

203

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/IBC/382/CHE/2022 IN IBA/606/2020

(Filed under Section 12A of the Insolvency And Bankruptcy Code, 2016
r/w Regulation 30A of the Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2019)

In the matter of M/s. VRMX Concrete India Private Limited

Ms. GANESAN GEETHA,
Interim Resolution Professional,
VRMX Concrete India Private Limited,
Reg No. 1881/IPA-001/IP-P00857/2017-2018/11439,
12, I Cross Street, MES Road,
East Tambaram,
Chennai-600059

..... Applicant / Corporate Debtor

Vs.

1. M/s. Salem Mines & Aggregates,
Represented by its partner P. Subramani,
Having office at No. 9,
Nagarathinam Nagar Extension,
Thiruneermalai Road,
West Tambaram, Chennai - 600045.

..... 1st Respondent / Operational Creditor

2. S. Arumugasamy,
No. 1 Mount View Building,
2nd Floor, Old No 110,
New No. 111-A,
Mount Road, Guindy,
Chennai - 600032..

..... 2nd Respondent / Suspended Director

3. Muthuraj Lakshmanan,
No. 1 Mount View Building,
2nd Floor, Old No 110,
New No. 111-A,
Mount Road, Guindy,
Chennai - 600032..

..... 3rd Respondent / Suspended Director

Along with

IA/IBC/431/CHE/2021 IN IBA/606/2020

(Filed under Section 60 (5) of the *Insolvency And Bankruptcy Code, 2016*
r/w Rule 32 and Rule 11 of the *NCLT Rules, 2016*)

Mr. Ranjith Babu,
Proprietor, M/s. NXTGEN RMC,
Block No.6, 2nd Floor,
Door No.A, Bashyam Navarathana Apartments,
Thiruneermalai Road,
Chrompet, Chennai-600 044.

..... Applicant

-Vs-

1. Salem Mines & Aggregates
Represented by its partner P.Subramani
No.9, Nagarathinam Nagar Extension,
Thiruneermalai Road, West Tambaram,
Chennai- 600 045

..... 1st Respondent / Corporate Debtor

2. VRMX Concrete private limited
Represented by its IRP
Mrs Ganesan Geetha
No.1 Mount View Building,
2nd Floor, Old No 110, New No 111-A
Mount Road, Gunidy
Chennai- 600 032

..... 2nd Respondent / IRP

Along with

IA/IBC/432/CHE/2021 IN IBA/606/2020

(Filed under Section 60 (5) of the *Insolvency And Bankruptcy Code, 2016*
r/w Rule 32 and Rule 11 of the *NCLT Rules, 2016*)

M/s. Alturas Trading Corp,
Rep. by its Partner,
Mrs. Anitha,
Old No. 247, Lloyds Road,
Gopalapuram, Chennai - 600 086.

..... Applicant

-Vs-

1. Salem Mines & Aggregates
Represented by its partner P.Subramani
No.9, Nagarathinam Nagar Extension,
Thiruneermalai Road, West Tambaram,
Chennai- 600 045

..... 1st Respondent / Corporate Debtor

2. VRMX Concrete private limited
Represented by its IRP
Mrs Ganesan Geetha
No.1 Mount View Building,
2nd Floor, Old No 110, New No 111-A
Mount Road, Gunidy
Chennai- 600 032

..... 2nd Respondent / IRP

Order Pronounced on **21st July 2022**

CORAM

Justice (Retd) S. RAMATHILAGAM, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For IRP : Avinash Krishnan Ravi, Advocate
For Objector : Revathi Manivannan, Advocate

COMMON ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

IA(IBC)/382(CHE)/2022 is an application filed by the IRP before this Tribunal on 01.04.2022 in respect of the Corporate Debtor viz. VRMX Concrete India Private Limited under Section 12A of IBC, 2016 read with Regulation 30A of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2019

2. IA(IBC)/431(CHE)/2022 and IA(IBC)/432(CHE)/2022 are applications filed by the Applicants / Operational Creditor who are objecting to the Application filed by the IRP under Section 12A of IBC, 2016.

3. In relation to IA(IBC)/382(CHE)/2022 is concerned, it is seen that in an Application filed by an Operational Creditor under Section 9 of IBC, 2016 the CIRP in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 21.03.2022 in and the Applicant herein was appointed as the Interim Resolution Professional. Pursuant thereto, it was submitted that that both Operational Creditor and the Suspended Directors of the Corporate Debtor had settled their claims via Memorandum of Compromise dated 31.03.2022. The Applicant has filed Form - FA dated 31.03.2022 and a perusal of the same would show that the fees of the IRP has been paid.

4. In relation to the objections raised by the other Operational Creditors in IA(IBC)/431(CHE)/2022 and IA(IBC)/432(CHE)/2022, it is seen that both these Operational Creditors have already filed an Application under Section 9 of IBC, 2016 before this Tribunal and the same is also pending adjudication. In the meantime, the CIRP in respect of the Corporate Debtor was initiated by this Tribunal

vide its order dated 21.03.2022 and the Applicants herein have submitted their claim before the IRP on 04.04.2022. However, the IRP in reply has stated that an application for withdrawal of CIRP proceedings have been filed before this Tribunal. Hence the Applicants have moved the present Applications.

5. The Learned Counsel for the Applicants placed reliance upon this judgment of the Hon'ble Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. and Anr. -Vs- Union of India and Ors. (2019) 4 SCC 17** where in was observed that the interest of all the stakeholders have to be considered while accepting or disallowing an Application for withdrawal. Further, reliance was also placed upon the Judgment of the Hon'ble NCLAT in the matter of **Jai Krishnan Gupta -Vs- Green Edge Buildtech LLP, Company Appeal (AT) (Ins) No. 696-670 of 2019** wherein the Hon'ble NCLAT did not accept the plea of the Applicant and did not intervene in the orders passed by NCLAT wherein notice was received by the objections raised by the Creditor and the application to withdraw on the settlement was not allowed.

6. During the course of hearing, this Tribunal apprised the objectors that they do not have any *locus* to object the Application filed under Section 12A of IBC, 2016 since the same was filed before the Constitution of the CoC and as such once the present

Application is allowed, they can prosecute their Applications filed under Section 9 of IBC, 2016 which is also pending adjudication before this Tribunal.

7. Further, this Tribunal also brought to the notice of the objector the judgment of in the matter of Rolta India Limited, wherein the NCLT Mumbai Bench vide its order dated 06.08.2021 dismissed the Section 12A of IBC, 2016 Application on the ground that there were 40 interveners and the claims collated by the IRP amounts to Rs.5000 Crore and allowing an Application under Section 12A of IBC, 2016 would lead to multiplicity of litigation and readmission of the Corporate Debtors to CIRP. As against the said order, the Hon'ble Supreme Court vide its order dated 25.08.2021 passed in **Kamal K.Singh -Vs- Dinesh Gupta & Anr.** in *Civil Appeal No. 4993 of 2021* has held as follows

"We have heard learned counsel for the parties. It is not in dispute that CoC has not been constituted so far. This Court in *Swiss Ribbons Private Limited and Anr. v. Union of India and Others - (2019) 4 SCC 17* has held that at any stage, before a Committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, allow or disallow an application for withdrawal or settlement. It was held thus :

"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." (emphasis supplied)

(4) In the instant case, as noticed earlier, the applicant-respondent no.1 had made an application before the NCLT, Mumbai Bench, under Rule 11 of the NCLT Rules for withdrawal of company petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) on the ground that the matter has been settled between the Corporate debtor and the applicant-respondent no.1.

(5) Having heard learned counsel for the parties and having regard to the facts and circumstances of the case, we are of the view that the applicant / respondent no.1 was justified in filing the application under Rule 11 of the NCLT Rules for withdrawal of the company petition on the ground that the matter has been settled between the parties.

(6) The appeal is accordingly **allowed**. The order of the NCLT dated 06.08.2021 is hereby set aside and the company petition, for which withdrawal application was filed under Rule 11 of the NCLT Rules, is ordered to be withdrawn. No costs."

8. Despite bringing into notice the aforesaid judgment to the knowledge of the Applicant / Objectors, they still persisted on their Application and argued at length and has also wasted the judicial time of this Tribunal. Under the said circumstances, the Application filed by the Objectors viz. IA(IBC)/431(CHE)/2022 and IA(IBC)/432(CHE)/2022 stands **dismissed** with a cost of

Rs.25,000/- (*Rupees Twenty-Five Thousand Only*) payable to the Prime Minister National Relief Fund within a period of 7 days from the date of this order and report compliance of the same.

9. Taking into consideration the Judgment of the Hon'ble Supreme Court and also the averment contained in IA(IBC)/382(CHE)/2022 and also the Form FA given by the Operational Creditor, and also in view of the fact that the fees of the IRP has been paid in full, this instant Application stands **allowed** and, in the circumstances, IBA/606/2020 stands **dismissed as withdrawn**. Consequently, the CIRP initiated against the Corporate Debtor also stands **withdrawn**. The IRP is discharged from the assignment and is further directed to hand over the management to the Board of Directors of the Corporate Debtor. The Corporate Debtor is released from the rigors of IBC, 2016. Accordingly, IA(IBC)/382(CHE)/2022 stands **allowed**.

10. In relation to IA(IBC)/431(CHE)/2022 and IA(IBC)/432(CHE)/2022, post this matter for compliance on **12.08.2022**

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

Justice (Retd) S. RAMATHILAGAM,
MEMBER (JUDICIAL)

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