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NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY- MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.01.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA NO. 1113/2019 in CP(IB) NO. 202/7/HDB/2018
NAME OF THE COMPANY	CaféD Lake Pvt Ltd
NAME OF THE PETITIONER(S)	Tourism Finance Corporation Of India Ltd
NAME OF THE RESPONDENT(S)	CaféD Lake Pvt Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Aashish Aggarwal for S. V. Ram Aashish Rao	Adv	9030333331	Aashish

Counsel for Respondent(s):

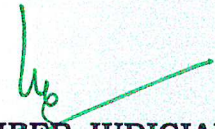
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order pronounced in open court. IA allowed vide
separate order.


MEMBER TECHNICAL

AS


MEMBER JUDICIAL

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 1113 of 2019

In CP (IB) No.202/07/HDB/2018

Under section 12A of the Insolvency & Bankruptcy
Code, 2016, Read with Regulation 30A of the IBBI
(Insolvency Resolution Process for Corporate Persons)
Regulation, 2016, Read with Rule 11 of NCLT Rules, 2016.

In the matter of :

M/s. CAFÉ D LAKE PRIVATE LIMITED

Mr. Mukesh Kumar Gupta
Resolution Professional,
For Café D Lake Private Limited

...Applicant/
Resolution Professional of
Corporate Debtor

Date of Order: 10.01.2020

**Coram: Shri. K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL.
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL.**

Parties/Counsels present:

For the Applicant: Dr. S.V. Rama Krishna, counsel.

Per: K. Anantha Padmanabha Swamy, Member Judicial

ORDER

1. Under consideration is a Interlocutory Application bearing IA No. 1113 of 2019 in CP (IB) No.202/07/HDB/2018 filed by Resolution Professional (RP) under section 12A of the Insolvency and Bankruptcy Code, 2016, on behalf of M/s. Tourism Finance Corporation of India (TFCI) (sole member of CoC) seeking to recall the order dated **18.03.2019** of admission and initiation of Corporate Insolvency Resolution Process of the Corporate Debtor in the above CP and further to allow the present Application and accord permission to the Financial Creditor to withdraw the Company Application bearing CP (IB) No. 202/7/HDB/2018, in terms of the settlement of debt by the Corporate Debtor.
2. It is stated that the petition bearing CP (IB) No.202/7/HDB/2018 was admitted for CIRP vide this Adjudicating Authority's order dated


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18.03.2019 and Mr. Vijaya Bhaskar Rao was appointed as the Interim Resolution Professional (**IRP**). Subsequently, vide order dated 29.04.2019 in IA No.304/2019 in the said CP, Mr. Mukesh Kumar Gupta was appointed as Resolution Professional (**RP**).

3. It is stated that the CoC was constituted on 08.04.2019 and the report certifying the constitution of Committee of Creditors had been filed on 17.04.2019 in the Registry. Subsequently, the CoC met five times on 16.04.2019, 23.05.2019, 25.06.2019, 18.07.2019 and 27.08.2019 and reports are submitted regularly on various measures taken as part of CIRP process such as Newspaper advertisement, EoI etc., It is further stated that by order dated 13.09.2019 in IA No.767/2019, this Adjudicating Authority granted 90 days extension beyond 180 days for completing the CIRP process.
4. It is stated that the Financial Creditor i.e., Tourism Finance Corporation of India (TFCI), New Delhi is the sole Financial Creditor and having 100% voting share in the CoC. The Financial Creditor informed that their Board of Directors at the meeting held on 29.05.2019 approved OTS proposal submitted by the Corporate Debtor. The Financial Creditor also furnished a Bank Guarantee dated 28.11.2019 issued by SBI, Commercial Branch, New Delhi for an amount of Rs.18,00,000/- (Rupees Eighteen Lakh Only) towards "cost of insolvency resolution process" of the Corporate Debtor i.e., Café D Lake Pvt Ltd., The Financial Creditor also furnished an application in prescribed Form FA dated 05.12.2019 under Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 seeking "Withdrawal of Corporate Insolvency Resolution Process" of the Corporate Debtor. The matter had been considered at the 8th meeting of the CoC held on 05.12.2019 and various agenda items were considered and certain decisions were taken there at.


10/01/2020



5. It is stated that in the 8th meeting of the CoC held on 05.12.2019, the CoC took note that one Resolution Plan was submitted by Imperial Developers which had not been found compliant with provisions of Sec.29A of IBC, 2016 and another Resolution Plan submitted by M/s. Theme Ambience Constructions Pvt Ltd was rejected by the CoC for reasons stated therein. In the same meeting, CoC also discussed the OTS proposal submitted by Mr. Prabhakar Reddy (Suspended Director of the Corporate Debtor) which has been approved by the Financial Creditor. Thereafter, the CoC with 100.00% of voting share approved in favour of the following resolution:

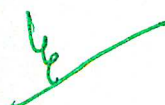
"RESOLVED THAT application for withdrawal of CIRP under section 12A received from the Applicant Tourism Finance Corporation India Limited be and is hereby approved".

"FURTHER RESOLVE THAT the Resolution Professional Mr. Mukesh Kumar Gupta be and is hereby authorized to file the said application before the Hon'ble NCLT on behalf of the Applicant within three days of the said approval".

6. It is also stated that the Applicant has made necessary arrangement to defray the expenses incurred by RP up to the filing of the said application.
7. It is stated that the present application is being made bona fide and in the interest of justice, equity and good conscience and further prayed to allow the Application as prayed for.
8. Heard and perused the record.
9. The instant Application is filed by the Resolution Professional seeking to allow the present Application and accord permission to withdraw the Company Application bearing CP (IB) No. 202/7/HDB/2018.
10. It is pertinent to note here that the Board vide Gazette Notification No.IBBI/2019-20/GN/REG048 dated 25.07.2019 have substituted Regulation 30A with a new Regulation 30A which is extracted hereunder:

"30A. Withdrawal of application.


R. 12020



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 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 may, by order, approve the application submitted under sub-regulation (3) or (5).
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."

11. It is observed that the provisions of Regulation 30A(1)(b) are duly complied as Form FA is submitted after constitution of CoC and after issue of invitation of EoI, with reasons justifying the withdrawal of CIRP process at this stage. A Bank Guarantee for an amount of Rs.18,00,000/- has also been filed towards payment of CIRP cost as defined in Regulation 31.

12. This Adjudicating Authority is empowered to allow the prayer for withdrawal by exercising its power u/s. 12A of the IB Code, 2016, R/w

Ans

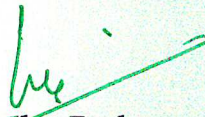
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Regulation 30A of Insolvency & Bankruptcy (Insolvency Resolution Process of Corporate Persons) Regulations 2016. Having satisfied with the submissions put forth by the Applicant and having seen that the Applicant has complied with all the requirements as contemplated under Regulation 30A *supra*, this Adjudicating Authority is inclined to allow the Application.

13. In the result, IA No. 1113 of 2019 is hereby allowed and Company Application bearing CP (IB) No. 202/7/HDB/2018 admitted earlier stands withdrawn in terms of provisions of section 12A of the Code and the CIRP stands closed. The moratorium order passed u/s. 14 of the Code will also cease to have effect from the date of this order.


10.01.2020

Dr. Binod Kumar Sinha
Member Technical



K. Anantha Padmanabha Swamy
Member Judicial

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