

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

MA/43/CHE/2021 IN IBA/453/2019

(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)

Along with

IA/647/IB/2020 IN IBA/453/2019

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

Along with

IA/586/CHE/2021 IN IBA/453/2019

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016)

*In the matter of **M/s. Siva Industries and Holdings Limited***

Abhijit Guhathakurta

Resolution Professional of
M/s. Siva Industries and Holdings Limited,
Deloitte Touche Tohmatsu India LLP.,
Indiabulls Finance Center,
Tower 3, 27th Floor,
Senapai Bapat Marg, Elphinstone Road (West)
Mumbai – 400 003

... Applicant

Order Pronounced on 12th August 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For RP : Sanjeev Kumar & Anshul Sehgal,
Advocates

For Corporate Debtor : Arvinth Pandian, Senior Advocate
Avinash Krishnan Ravi, Advocate

For IDBI Bank : Satish Parasaran, Senior Advocate
Subhang P. Nair, Advocate

For SBI : M.L. Ganesh, Advocate



ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

IA/647/IB/2020 is an Application which is moved by the promoter of the Corporate Debtor viz. Mr. Vallal RCK under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as "IBC, 2016"*) read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking urgent hearing of MA/43(CHE)/2021 and to consider the settlement proposed by the Applicant and to pass orders in the same. Since, the MA/43(CHE)/2021 was taken up for hearing and disposal along with this Application on the same, the prayer as sought for in the present Application has become infructuous. Accordingly, IA/647/IB/2020 stands **closed**.

2. The Application viz. MA/43(CHE)/2021 is moved by the Resolution Professional of the Corporate Debtor viz. M/s. Siva Industries and Holdings Limited under Section 12A of IBC, 2016 read with Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (*hereinafter referred to as "CIRP Regulations, 2016"*) seeking relief as follows;

- a) Pass an order allowing this Application filed under Section 12A of the Code read with Regulation 30A of the CIRP Regulations;



- b) Pass an order allowing withdrawal of the original Application filed under Section 7 of the Code;
- c) Pass an order directing the Corporate Debtor to implement the approved Settlement Plan in full letter and spirit;
- d) Pass an order allowing the original petitioner or any other creditor approving the Settlement Proposal to seek initiation of liquidation proceedings of the Corporate Debtor in the event of failure by the Corporate Debtor to adhere to the terms of the Settlement Proposal;
- e) Pass any such other order(s) as deemed fit and proper by this Hon'ble Tribunal

3. The thumbnail sketch of the sequence of facts which culminates to filing of the present Application and which are necessary for the disposal of the present Applications are set out hereunder;

- (i) In an Application filed by IDBI Bank Limited under Section 7 of IBC, 2016 against M/s. Siva Industries and Holdings Limited, (*hereinafter referred to as "Corporate Debtor"*) this Tribunal vide its order dated 04.07.2019 had initiated the Corporate Insolvency Resolution Process in respect of the Corporate Debtor and appointed the "Interim Resolution Professional" (IRP).
- (ii) Thereafter, the IRP has caused public announcement as stipulated under Section 15 of IBC, 2016 in "Financial Express", All India Edition and in "Dinamai", Tamil

Nadu Edition and also in "Navshakti", Mumbai Edition. In the meantime, it is seen that the CoC has moved an Application under Section 22 of IBC, 2016 seeking appointment of the Applicant herein as the "Resolution Professional" in relation to the Corporate Debtor and accordingly, this Tribunal vide its order dated 18.09.2019 passed in MA/955/2019 appointed the Applicant herein as the "Resolution Professional" in relation to the Corporate Debtor.

- (iii) Pursuant to the public announcement, it is seen that the creditors in relation to the Corporate Debtor had submitted their claims to the Applicant and accordingly, the Applicant in terms of Section 21 of IBC, 2016 read with Regulation 17 of the CIRP Regulations, 2016, constituted the CoC and that the claims of the Financial Creditors alone were admitted by the IRP to the tune of Rs.4,863.87 Crore. The list of Financial Creditors who are forming part of the CoC and their respective voting shares are extracted hereunder;

S. No	NAME OF CREDITOR	VOTING SHARE (%)
1	International Asset Reconstruction Company Pvt. Ltd.	23.60
2	IDBI Bank Ltd.	18.01
3	Masdar Energy Limited	15.97
4	Union Bank of India	13.26
5	Central Bank of India	8.28
6	Life Insurance Corporation of India	7.29
7	State Bank of India	5.77
8	Punjab National Bank	6.29
9	Bank of India	1.53

- (iv) It is also seen that the Applicant has received claims from the Operational Creditors and admitted the same




to the tune of Rs.461.02 Crore. Further, the claims of other creditors were also admitted to the tune of Rs.40.55 Crore.

- (v) Thereafter, it is seen that in compliance with Section 25(2)(h) of IBC, 2016 the Applicant has issued Form – G as mandated under the CIRP Regulations, 2016 on 17.06.2019 in “Financial Express”, All India Edition and also in “Dinamani”, Tamil Nadu Edition, inviting Expressions of Interest (EoI) for submission of the Resolution Plan from the prospective Resolution Applicants. Further, in terms of the advertisement, the last date was fixed as 03.10.2019, which was extended upto 13.10.2019.
- (vi) In pursuance to the same, it is seen that the Applicant has received two EoI’s from the prospective Resolution Applicants viz. (1) Mr. Sadayandi Pothiraj, Director of Otto Clothing Pvt. Ltd. and Pothys Pvt. Ltd. and (2) M/s. Atyant Capital Management Limited. Thereafter, it is seen that both the prospective Resolution Applicants had withdrawn their EoI on 03.12.2019 and 26.11.2019 respectively. In the meantime, one M/s. Royal Partners Investment Fund Limited, (*hereinafter referred to as “RPIFL”*) had expressed interest in filing the EoI and accordingly the last date for submission of EoI was extended upto 08.12.2019 and the last date for submission of the Resolution Plan was extended upto 16.12.2019.



- (vii) In line with the same, it is seen that the only prospective Resolution Applicant viz. RPIFL had submitted the Resolution Plan before the last date. Thereafter, the CoC discussed about the said Resolution Plan and suggested RPIFL to improve and clarify certain points in relation to the Resolution Plan.
- (viii) In the meantime, the period of 180 days of CIRP in relation to the Corporate Debtor came to an end on 31.12.2019. Accordingly, in an Application moved by the Applicant this Tribunal vide its order dated 06.02.2020 had allowed for extension of CIRP for a period of 60 days. The Applicant also moved IA/298/2020 before this Tribunal seeking further extension of 30 days and this Tribunal vide its order dated 13.03.2020 allowed the said Application.
- (ix) Thereafter, it is seen that due to the Covid-19 pandemic and the attendant lockdowns imposed by the Central / State Government, there was some difficulty on the part of the Applicant to carry on with the CIRP in relation to the Corporate Debtor and that the Applicant relied upon the Judgment of the Hon'ble NCLAT dated 30.03.2020 in the matter of *Suo-Motu Company Appeal (AT) No. 01 of 2020* to state that the period of lockdown would be excluded for the purpose of counting the period for Resolution Process under Section 12 of IBC, 2016.
- (x) In so far as the Resolution Plan submitted by RPIFL, it is seen that they have not deposited the Earnest Money



Deposit (EMD) of Rs. 5 Crore as required under the provisions of the Request for Resolution Plan and instead requested for the EMD to be reduced to Rs.50 Lakh and the performance security to be reduced to Rs.3 Crore. Further, the CoC in its meeting held on 07.02.2020 has acceded to the request made by RPIFL and voted for it in relation to the same.

- (xi) The final Resolution Plan of RPIFL was put to vote by the CoC on 04.04.2020 and it is seen that the Resolution Plan submitted by RPIFL failed to receive the requisite majority of 66% of votes and it has received only a vote of 60.90% in favour of the Resolution Plan. Since the Resolution Plan has failed, the Applicant immediately moved an Application under Section 33(1)(a) of IBC, 2016 seeking initiation of liquidation process in relation to the Corporate Debtor.
- (xii) In the meantime, it is seen that on 31.08.2020, one shareholder of the Corporate Debtor has filed an Application under Section 60(5) of IBC, 2016 viz. IA/647/2020 before this Tribunal seeking necessary directions for consideration by the CoC on a proposed purported to be a One Time Settlement Offer. In the said Application, this Tribunal vide its order dated 05.10.2020 had directed the RP to convene a meeting with the CoC to consider the proposal submitted by the shareholder / erstwhile Directors, pursuant to which, it is seen that the 13th CoC meeting was conducted on 13.10.2020 wherein the CoC members have decided that further time be taken by all the lenders to discuss

on the offer and seek necessary approvals and then accordingly revert to the RP.

- (xiii) The shareholder of the Corporate Debtor on 14.12.2020 submitted a detailed Settlement Plan before the entire CoC and also submitted an Addendum to the Settlement Plan on 05.01.2021 and 14.01.2021 to the Union Bank of India. Thereafter, in view of the same, the CoC in its 16th meeting held on 18.01.2021 opened an Agenda for withdrawal of CIRP under Section 12A of IBC, 2016 in tune with the proposal given by the shareholder of the Corporate Debtor and also opened the voting lines for the period from 19.01.2021 to 30.01.2021, which was subsequently extended upto 08.02.2021. The voting results were disclosed on 08.02.2021, wherein it is seen that only 70.63% of the CoC have voted in favour of withdrawal of the CIRP and thus, it is seen that the said Agenda has failed to garner the requisite threshold of 90% approval as mandated under Section 12A of IBC, 2016.
- (xiv) Subsequent to the above, it is seen that the Applicant / RP has received a letter from one of the Financial Creditors viz. IARCL on 05.03.2021 wherein they have stated that they have decided to change its vote which was casted as "against" to now "approve", which fact was brought to the knowledge of the CoC immediately by the RP and then the Applicant /RP has moved an Application seeking necessary directions from this Tribunal in relation to the same, and this Tribunal vide its order dated 29.03.2021 passed in



MA/12(CHE)/2021 has directed the RP to place the request of IARCL letter dated 05.03.2021 before the entire CoC for its consideration and that the CoC shall accord their approval or rejection specifically in the meeting.

- (xv) The 17th CoC meeting was convened on 01.04.2021 and that the same agenda for withdrawal of the CIRP in relation to the Corporate Debtor purportedly to be as per Section 12A of IBC, 2016 was once again put for vote by the CoC and the voting lines were opened from 02.04.2021 to 06.04.2021. It is seen that the results were disclosed on 06.04.2021 in and by which the CoC with 94.23% have approved the Resolution passed for withdrawal of CIRP in relation to the Corporate Debtor, which passes the muster of 90% as laid down under Section 12A of IBC, 2016.
- (xvi) In view of the CoC in its 17th meeting with a requisite majority of 94.23% have approved for the withdrawal of CIRP in relation to the Corporate Debtor and also the Financial Creditor who triggered the CIRP viz. IDBI Bank also has tendered their withdrawal in Form – FA as mandated under the CIRP Regulation, 2016 and also the requisite Bank guarantee for a sum of Rs.5 Crore has been produced by the shareholder of the Corporate Debtor, the present Application has been purportedly moved by the Applicant under Section 12A of IBC, 2016 seeking withdrawal of the CIRP in relation to the Corporate Debtor.



4. The Learned Counsel appearing on behalf of the Applicant / RP submitted that the entire conditions as stipulated under Section 12A of IBC, 2016 read with Regulation 30A of the CIRP Regulations 2016 has been fulfilled by the Applicant and as such prayed that the present Application should be allowed. Further, in support of his contention the Learned Counsel for the Applicant pressed into service the following judgments of the Supreme Court;

- (i) **Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd., Civil Appeal No. 9664 of 2019**
- (ii) **Jaypee Kensington Boulevard Apartments Welfare Association Vs. NBCC (India) Ltd., Civil Appeal Nos. 3395, 3396 of 2020"**
- (iii) **Swiss Ribbons (P) Ltd. Vs. Union of India, (2019) 4 SCC 17**
- (iv) **India Resurgence Arc Private Limited Vs. Amit Metaliks Limited, Civil Appeal No. 1700 of 2021**
- (v) **Lalit Kumar Jain Vs. Union of India, MANU/SC/0352/2021**
- (vi) **Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. Company Appeal (AT) (Insolvency) No.601 of 2019 – NCLAT – Judgment dated 28.08.2019**
- (vii) **Brilliant Alloys Private Limited Vs. Mr. S. Rajagopal & Ors., 2018 SCC OnLine SC 3154;**
- (viii) **Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh, (2020) 11 SCC 467;**
- (ix) **Shaji Purushothaman Vs. Union Bank of India & Ors. Company Appeal (AT) (Insolvency) No.921 of 2019 – NCLAT – Judgment dated 06.09.2019;**



- (x) **Re: Satyanarayan Malu, In the matter of SBM Paper Mills Ltd.** *NCLT, Mumbai – Judgment dated 20.12.2018;*
- (xi) **Embassy Property Developments (P) Ltd. Vs. State of Karnataka;** *(2020) 13 SCC 308;*
- (xii) **K. Sashidhar Vs. Indian Overseas Bank;** *(2019) 12 SCC 150;*

5. The Learned Senior Counsel appearing on behalf of IDBI Bank submitted that the IDBI has submitted its claim before the IRP for a sum of Rs.876.06 Crore which was admitted by the IRP and that the IDBI Bank has 18.01% voting share in respect of the total admitted claim of the Corporate Debtor which comes to the tune of Rs. 4863.86 Crore. Further, it was submitted that out of the total admitted claim of Rs.4863.86 Crore, the Principal component alone comes to the tune of Rs.2883.31 Crore, out of which the Principal Loan given to the Corporate Debtor is Rs.1281.06 Crore and the loan towards Corporate Guarantee is Rs.1602.25 Crore.

6. Further, it is seen from the Liquidation Application filed by the Applicant in IA/837/2020 that the Applicant has not enclosed Form – H and under the said circumstances, we are unable to ascertain the Liquidation value in relation to the Corporate Debtor. It is stated in the said Application that in order to maintain the confidentiality that Applicant has not disclosed the Liquidation value. However we find it very strange on the part of the Applicant

to state so, since the provisions of IBC, 2016 read with IBBI Regulations mandate that the Applicant has to file Form – H disclosing all the details therein before this Tribunal while filing an Application under Section 33 of IBC, 2016.

7. Be that as it may, the Learned Senior Counsel for the IDBI Bank submitted that the Liquidation value as per the average valuation done during the CIRP period is approximately Rs.229 Crore. Further, it was also submitted that the Resolution Plan submitted by the RFIPL, the prospective Resolution Applicant was for a sum of Rs.245 Crore, out of which the share of IDBI Bank was only Rs.12 Crore. However, it was submitted that the CoC in its commercial wisdom have not approved the Resolution Plan submitted by RFIPL.

8. Further, the Learned Senior Counsel for the IDBI Bank submitted that the offer of the promoters is Rs.328 Crores which is more than the liquidation value of Rs.229 Crore and also it was submitted that the settlement offer arrived at by the IDBI was only in relation to the admitted claims of M/s. Siva Industries and Holdings Limited and M/s. Rudhra Mineral Pte Limited with an aggregate principal amount of Rs.111.82 Crore and that the Settlement proposal envisages the IDBI Bank to continue / pursue



legal action in respect of recovery of Rs.644.71 Crore against M/s. Axcel Sunshine, over which the Corporate Debtor stood as a Corporate Guarantor. It was also submitted that in the worst case scenario, if subsequently the settlement proposal was not implemented, the position of IDBI Bank would be the same, as if the Corporate Debtor would have gone into liquidation. Under such circumstances, the Learned Senior Counsel for the IDBI Bank submitted that as compared to liquidation of the Corporate Debtor, the stakeholders are paid more in the Settlement Plan proposed by the promoters of the Corporate Debtor. Thus, prayed that the Settlement proposal along with withdrawal of the CIRP which was voted in the 17th CoC meeting and was passed with a 94.38% majority is required to be allowed.

9. We have heard the submission made by the Learned Senior Counsel for the parties and contemplated over the present Application which is filed under Section 12A of IBC, 2016 read with Regulation 30A of the CIRP Regulations, 2016. A perusal of the Settlement proposal which was considered by the Committee of Creditors would show that all the 9 Financial Creditors in relation to the Corporate Debtor have agreed to receive a sum of Rs.328.21 Crore as their Settlement Amount as against their total admitted



amount of Rs.4,863.88 Crore. The detailed lender wise settlement proposal is extracted hereunder;

(Amount in INR Crore)

S. No.	FINANCIAL CREDITOR	ADMITTED AMOUNT	TRANCHE I	TRANCHE II	SETTLEMENT AMOUNT
1	Central Bank of India	402.95	4.77	40.23	45.00
2	Life Insurance Corporation of India	354.36	22.50	137.50	160.00
3	State Bank of India	280.50	2.50	22.50	25.00
4	Union Bank of India	645.17	3.00	27.00	30.00
5	International Asset Reconstruction Company Pvt. Ltd.	1,147.69	2.33	13.22	15.55
6	IDBI Bank Limited	876.07	5.00	32.00	37.00
7	Punjab National Bank	305.83	0.62	3.52	4.14
8	Bank of India	74.42	0.15	0.85	1.00
9	Masdar Energy Limited, UAE	776.88	1.58	8.94	10.52
	TOTAL	4,863.88	42.45	285.76	328.21

10. It is also seen from the Settlement proposal plan as given by the shareholder of the Corporate Debtor that the payments as envisaged under Tranche – I shall be paid within 30 working days from the NCLT approval date and the payments as envisaged under Tranche –II shall be paid within 180 working days from the NCLT approval date.

11. It is seen from the Settlement proposal as given by the erstwhile promoters of the Corporate Debtor that the same appears to be more like a Corporate Restructuring and Resolution Plan or a Business Restructuring Plan rather than a settlement simpliciter under Section 12A of IBC, 2016. First in this regard, this Adjudicating Authority wishes to highlight one of the clauses given

under settlement proposal dated 14.12.2020, which is Clause 2 of Chapter VII – Miscellaneous as follows;

2. Effective Date and Failure of Approved Settlement Plan:

This document constitutes a binding proposal of the Promoters in respect of settlement of dues of the Company. However, the proposal of the Promoters is subject to negotiation with the Committee of Creditors. Therefore, the terms of the Approved Settlement Plan may be different from the terms proposed herein.

12. The above clause posits the fact that even after the proposal is approved, the promoter of the Corporate Debtor can change the terms of the proposed settlement plan. Also, the Settlement Plan governs the terms of implementation, which is more like a Resolution Plan proposed under Section 30 of IBC, 2016 and cannot at any case be termed as a "settlement simpliciter" under Section 12A of IBC, 2016.

13. Further, the ratio as laid down by the Supreme Court in respect of a Resolution Plan postulating that the "Commercial wisdom" of the CoC cannot be a subject matter of appeal before the Adjudicating Authority, **cannot** *mutatis mutandis* apply to an Application filed under Section 12A of IBC, 2016. This Adjudicating Authority is required to be vigilant in considering the settlement plan in relation to Section 12A of IBC, 2016 and is only required to permit unprejudiced settlement plan to succeed. There is always a

system of constant checks and balances where there must not be a capricious or arbitrary power given in the hands of CoC to accept or reject settlements.

14. The "collective commercial wisdom" of the CoC cannot be called in question by this Adjudicating Authority only when the said decision has been taken by the CoC in conformity within the framework of IBC, 2016. However, in the present case, instead, without even receiving single penny from the promoter of the Corporate Debtor, the CoC has voted under Section 12A of IBC, 2016 for the withdrawal of the CIRP in relation to the Corporate Debtor, which is not a settlement simpliciter rather than a "Business Restructuring Plan", as submitted by the Learned Senior Counsel for the Corporate Debtor. Thus, now a question arises for consideration before this Adjudicating Authority that whether based upon a "Business Restructuring Plan" submitted by the promoter of the Corporate Debtor and in an Application filed under Section 12A of IBC, 2016 can this Adjudicating Authority allow for the withdrawal of the CIRP in relation to the Corporate Debtor. Further, it should also be noted that the powers of this Adjudicating Authority cannot be circumscribed on the ground that "commercial wisdom" of the CoC would prevail over any other provisions of the IBC, 2016. Further, it should also be borne in mind that this Adjudicating Authority is not a mere stamping authority so as to

endorse the decision of the CoC and is required to examine whether such decision is falling within the contours of IBC, 2016.

15. We have gone through the minutes of the CoC and we observe that the Resolution Professional in all the meetings of the CoC appears to have engaged a Legal Counsel in order to answer the queries raised by the CoC members. Further, it is seen from the attendance of the CoC meetings that the RP has allowed certain Authorized Representatives on his part to appear in the CoC meeting, which we find that it is quite unusual.

16. It is also required to be noted that once the CIRP is triggered in relation to a Corporate Debtor, the same is an order in *rem* and not *in personam* and that whether the Corporate Debtor is required to be wriggled out of the CIRP is to be decided by this Adjudicating Authority by exercising its "judicial wisdom" and cannot be carried away by the "commercial wisdom" of the CoC in this regard.

17. We are also conscious of the fact that the Financial Creditor has full freedom to decide on the quantum of amount which they are willing to accept in respect of the overall dues pending against the Corporate Debtor and this Adjudicating Authority consciously restrains from making any observation in this regard and leaves the same to the "commercial wisdom" of the CoC. However, this



Adjudicating Authority is duty bound to examine the consequences of a purported Settlement proposal which is proposed by the promoter of the Corporate Debtor and the position of the Corporate Debtor once the application for withdrawal of the CIRP is allowed and also the default if any committed by the promoter of the Corporate Debtor in respect of the repayment of the money which is spread over a period of 180 days.

18. In the present Application, the Applicant has prayed for the Liquidation of the Corporate Debtor in case of the failure of the terms of the Settlement proposal as given by the promoter of the Corporate Debtor. However, we find that such a prayer cannot be acceded to once an order of dismissal of IBA/453/2019 is passed under Section 12A of IBC, 2016, the Petitioning Creditor himself withdraws the Application in the format prescribed under Form FA. Thus, once the Petitioning Creditor has agreed to withdraw the Petition, there cannot be any strings attached to the same. In the event of a subsequent default, an application seeking revival of the same cannot be filed, since it must be borne in mind that the Application filed under Section 7, 9 and 10 of IBC, 2016 is for Insolvency Resolution of the Corporate Debtor and not for the recovery of the money from the Corporate Debtor.



19. Further, once an order of withdrawal of CIRP is passed under Section 12A of IBC, 2016, the Corporate Debtor would come out of the rigours of IBC, 2016 and would be free from CIRP and would be acting independently, and that the default being committed in respect of the Settlement proposal cannot directly push the Corporate Debtor into liquidation, since the Corporate Debtor would not be under CIRP at that point of time. The prayer as sought for by the Applicant transcends beyond the scope of IBC, 2016 and granting such a prayer would be doing violence to the provisions of IBC, 2016. Also, for instance if at this stage, on the basis of the purported settlement proposal, if the Corporate Debtor is being wriggled out of the CIRP, at any later stage, during the 180 days period of the settlement plan, upon any of the Operational Creditor filing an Application under Section 9 of IBC, 2016 against the Corporate Debtor, it would again trigger the CIRP in relation to the Corporate Debtor and the whole process is required be started *de novo*, which would very much defeat the very purpose of IBC, 2016.

20. We have gone through the entire minutes of the CoC, it is not in doubt that the CoC has passed a Resolution for the withdrawal of the CIRP in relation to the Corporate Debtor in its 17th CoC meeting with a majority vote of 94.23%. However, nowhere in the minutes



it has been stated that the CoC has accepted the Settlement proposal given by the promoter of the Corporate Debtor and the Settlement proposal *per se* was not put to vote by the members of the CoC.

21. Eventhough the Application filed by the Applicant contains Form FA and the copy of the bank guarantee for a sum of Rs.5 Crore as mandated under the CIRP Regulations, 2016 we find that the present Application filed under Section 12A of IBC, 2016 is not required to be allowed in view of the fact that it will have some serious ramifications, since in the present case, till this time, the money has not been paid to the Financial Creditors and that the dues of the entire Financial Creditors are to be cleared by the promoters of the Corporate Debtor only after a period of 180 days from the approval granted by this Tribunal. Further as already discussed, the Corporate Debtor once comes out of CIRP cannot be pushed directly into liquidation, since such a scenario is unfounded in the provisions of IBC, 2016. Also it is relevant to point out here that, only a violation of the terms and conditions of a Resolution Plan would push a Corporate Debtor into liquidation and that a violation of a settlement proposal envisaged under Section 12A of IBC, 2016 does not provide any remedy, in which case, the CoC before passing any Resolution should be absolutely sure that they



receive the entire OTS amount as proposed by the settler before passing a Resolution under Section 12A of IBC, 2016.

22. A settlement simpliciter under Section 12A of IBC, 2016 is different from a Resolution Plan given under Section 30 and 31 of IBC, 2016. However, in the present case, the promoter of the Corporate Debtor who is ineligible to submit a Resolution Plan because of Section 29A of IBC, 2016 is trying to provide a Settlement proposal, which is similar to a Resolution Plan under Section 12A of IBC, 2016. In other words, the promoter of the Corporate Debtor is trying to restructure the loans granted by the Financial Creditor under the pretext of a Settlement proposal to be given under Section 12A of IBC, 2016. Further, there exists an uncertainty in relation to the default, if any, being committed by the promoters of the Corporate Debtor and that this Tribunal has already come to a view that the Corporate Debtor cannot be pushed into liquidation in case of a default committed under Section 12A of IBC, 2016. In the first case, this Tribunal is of the view that the CoC ought to have voted for the proposal only if they have received the money in full as per the Settlement proposal given by the promoter of the Corporate Debtor and if such being the case, the apprehension of default on the part of the promoter of the Corporate Debtor would not have arisen and that the

Tribunal would have no difficulty in approving the proposal under Section 12A of IBC, 2016.

23. If such a settlement proposal as given by the promoter of the Corporate Debtor under Section 12A of IBC, 2016 is approved by this Tribunal, especially when as on date no money has been paid to the Financial Creditor of the Corporate Debtor, then this Tribunal would be left in lurch when there arises any default on the part of the promoters of the Corporate Debtor, since it would be uncertain as to how to proceed thereon when the Corporate Debtor is out of CIRP and hence there arises a legal quagmire.

24. Viewed from this perspective, all the judgments referred to by the Learned Counsel for the Resolution Professional, the Corporate Debtor and the IDBI Bank, would not apply to the facts of the present case, since here the settlement proposal as envisaged by the promoter of the Corporate Debtor is not a settlement simpliciter as envisaged under Section 12A of IBC, 2016.

25. For all the aforesaid reasons, we are of the view that the Settlement Proposal as given by the Corporate Debtor and the approval of the withdrawal of the CIRP in relation to the Corporate

Debtor by the CoC in its 17th meeting, is not in conformity with the provisions of IBC, 2016 and also not in line with the judicial conscientiousness of this Adjudicating Authority and also transcends beyond the scope of IBC, 2016.

26. In so far as IA/586/CHE/2021 is concerned, it is seen that the same has been filed by State Bank of India, who is one of the Financial Creditors in relation to the Corporate Debtor who has voted against the Settlement proposal under Section 12A of IBC, 2016 given by the promoter of the Corporate Debtor. The State Bank of India, in IA/586/CHE/2021 has sought for a direction to declare that the mortgage rights of the Applicant over the immovable property offered by the Corporate Debtor will not get diluted upon withdrawal of the CIRP by the 2nd Respondent under Section 12A of IBC, 2016 pursuant to the decision of the CoC members. It is averred in the Application that the Applicant Bank is having exclusive mortgage rights over the immovable property of the Corporate Debtor and the Applicant will be at liberty to enforce the SARFAESI Proceedings against the mortgaged property. Further, it is averred that the Applicant Bank viz. State Bank of India does not appear to have any objection for the withdrawal of the CIRP, provided that the rights of the Applicant Bank over the mortgaged property should not get diluted. Considering the submissions made by the Learned Counsel for State Bank of India,

we are of the view that since we are not inclined to allow the relief as sought for in MA/43(CHE)/2021, seeking withdrawal of the CIRP process. The necessary consequence will be an order of Liquidation, which is also passed vide separate order, the Applicant Bank may exercise the security interest over the subject property and may intimate the same to the Liquidator in so far as whether they are relinquishing their security or standing outside the Liquidation process. With the above said directions IA/586(CHE)/2021 stands **disposed off**.

27. In view of the above discussions, we conclude as follows;

- a. The purported Settlement Plan proposed by the promoter of the Corporate Debtor is not a Settlement simpliciter as envisaged under Section 12A of IBC, 2016 rather than it is a "Business Restructuring Plan".
- b. As per the settlement Plan, there is no final offer made by the promoter of the Corporate Debtor and also the acceptance made by the CoC in this regard. There is no finality reached between the promoter of the Corporate Debtor and the CoC as per Clause 2 of Chapter VIII of the Settlement proposal; hence based on ambiguity of terms of settlement, we cannot order for withdrawal of the CIRP.



- c. The prayer seeking for liquidation of the Corporate Debtor in case of any default in the proposed Settlement Plan transcends beyond the scope of IBC, 2016.

28. For the foregoing reasons which have been stated *supra*, the MA/43(CHE)/2021 filed by the Applicant under Section 12A of IBC, 2016 stands **dismissed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond