

NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH-II

IA. 2038/ND/2020

IN

Company Petition No. (IB)-1742(ND)/2019

IN THE MATTER OF:

Om Logistics Limited & Anr.

...Operational Creditor

Versus

M/s Ryder India Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF:

**Bikram Singh Gusain
Interim Resolution Professional
Ryder India Private Limited
B-1/105, Sunrise Apartments
Dr. KN Katju Marg
Sector 13 Rohini
Delhi-110085**

...Applicant

Versus

**1. Mr. Rohtas Kumar Rohit
Director of the Suspended Board
Plot no. 168, 3rd Floor
Vishali Enclave, Pitampura**

...Respondent No. 1

**2. Mr. Pankaj Batra
Director of the Suspended Board
WZ-3807, Mahindra Park Rani Bagh
Delhi-110034**

...Respondent No. 2

**3. Registrar of Companies
4th Floor, IFCI Tower,
61-Nehru Place
New Delhi-110019**

...Respondent No. 3

**4. Commissioner of Income Tax Department
Range 45(1), Circle 21(1)
CR Building
IP Estate,
New Delhi-110002**

...Respondent No. 4

IA. 2038/ND/2020 IN C.P. No. (IB)-1742(ND)/2019
Om Logistics Limited & Anr. Vs. M/s Ryder India Pvt. Ltd.

5. **Goods & Services Tax Commissionerate
Delhi West
4th & 5th Floor
EIL Annexe Building
Bhikaji Cama Place,
New Delhi-110066**Respondent No.5
6. **Excise & Taxation Officer
Jhajjar Haryana -124103** ...Respondent No.6

Order Delivered on: 29.07.2021

SECTION: Section 60(5) of IBC 2016

CORAM :

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENTS:

For the Applicant : Mr. Vinod Chaurasiya, Advocate for IRP
For the Respondents : None

ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present I.A. No. 2038 of 2020 is preferred by Mr. Bikram Singh Gusain IRP (hereinafter referred as '**Applicant**') of M/s Ryder India Pvt. Ltd. (hereinafter referred as 'Corporate Debtor'), under Section 60(5) of IBC, 2016.

2. That the Applicant has made the following prayers in the Application under consideration:

- “a. Close the CIRP initiated action against M/s Ryder India Private Limited/ CD.*
- b. Consider dissolution of M/s Ryder India Private Limited/ CD, if found just and reasonable.*
- c. Discharge the Applicant/IRP from the responsibility of IRP.*
- d. Pass such further and other order and directions as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the matter.”*

3. As submitted, the facts of the case in brief are that the Operational Creditor (OC), M/s Om Logistics Ltd. had filed an application bearing no IB-1742(ND)/2019 under Section 9 of IBC 2016 in this Tribunal for initiation of CIR Process against the Corporate Debtor M/s. Ryder India Pvt. Ltd. That vide order dated 26.09.2019, this Adjudicating Authority had initiated the CIR Process against the Corporate Debtor and appointed Mr. Bikram Singh Gusain IP, as the Interim Resolution Professional (IRP).

4. That the Applicant in the introductory para of its Application has averred the following :

“Further, the Applicant/IRP submits the company has no assets, the company has not filed its financial and statutory returns with the CoC after 31.03.2016. Currently, the company has no business/commercial operations. This Hon’ble Tribunal may consider dissolution of the CD, if found just and reasonable”.

5. It is stated by the Applicant that Public Announcement in 'Form A' was made in the newspapers namely, Business Standard (English) and Jansatta (Hindi) in Delhi NCR editions on 02.10.2019.

6. It is further stated by the Applicant that on 11.11.2019 the Operational Creditor M/s Om Logistics Limited filed its claim of Rs.1,59,830 with the IRP. Besides, one more claim of Rs 1,41,19,729/- was filed by Excise & Taxation Officer, Bahadurgarh Jhajjar, Haryana (hereinafter referred as "**ETO Bahadurgarh**") on 10.12.2019.

7. It is submitted by the Applicant that on the basis of the aforesaid two claims received from Operational Creditors, CoC was constituted with ETO Bahadurgarh having 98.88% voting share and M/s Om Logistics Ltd. having 1.12% voting share in the CoC.

8. It is further submitted by the Applicant that the First meeting of CoC was convened on 23.12.2019, where M/s Om Logistics Ltd. did not attend the meeting and ETO Bahadurgarh abstained itself from voting. Therefore, no decision could be taken in the meeting.

9. It is added by the Applicant that again on 10.01.2020 during the Second Meeting of CoC due to absence of M/s Om Logistics Ltd. and non-voting by ETO Bahadurgarh no decision was taken.

10. It is further added by the Applicant that the Applicant convened the third meeting of the CoC on 20.01.2020. It is further stated that neither the members of the CoC nor the Ex-Directors attended the meeting. It is added that in terms of Regulation 22(2) of IBBI (Insolvency Resolution IA. 2038/ND/2020 IN C.P. No. (IB)-1742(ND)/2019 Om Logistics Limited & Anr. Vs. M/s Ryder India Pvt. Ltd.

Process of Corporate Persons) Regulations 2016, the meeting was adjourned to 07.02.2020. However, it is submitted by the Applicant that none of the members of the CoC attended the re-convened meeting.

11. It is averred by the Applicant that subsequently, the ETO Bahadurgarh withdrew its claim vide letter No. 2408/ETO Ward 5/ dated 17.02.2020, which is reproduced below:

From
Excise & Taxation Officer,
O/o Dy. Excise & Taxation Commissioner(ST),
Jhajjar.

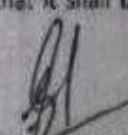
To
Sh. Bikram Singh Gusain,
Insolvency Resolution Professional,
UGF, 1/15 (Near PNB), Tilak Nagar,
New Delhi-110018.

No. 2408 /ETO-Ward-5/ Dated 17-2-2020

Subject: Withdrawal of claim lodged against M/s Ryder India Pvt. Ltd. in C.P. No. IB 1742(ND)2019.

Memo

The undersigned has filed claims of Rs. 1,41,19,729/- against M/s Ryder India Pvt. Ltd. (Corporate Debtor). After attending few meetings of COC, it has transpired that there is no information as regard availability of any assets of the Company, therefore, in order to avoid burdening the public exchequer, it is hereby intimated that the Department no longer wishes to continue with the CIRP proceedings and is hereby withdrawing the claims. It expressly clarified that the said withdrawal of claims is without prejudice to the rights of the Department to claim the due amount from the Company and that it shall be open for the Department to pursue all legal remedies as provided under law.


Excise & Taxation Officer,
O/o Dy. Excise & Taxation Commissioner(ST),
Jhajjar.

12. It is submitted by the Applicant that out of the two CoC members, whereas the ETO Bahadurgarh has withdrawn its claim and the other member Om Logistics Ltd. has not been pursuing the CIR Process.

13. That it is also submitted by the Applicant that he had filed an application under Section 19(2) of IBC 2016, in which this Bench vide order dated 15.01.2020 had directed the Ex-Directors to cooperate with the IRP. Further direction was given to the Ex-Directors to be present before the IRP and handover all the documents in their possession on 18.01.2020 at 12pm. Since the Ex-Directors failed to comply with the order dated 15.01.2020 and also failed to appear before this Adjudicating Authority, vide order dated 24.01.2020 bailable warrants were issued against the Ex-Directors. That subsequently, the Ex-Directors appeared before this Adjudicating Authority on 10.02.2020 and submitted that the Books of Accounts are lying in a premises, which is under the control of one Mr. Brij Mohan Garg. Accordingly, the Ex-Directors were directed to accompany the IRP to the premises where books of accounts were lying on 11.02.2020 at 11am. That the IRP, then visited the property and filed the following report :

Visit Report-of 12.02.2020

On 10.02.2020 – during hearing ex-Directors (Mr. Rohtash Kumar Rohit and Mr. Pankaj Batra) who were present in the Court submitted that all records of the company containing statutory record, financial records and all other records are lying in the premises at which the CD was running the business activity. The director informed that the said premises have been purchased Mr. Brij Mohan Garg (occupier of the premises). The premises at present is under his occupation. The Hon'ble Bench directed the ex-Directors to accompany the IRP and take possession of all records pertaining to M/s Ryder India Private Limited (CD) lying at Bahadurgarh on 11.02.2020.


On 11.02.2020 (at 9:55 AM) – IRP was informed in the morning (at that time IRP was ready for the visit to Bahadurgarh, as per directions of this Hon'ble Bench) by Mr. Rohtash Kumar Rohit, that today Mr. Brij Mohan Garg will not be available at the said premises and hence suggested that visit be planned for next day (12.02.2020).

On 12.02.2020 Mr. Pankaj Batra (one of the ex-Director of CD) accompanied the IRP at the said premises located at Plot No. 352, Sector – 17, Footwear Park, HSIIDC, Bahadurgarh (Haryana). The team included Mr. Pankaj Batra, one of his known person and IRP with one of his team members. On reach the premises it was found gate closed. On inquiry with the security guard IRP was informed that nobody is allowed inside. IRP requested the security guard to receive a letter addressed to Mr. Garg, which he received and signed acknowledgement. Copy of receipt of letter is attached. While the visiting team was still near the gate (outside the premises) security guard handed over his mobile informing the IRP that Mr. Garg is on the line. IRP took the phone for talking to the caller. The caller informed that he is Mr. Brij Mohan Garg. The Caller was very offensive, using abusive language and threatened the IRP and team " *saalon thodi der ruko waheen tumhari tange torhata hun.. uthwa dunga..*".

IRP tried to explain the purposes and background of the visit. IRP tried to convey him that the visit on the instruction of the NCLT Court with the purpose of collect the records, if any, of M/s Ryder India Private Limited stored at his premises. He was not ready to listen and continued his insulting and threats. The IRP thereupon excused himself. Thereafter the caller asked the IRP to give phone to Mr. Pankaj Batra and continued his offensive, using abusive language and threats to him too.

While at site IRP noticed that one sign board of Pentagon Shoe (India) Private Limited was displayed, with name of Mr. Brij Mohan Garg (Advocate) on the top of the sign board. Photo of the same is attached.

Thereupon the team came back empty handed.

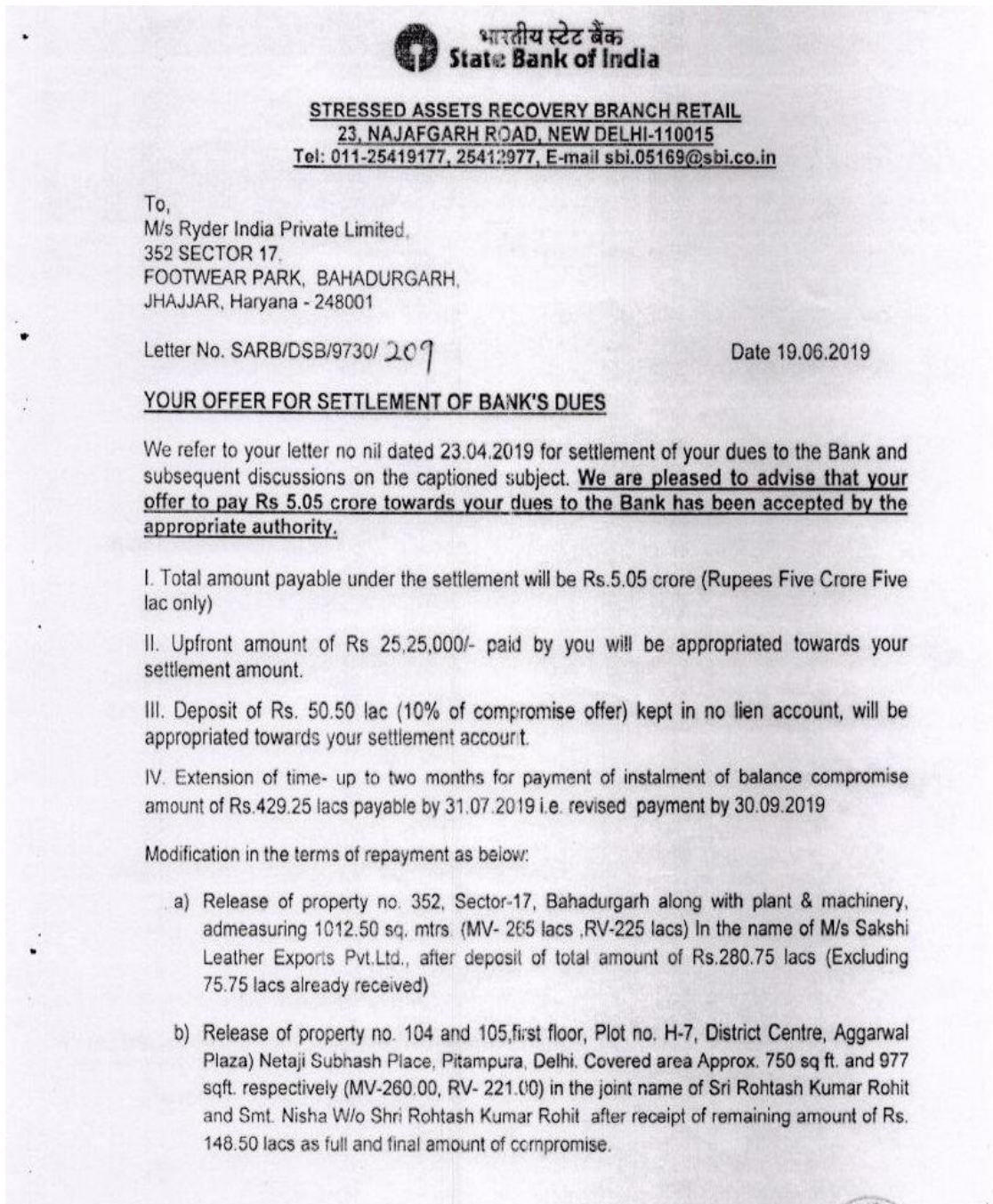

Bikram Singh Gusain, IRP

M/s Ryder India Private Limited (undergoing CIRP)

Dated : 12.02.2020

14. It is stated by the Applicant that he could not recover any record from the premises of the Corporate Debtor and found one notice board of Pentagon Shoe (India) Private Limited displayed with the name of Mr. Brij Mohan Garg (Advocate) on the top of the sign board.

15. It is further stated by the Applicant that the Ex-Director Mr. Rohtash Kumar Rohit handed over to him the Letter No. SARB/DSB/9730/209 dated 19.06.2019 regarding the one-time settlement with the SBI, Najafgarh Road, New Delhi and re-payment thereunder issued to the Corporate Debtor by the State Bank of India, copy of which is reproduced below :



c) Interest @MCLR tenor 12 month to be charged on the balance amount paid after four months shall be charged from 30th day from the date of letter conveying initial approval of the compromise to the borrower

d) All other terms and condition remain same.

V. Consent terms with default clause will be filed before Presiding Officer of DRT/Court for obtaining Consent Decree.

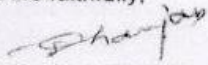
VI. All cases filed by the company/directors/guarantors, if any, against the Bank are to be withdrawn.

VII. If, for any reason, the compromise amount or any instalment, as agreed, is not received within scheduled period, the Bank reserves the right to cancel the compromise settlement and entire dues of the Bank/consortium as claimed in DRT/Court in the original application with interest and costs will become due for payment.

VIII. Other terms and conditions. As applicable as per Bank's Compromise Settlement Policy.

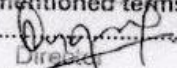
We, therefore, advise you to accept the terms and conditions of the above sanction and arrange for payment of compromise settlement amount as per terms mentioned above. A resolution of the Company for acceptance of the compromise settlement terms and authorising a Director to execute/sign necessary documents may also be submitted. The duplicate of this letter signed by the Company and all the guarantors be sent to us indicating your acceptance of above mentioned terms and conditions of compromise settlement.

Yours faithfully,

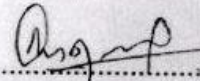

Asst. General Manager
For Ryder India Pvt. Ltd.



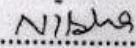
We accept above mentioned terms and conditions of Compromise Settlement:


.....
(Borrower - M/s Ryder India Private Limited)


(Guarantor -)
Shri Rohtash Kumar Rohit


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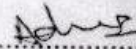
Mrs. Nisha W/o Shri Rohtash Kumar Rohit


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Mr. Pankaj Batra

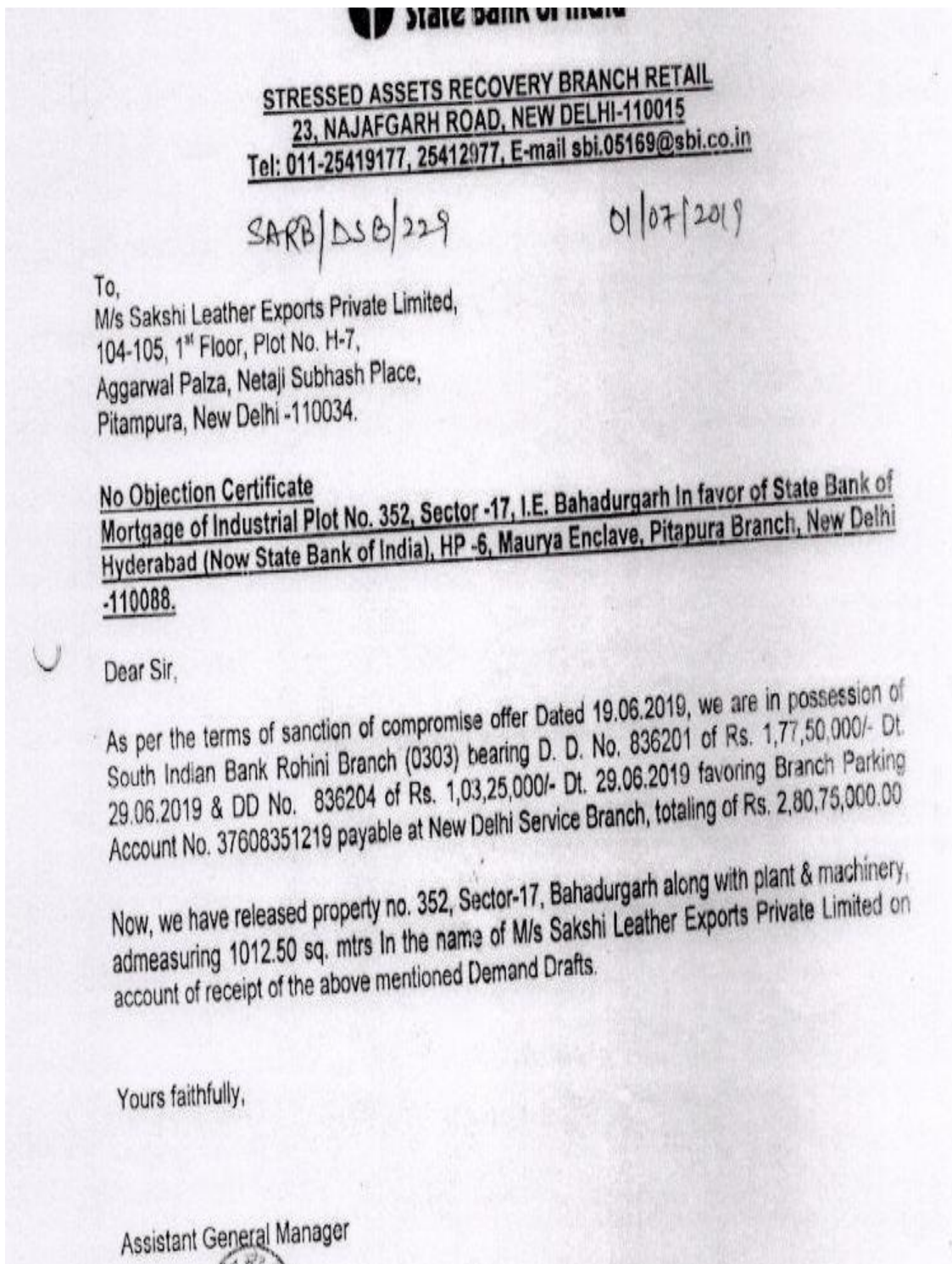

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Mr. Aditya Kumar


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16. It is added by the Applicant that the Ex-Director Mr. Rohtash Kumar Rohit also handed over to him a copy of the 'No Objection Certificate' issued vide letter No. SARB/DSB/9730/229 dated 01.07.2019 by SBI addressed to M/s. Sakshi Leather Exports Pvt. Ltd., (owner of the property at which CD was running its plant). It is further

added by the Applicant/ IRP that from these letters of SBI it can be inferred that the assets of the CD have been disposed of to settle the dues of the Bank. The scanned copy of the said letter is reproduced below :



17. After hearing submissions of the Applicant/IRP, perusing his averments and documents placed on record, this Bench is of the view that the prayer made by the IRP for dissolution of the Corporate Debtor cannot be accepted since the Liquidation is a pre-requisite to the Dissolution and in the present case, no order of Liquidation has been passed due to absence of any such proposal and non-functioning of the CoC.

18. We observe that even if the ETO Bahadurgarh has withdrawn its claim, the CoC could have functioned with the Sole Member/ Operational Creditor, at whose instance the CIRP was initiated. However, in the present case we notice that even the Sole Member/ Operational Creditor of the CoC has been shirking from the responsibility and not pursuing the CIR Process of the Corporate Debtor.

19. In case the Sole Member/ Operational Creditor of the CoC was not interested in pursuing the CIR Process, the appropriate course could have been to file a withdrawal application under Section 12A of IBC, 2016. The contents of the Section 12A are reproduced below :

“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.”

20. The aforesaid sequence of events shows that the intention of the Operational Creditor i.e., M/s. Om Logistics Ltd., at whose instance the CIR Process was initiated, was not for the resolution of Insolvency. Instead, the Operational Creditor has used this forum for recovery and got the CIR process kickstarted with malicious intent for a purpose other than the resolution of insolvency of the Corporate Debtor, which is not permissible under the IBC 2016. As per the Code, if any person [as defined under Section 3(23) of IBC] initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of the insolvency, or liquidation, such an act is punishable under Section 65 (1) of IBC 2016. Hence, before taking any action under Section 65(1) IBC 2016, we think it proper to issue a show cause notice, under Rule 59 of the National Company Law Tribunal Rules 2016, on the Operational Creditor M/s. Om Logistics Ltd. through its Directors as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on it. **Ld. Registrar NCLT is directed to issue the show cause notice under Section 65(1) of IBC 2016 read with Rule 59 of the National Company Law Tribunal Rules, 2016 on M/s. Om Logistics Ltd. through its Directors giving them fifteen days' time to explain and submit in writing as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on them. The Registry is directed to allot a Case No. for the proceedings for which the Show Cause Notice is being issued to the Operational Creditor under Section 65(1) of IBC, 2016.** Registry/ Court Officer to list this matter on **01.09.2021**.

21. Now, coming to the prayer of the Applicant, we are of the view that it is not the duty of the IRP to run after the Members of CoC to attend the meeting and pursue the CIR Process. In a similar situation, when the CoC was not interested in pursuing the CIR Process, this Adjudicating Authority has terminated the CIR Process in the matter of **M/s. Surendra Steels Sales Vs. M/s. Immortal Buildcon Pvt. Ltd., (IB)-1152(ND)2019 dated on 07.01.2020**. The relevant extract of the said order is reproduced below :

“...The IRP has submitted that he has been meeting expenses from his own pocket. Pursuant to the publication, no other claim was received. It is submitted that the first meeting has been held while the second meeting has been postponed a few times, at the instances of the Operational Creditor/CoC on grounds of a possible settlement with the Corporate Debtor. As such there was no confirmation of the RP further steps take. There was no concession on the fees to be given, much less expenses to be met. No progress has been made in this case. This bench is apprised of the fact that the Operational Creditor has been in talks of settlement with the Corporate Debtor and, is therefore, not interested in taking any step to proceed with the CIR process. Under such circumstances with no other claimant and the sole member of the CoC not being interested in prosecuting the CIR process, it would be expedient to terminate the CIR process. In view of the above, the CIR process is hereby, terminated. The Corporate Debtor is released from the rigors of the moratorium and is permitted to function through its own board. We find that the Operational Creditor has not only failed to reimburse the expenses and fees of the Interim Resolution Professional, but has also wasted the time of this Bench after the Petition was duly admitted. Accordingly, while terminating the CIR process, a cost of Rs. 50,000/- is imposed on the Operational Creditor to be paid to the Prime Minister’s Relief Fund....”

22. In the circumstances, when the Applicant is unable to carry forward the CIR process for want of cooperation/participation from the sole member of CoC, we feel it appropriate to terminate the CIR process of the Corporate Debtor. **In view of the above, by exercising our jurisdiction under Section 60(5) of IBC 2016 along with inherent power under Rule 11 of the NCLT Rules, 2016, we hereby terminate the CIR process of the Corporate Debtor with immediate effect and release the Corporate Debtor from the rigors of the CIRP and moratorium.**

23. **The Application is Allowed in the aforesaid terms.**

Sd/-

**(L.N. GUPTA)
MEMBER (T)**

Sd/-

**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**