

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD SPECIAL BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
29-03-2022 AT 02:30 P.M. THROUGH VIDEO CONFERENCE.

**IA (IBC) 232/2022 in
CP (IB) No.61/9/HDB/2020
U/s 9 of IBC, 2016**

IN THE MATTER OF:

Airhub Technologies Pvt Ltd

...Operational Creditor

Vs

Netxcell Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA No.232/2022

Learned counsel Shri K.Purnachandra Rao, for petitioner appeared via video conference.

Learned IRP Shri S.Sreenivasa Rao, appeared via video conference.

Orders passed in IA No.232/2022, vide separate orders.


MEMBER (T)


MEMBER (J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

IA No. 232 of 2021
In
CP (IB) No. 61/9/HDB/2020

*Application under Section 12-A of the IBC, 2016 r/w Rule 30A (1) of IBBI
(IRPCP) Regulations, 2016*

In the matter of **M/s. Netxcell Limited**

Between

Shri Sreenivasa Rao Somisetty, IRP
M/s. Netxcell Limited
Block-D, 4th Floor, Wing-1,
Cyber Gateway, Hi-tech City,
Madhapur, Hyderabad-500 081,
Telangana.

...Applicant/
Corporate Debtor

Versus

M/s. Airhub Technologies Private Limited
Registered Office: Plot No.312,
Road No.-10C, Jubilee Hills,
Hyderabad-500 033,
Telangana.

... Respondent/
Operational Creditor

Date of order: 29.03.2022



Coram:

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

PER BENCH

ORDER

1. The Interim Resolution Professional. (for short IRP) appointed by this Tribunal pursuant to our order dated 07.02.2022 directing initiation of Corporate Insolvency Resolution Process (For short "CIRP") against the Corporate Debtor (NETXCELL Limited) vide CP No. 61/9/HDB/2020, has filed this application under Section 12A of Insolvency & Bankruptcy Code, 2016 ("Code"), r/w Rule 30A (1) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") praying this Tribunal to set aside the order dated 07.02.2022 ordering CIRP against the Corporate Debtor, citing post CIRP there was settlement between the operational creditor and the corporate debtor.
2. It is stated in the application that this Tribunal admitted the Petition in CP No. 61/9/HDB/2020 filed by the Operational Creditor vide its order dated 07.02.2022 and ordered CIRP against the Corporate



Debtor. The Applicant received the said order of admission on 14.02.2022 and made public announcement on 17.02.2022.

3. It is further stated that in the meantime the operational creditor (Airhub Technologies Private Limited) at whose instance the Company Petition u/s 9 of IBC was admitted, has communicated to the IRP that operational creditor had entered into a Deed of Settlement on 04.03.2022 with the corporate debtor, pursuant thereto has submitted Form FA to the Interim Resolution Professional complying with the requirements as stipulated in Regulation 30A.
5. Placing reliance on the ruling of Hon'ble Supreme Court of India in Swiss Ribbons vs Union of India & Ors, the applicant/ Resolution Professional stated that the Adjudicating Authority is empowered to exercise the inherent powers under Rule 11 of NCLT Rules, 2016 and permit withdrawal of CIRP Process against the Corporate debtor, on account of the settlement of dues of the creditor by the corporate debtor.
5. In the above background of the facts, the point that arises for consideration is;

Whether the Resolution Professional can be permitted to withdraw the CIRP against the Corporate Debtor by invoking inherent powers under Rule 11 of NCLT Rules?

6. We have heard the Ld. Counsel for IRP, perused the record and the case law.



7. At the outset, it may be stated that the following provisions under the I&B Code, besides the Regulation, provide for the exit of the corporate debtor from CIRP, both at pre and post admission stages, before or after constitution of COC, besides confer *discretionary* power on the AA, to either allow or dismiss the prayer for such withdrawal.
8. Section 12A of the Code and 30A of CIRP Regulations which have come into force with effect from 06.06.2018 and 25.07.2019 respectively, are as follows: -

Section 12A of IBC

“The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety percent voting share of the committee of creditors, in such manner as may be prescribed”.

Regulation 30A (1) of the CIRP Regulations

Regulation 30A (1) of the CIRP Regulations **requires that an application for withdrawal under section 12A shall be submitted to the Interim Resolution Professional (IRP) or Resolution Professional (RP), as the case may be, in Form FA of the Schedule to the said Regulations, before issue of expression of interest (EoI) under regulation 36A.**

Thus, while Section 12A of the Code confers power on the Adjudicating Authority to allow the withdrawal of the petition admitted under Section 7 or 9 or 10 of the Code, when the application is made by the Applicant with the approval of 90% voting share of

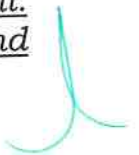


the CoC, in such manner as may be specified, Regulation 30A of CIRP Regulations provides for withdrawal of a petition *before the constitution of the Committee by the Applicant through the IRP as well as after constitution of the Committee by the Applicant, as per procedure stated therein*. Thus, the power under the above is discretionary while considering the Application filed by IRP for withdrawal of the Company Petition.

9. Here, we feel, very apt to quote herein, the authoritative judgement of Hon'ble Supreme Court of India in ***Swiss Ribbons vs Union of India & Ors*** reported in Manu/SC/0079/2019 at para 52 which states as follows:-

Para 52:

“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 the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case”.
(Emphasis is ours).



10. The aforesaid ruling amply demonstrates that when an application is filed by the IRP seeking withdrawal of 61/9/HDB/2020 in pursuance of Section 12A, read with Regulation 30A, the Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all the relevant factors on the facts of each case (emphasis is ours).
11. Thus, hearing all the concerned parties and considering all relevant factors of the facts of each case, is sine quo non, before the Tribunal allows or dismisses the application filed by IRP for withdrawal of CIRP against the corporate debtor. However, neither the ruling in *Swiss Ribbon*, IBC or any Regulation stated/contained any 'definition' as to who can be considered as the "concerned parties", for the purpose of hearing while deciding a withdrawal petition filed by IRP.
12. No doubt, upon triggering the CIRP against a Corporate Debtor and on appointment of an IRP, the dispute will transform into a dispute in rem, hence slips into the domain of the people at large. In so far as the case on hand is concerned, it has been stated in the application that the IRP had already caused public notice inviting claims, however it is not stated whether any claim is received pursuant to the said publication. It is needless to say that, the Code provides for fixing of timeframe by the IRP for submission of claims by Financial



as well as Operational Creditors before the IRP and it is not stated that the said time has lapsed.

13. Therefore, the question that may arise is whether by allowing withdrawal of company petition, pursuant to a settlement between the CD and the Financial/Operational creditor since would deprive the financial/operational creditors of the opportunity to file their claims, if any, should “concerned persons” shall mean and include all the *prospective* financial/operational creditors who are entitled to file their claims pursuant to the public notice issued by the IRP consequent to the initiation of CIRP against the corporate debtor and even those claimants whose claims are pending in the Tribunal? In answer to the same we state herein that, it would be a misnomer to hold that allowing application for withdrawal of CIRP pursuant to a settlement arrived at between the CD and the FC/OC post CIRP, by the Tribunal, would be detrimental to the interests of the prospective financial / operational creditors on the apprehension that the same would result in “frustration” of their opportunity to submit their claims before the IRP, as such they are the concerned parties. To substantiate our view, we categorise claims against the Corporate Debtor under CIRP as follows:-

- (i) The claims made before IRP pursuant to public notice issued by the IRP.
- (ii) Pending claims of FC/OCs before the Adjudicating Authority



(iii) Claims which were closed/ disposed of by the AA, consequent to ordering CIR process against the CD and appointment of IRP, with a liberty to approach the concerned IRP/RP.

14. In so far as first category of claims are concerned, since CIRP gets terminated upon withdrawal of CIRP proceedings against the CD and the IRP/RP stands discharged, all such claimants are very much entitled to pursue their claims in their individual capacity before the Adjudicating Authority if they wish as per the procedure laid down under the Code. In second category of matters, the Financial/Operational Creditor whose claim before this Tribunal has been disposed of, with a direction to approach the IRP can seek revival of their company petition, in view of the changed circumstances, by filing necessary application before the Tribunal, to recall the said order. In so far as the third category of cases, the same can be continued before the Tribunal. Therefore, the argument that allowing withdrawal of the CIRP ordered against the Corporate Debtor, by virtue of a settlement would jeopardize recovery opportunity of the FC/OC, and amounts failure to hear the “concerned parties” is totally unfounded and mischievous.

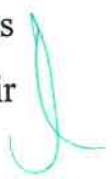
15. Hon’ble Supreme Court of India in Civil Appeal No 324/2020 in the matter of Ess Investments Private Limited vs Lokhandwala Infrastructure Private Limited and Anr, in identical situation held as follows:-

Para.6: Since the disputes between the Respondent No.1 and Dalmia Group Holdings has been settled and the order




dated 19.09.2019 has been set aside, it will be open to the appellant to proceed against the Respondent No.1 before the NCLT by seeking recall of the order dated -4.09.2018 and revival of its application no. CP (IB) No. 4000/MP/2018

16. In that view of the matter, the Tribunal is of the opinion that no prejudice much less serious will be caused to any intending financial/operational creditors who are entitled to move their claims before the IRP, if the withdrawal of CIRP is ordered pursuant to any settlement/compromise.
17. Further, Hon'ble NCLAT Chennai Bench, in re ***SBI vs M/s AFCO Energy Pte Limited & Anr*** discloses that the Hon'ble NCLAT, approved the order passed by the NCLT Chennai Bench, allowing withdrawal of the CIRP by the IRP, consequent to the settlement reached between CD and the Financial Creditor, even while the application filed by the financial creditor (SBI) objecting such withdrawal was pending before the NCLT Chennai Bench.
18. However, placing reliance on the ruling of Hon'ble Supreme Court in Civil Appeal No 324/2020 in the matter of Ess Investments Private Limited vs Lokhandwala Infrastructure Private Limited and Anr, we are of the view that, while allowing a petition for withdrawal of CIRP against the Corporate Debtor, we should ensure that the interests of the Applicants who's Company Petitions were disposed of directing them to approach the IRP, shall be protected. We therefore, deemed conferred liberty on the Applicants, in the above Company Petitions to approach this Tribunal for recall of the order of closure of their




- company petitions, so that this Tribunal can decide their applications on merits.
20. Therefore, having anxiously considered the factual matrix of this matter and keeping in view of the fact that the IRP has not so far received any claim pursuant to the public notice, besides the fact this application does not require the consent of the members of COC (since the same was filed before constitution of the COC) and relying on the ruling in Swiss Ribbons, supra, wherein it was held that relevant facts of each case have to be taken into consideration while allowing or dismissing a withdrawal petition filed by the IRP, we are of the firm view that “concerned parties/persons” for the purpose of deciding a withdrawal application filed by IRP, mean the persons who are parties to the *lis*, which is agitated before the AA, and not those who are not before us.
21. Therefore, in view of our discussion above and on careful consideration of the facts and circumstances of the case, this Tribunal is of the opinion that it is a fit case to exercise the inherent power under Rule 11 of NCLT Rules, 2016 by this AA, and accordingly hold that the application deserves to be allowed. As a sequel, we allow the withdrawal of CIRP against the Corporate Debtor, forthwith.
22. In the result, this application is allowed and CIRP ordered on 07.02.2022 in CP No. 61/9/HDB/2020 against the Corporate Debtor is hereby withdrawn. The Corporate Debtor is released from all the



rigour of law and is allowed to function independently through its Board of Directors with immediate effect.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr N.V. Ramakrishna Badarinath)
Member (Judicial)

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