Union Bank, which entertained and eventually accepted them, leading to the present application under Section 12A. There is no evidence that the Corporate Debtor engaged in litigation with mala fide intent or prolonged proceedings for any vested interest so as to justify the imposition of costs. Therefore, the present application is allowed without costs.

Sd/-
(REENA SINHA PURI)
MEMBER (T)

As the Ld. Technical Member is of opinion that no cost should be imposed on CD, there could be difference of opinion between the members of the Bench on certain points, thus, the following points are referred to the Hon'ble President, under Section 419(5) of Companies Act, 2013:-

Point as drawn by Member (J)

1. When as per proviso to Regulation 30A(1) of IBBI (CIRP) Regulations, 2016, where the application under Section 12A is preferred after issue of invitation for EoI under Regulation 36A, the applicant should state the reasons, justifying withdrawal after issue of such invitation and when the only reason given in the application is settlement between the creditor and debtor, which could fail in the year 2019 and led to initiation of CIRP and multiple proceedings, whether the CIRP can be allowed to be withdrawn, without subjecting the Suspended Management to deterrent cost, cost of Rs. 2.25 Crores out of which Rs. 2 Cr. should be deposited in Prime Minister's National Relief Fund.
2. Whether the factual matrix recorded in the order authored by Judicial Member, particularly in Paras 24-31 thereof (including the fact that way back in the year 2019, it was suspended management of CD which contributed to failure of settlement) do not justify the imposition of exemplary/deterrent cost on the Suspended Management, who caused the failure of settlement in the year 2019, out of which Rs. 2 Crores is payable Prime Minister's National Relief Fund.
3. Whether in the wake of the orders of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1481 of 2022 in the matter of Hem Singh Bharana vs. M/s Pawan Doot Estate Private Limited as also in the

matter of Nehru Place Hotels and Real Estate Private Limited vs. Sanjeev Mahajan and Others (2024) 245 Comp Cas 234 : 2024 SCC Online NCLAT 49, the settlement by suspended management and withdrawal of CIRP at a stage when application for approval of Resolution Plan is pending can be found justified and allowed without subjecting the suspended management to deterrent cost of Rs. 2.25 Cr.

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Point as drawn by Member (T)

Whether, while allowing withdrawal of CIRP under Section 12A, cost can be imposed on the Corporate Debtor when:

a. It is for the financial creditors to accept the OTS proposal by the erstwhile Board of Directors;
b. The initiation of CIRP has been contested by the Corporate Debtor from the outset;
c. Upon admission, the Corporate Debtor has remained under the control of the Resolution Professional.

Sd/-
(REENA SINHA PURI)
MEMBER (T)