

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, MUMBAI**

I. A. 1025/2020

In

C.P. 3010/I&B/NCLT/2019

Under Section 60(5)(c) of Insolvency
& Bankruptcy Code, 2016

In the matter of

ISGEC Heavy Engineering Limited
...Operational Creditor

V/s

Cane Agro Energy (India) Limited
...Corporate Debtor

And in the matter of:

Interlocutory Application by the Resolution
Professional Mr. Shailesh Bhalchandra
Desai.

... Applicant/ Resolution Professional

Order pronounced on: 16.02.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Appearance: (through video conferencing):

For the Applicant/IRP : Mr. Ayush J. Rajani, PCS

For the Corporate Debtor : Mr. Rohit Gupta, Advocate

For the Operational Creditor : Ms. Rashi Verma, Advocate

ORDER

Per: Suchitra Kanuparthi, Member (Judicial)

1. This is an Application filed by the Interim Resolution Professional (IRP) under section 12A of the Insolvency and Bankruptcy Code, 2016 (the Code) read with Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the Regulations) for withdrawal of the Company Petition.

2. This matter was referred to me as there was a difference of opinion amongst the Members vide order dated 15.12.2020. The issues framed for reference are as follows:
 - i. Whether the IRP can withhold an Application to the Adjudicating Authority after the Application in Form FA is submitted by the Creditor for withdrawal of the Company Petition?
 - ii. Whether the IRP is prohibited from making an Application under Section 12A of the Insolvency and Bankruptcy Code read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after the issue of the public advertisement under Section 13 of the Code read with Regulation 6 of the Regulations in Form A and before the last date for submission of the claims?
 - iii. If such an Application is made, would it amount to misconduct on the part of the IRP?
 - iv. Whether Adjudicating Authority has power to direct settlement of outstanding claims of other creditors who are not before it nor notices have been issued to them?

3. The admission of CIRP against the Corporate Debtor was passed on 10.06.2020. The Operational Creditor and Corporate Debtor entered into a settlement agreement dated 23.06.2020. The Operational

Creditor was paid an amount of Rs. 21 lakhs towards full and final settlement of operational Creditors due as per the settlement agreement. The copy of the settlement agreement and Form FA is extracted below:

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and executed at Noida on this 23rd day of June, 2020 between:

ISGEC Heavy Engineering Ltd., a Company incorporated under Companies Act, 1956 and having CIN: L23423HR1933PLC000097 and having its registered office at Radour Road Yamuna Nagar, Haryana - 135001. Hereinafter referred to as 'First Party';

AND

Cane Agro Energy (India) Limited, a Company incorporated, under the provisions of Companies Act, 1956, having its CIN: U01115PN2007PLC130211 and its registered address at Raigaon, Post Hingangaon (Budruk), Tal-Kadegaon, Sangli - 415 305. Presently under Corporate Insolvency Resolution Process Hereinafter referred to as 'Second Party'.

That 'First Party', 'Second Party', shall be collectively referred to as the "Parties" and individually to as the "Party".

WHEREAS the First Party has filed a Petition on 22.07.2019 under Section 9 of the Insolvency and Bankruptcy Code in relation to operational debt due from Second Party.


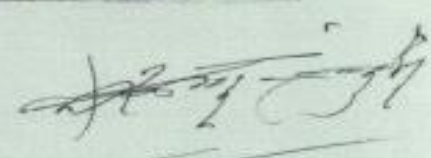


AND WHEREAS the said petition was listed on board before the Hon'ble National Company Law Tribunal, Mumbai Bench on 30.01.2020 wherein the Hon'ble Tribunal passed an order, inter-alia stating the Petition has been heard and reserved for orders.

AND WHEREAS the Hon'ble Tribunal vide its order dated 10.6.2020 has admitted the petition.

AND WHEREAS the present Settlement Agreement is executed by the Parties wilfully and without any coercion or undue influence. By executing the present Settlement Agreement, the Parties herein agree to mutually settle all disputes, differences and accounts in the following manner:-

1. The Second Party has agreed to settle the claims of the First Party under Company Petition No. 3010 of 2019 and has agreed to pay a sum of Rs.21.00 lacks towards settlement of entire claims of the First Party.
2. The First Party accepts a sum of Rs.21.00 Lakhs (Rupees Twenty One Lakhs only) in full and final settlement of the outstanding dues owned by the Second Party to the First Party in lieu of transactions that have occurred between them in due course of business.
3. That the aforesaid settlement amount has been paid by the Second Party in full. The First Party hereby acknowledge receipt of entire settlement amount in the following manner:-

S. NO.	DATE	MODE OF PAYMENT	AMOUNT (RS)
1.	18.06.2020	Demand Draft.No.402271(Bank Of Maharashtra)	6,00,000/-
2.	18.06.2020	Demand Draft.No.402272(Bank Of Maharashtra)	6,46,525/-
3.	20.06.2020	RTGS-MAHBR52070062008195728	2,50,000/-
4.	22.06.2020	RTGS (Maharashtra Bank)	1,50,000/-

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5.	22.06.2020	IMPS (Ref. No. 357204092)	50,000/-
6.	22.06.2020	IMPS (Ref. No. 357204092)	10,000/-
7.	22.06.2020	IMPS (Ref. No. 357204092)	40,000/-
8.	22.06.2020	IMPS (Receipt No. 19080945538)	1,51,476/-
9.	22.06.2020	RTGS from Union Bank Of India	2,00,000/-
		TOTAL	21,00,000/-

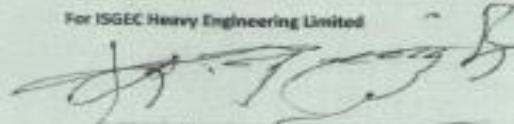
4. The parties hereby expressly agree and undertake to acknowledge that the settlement agreed herein is in full and final and neither party shall have any kind of claim against each other on any account whatsoever except on account of pending C. Forms as stated hereunder.
5. That the First Party and the Second Party have agreed that the Second Party shall provide the Central Sales Tax Form 'C' for supplies made worth Rs. 16,49,726/- (Rupees Sixteen Lakh Forty-Nine Thousand Seven Hundred and Twenty-Six Only) to the First Party at the earliest.
6. That the First Party hereby agrees to file an application before the Hon'ble Tribunal for withdrawal of the Petition. Second Party shall extend its full cooperation in this respect. Both the parties shall cooperate to each other in filing a lawful application for withdrawal/closure of the matter.

For Cane Agro Energy (India) Limited



Mr. Dhananjay Chandrasen Deshmukh
Shareholder and Suspended Director

For ISGEC Heavy Engineering Limited



Mr. Kapil Kumar Singh
Vice President-Legal &
Constituted Attorney



21/06/20

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FORM FA
APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS
[Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

To
The Adjudicating Authority
Hon'ble National Company Law Tribunal, Mumbai Bench
[Through Mr. Shailesh Bhaichandra Desai, Interim Resolution Professional]
[Cane Agro Energy (India) Limited.]


Subject: Withdrawal of Application admitted for corporate insolvency resolution process of Cane Agro Energy (India) Limited.

1. I, M/s Isgec Heavy Engineering Limited, had filed an application bearing Company Petition No. 3010/MB/C-IV/2019 on 22nd July 2019 before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on 10th June 2020 bearing C.P. No.3010/MB/C-IV/2019.

2. I hereby withdraw the application Company Petition No. 3010/MB/C-IV/2019 filed by me before the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016.

3. I have paid a sum of Rs. 3 Lac (Rs. 277,500.00 RTGS +Rs. 22500.00 as TDS) through Standard Chartered Bank to the Interim Resolution Professional towards the estimated cost incurred as per sub-regulation (2) of regulation 30A in place of the bank guarantee.

FOR ISGEC HEAVY ENGINEERING LTD.


Mr. Kapil Kumar Singh
(VICE PRESIDENT LEGAL &
CONSTITUTED ATTORNEY)

Date: 23/06/2020
Place: Noida



4. The Applicant/ IRP, however, has received the following claims in response to the public announcement dated 17.06.2020, the claims are furnished as follows:

Claims as on the date of filing Application (26th June 2020):

Sr. No.	Name of Creditor	Claim Form	Amount Claimed (in Crores)	Date of claim form received.
1.	Karad Janata Sahkari Bank Ltd.	FORM C	55.60	24.06.2020
2.	Sangali Urban Co-op Bank Ltd.	FORM C	7.73	18.06.2020
3.	Vasantdada Shetkari Sahkari Bank Ltd	FORM C	62.28	24.06.2020
	Total Claims received as on 26.06.2020		125.61	

Claims received as on 6th July 2020 i.e. on the date of hearing:

4.	Jankalyan Nagari SahkariPatsanstha	FORM C	7.66	27.06.2020
5.	Sangali District Central Coop Bank Ltd.	FORM D	191.24	27.06.2020
6.	Bank of India	FORM C	80.82	29.06.2020
7.	Krantiagrani Dr. G. D. BapuLad Sahakari Karkhana Ltd	FORM B	0.65	26.06.2020
8.	Bank of India	FORM F	157.62	29.06.2020
	Total Claims received as on 6th July 2020		437.99	

5. The IRP has also furnished the details of other applications filed against the Corporate Debtor which have either been withdrawn or settled:

Sl. No.	CP Nos.	Section under which filed and name of the Applicant therein	Status
1.	IB 2415 (MB) 2018	THE KARAD JANATA SAHAKARI BANK LIMITED (Section 7)	Application withdrawn by Applicants as there was no default and the Hon'ble Bench was inclined to dismiss the application.
2.	IB 915 (MB) 2019	SHREE BALAJI SUGAR CO (Section 9)	Matter amicably settled before admission. Out of the total dues 1/3 rd was to be paid before 12 th March, 2020. Hence, Rs. 2 crores out of Rs. 5.92 Cr (including interest) was paid on that date. Remaining 2/3 rd was to be paid on or before 31 st Mar 2020. This amount is pending due to the lockdown. Whereas the CD is in continuous touch with the Applicant therein and the payments schedules are being worked out afresh.
3.	IB 3010 (MB) 2019	ISGEC HEAVY ENGINEERING LIMITED (Section 9)	The Present Application

6. The Hon'ble Member Judicial referred to the decision of Hon'ble NCLAT in the case of *Mr. K. C. Sanjeev v. Mr. Easwara Pillai Kesavan*

Nair (Company Appeal (Insolvency) No. 1427 of 2019 decided on 28.02.2020) observed as follows.

"4. Considering the Provisions of Section 12 A of IBC and Regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is clear that the IRP is duty bound to place the Application for withdrawal within three days of its receipt. The grievance of the Appellant is that in spite of such provision such action was not taken. The Appellant is raising various grievances against the IRP. We have been dealing with these types of matters relating to withdrawal and in this regard various parties do appear to have been facing problems. The date of filing of application for withdrawal to Adjudicating Authority is material considering Judgment in the matter of Swiss Ribbons Pvt. Ltd. vs. Union of India 2019 SCC Online SC 73 in Para 79 and 80, Hon'ble Supreme Court observed as under:

"79. 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.

80. The main thrust against the provision of Section 12 A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (Supra). Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject. If the committee of creditors arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12 A also passes constitutional muster." (Emphasis supplied)

7. The Hon'ble Judicial Member relied upon the judgement aforesaid mentioned of the Hon'ble NCLAT and allowed the IA subject to settlement of claims of all the creditors by the Corporate Debtor within a period of three months. The Corporate Debtor was directed to report compliance at the end of three months. The order also recorded that failing the compliance by the Corporate Debtor, the CIRP shall get revived further action under the CIRP shall enshrined.

8. However, the Learned Member (Technical) has deferred with the order of Learned Member (Judicial). He has recorded in his order that even before the last date of receiving claims which is on 29.06.2020 in pursuance of the public advertisement dated 17.06.2020, the Application for withdrawal was filed on 26.06.2020. The total claims as on due date on 29.06.2020 is approximately Rs. 563.60 crores and the claims received as on 26.06.2020 is approximately Rs. 125.61 crores, therefore, the claims received between 27.06.2020 and 29.06.2020 is Rs. 438 crores. Further, he also recorded that the order of admission of CIRP is a process in rem as discussed by the Hon'ble Supreme Court in *Swiss Ribbons Pvt Ltd and Anrs v/s Union of India* judgement and considering the past history of Corporate Debtor and its inability to pay a few crores of rupees, even some lakhs of rupees as dues and as such in view of huge amount of claim approximately Rs. 563.60 crores in this case, permitting withdrawal of the CIRP may not be desirable. The Hon'ble Technical Member observed in his finding that considering the financial distress, financial position of the Corporate Debtor is a fit case to involve a resolution process.
9. The Hon'ble Technical Member in exercise of power under Rule 11 has awarded a cost of Rs. 10 lakhs on the Corporate Debtor and suggested suitable action to be initiated against IRP as he did not wait for the completion of last date to receive claims but has chosen to file the application under section 12 A read with regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Findings:

1. Heard the Counsel for the IRP and the counsel for Corporate Debtor.
2. It is pertinent to look at Section 12A of the Code read with Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Persons) Regulations, 2016 is as follows:

Section 12A of the Code:

"12A. Withdrawal of application admitted under section 7, 9 or 10The 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."

Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:

"30 A. Withdrawal of application:

(1) An application for withdrawal under section 12A maybe 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.

3. The code mandates filing of Form-FA within 3 days to the Adjudicating Authority and the CoC is yet to be constituted in the present case. The series of events post commencement of CIRP are as follows:

"iii. In present case:

- i. Insolvency commencement date was 10 June 2020*
- ii. Order was received on 15 June 2020;*
- iii. Public announcement calling for claims from creditors was made on 16 June 2020;*
- iv. Settlement agreement along with Form FA was received by the IRP from the Original Petitioner (Operational Creditor) on 23 June 2020 in view of complete settlement and payment of its dues;*
- v. Regulation 30A(3) only give 3 days to file the application under section 12A of the Code and the said application was filed on 26 June 2020;*
- vi. This IA i.e. IA 1025 of 2020 was then heard and "reserved for orders" on 06 July 2020. Copy of the said order is hereto annexed and marked as "Annexure 1".*

4. The question for consideration arises whether the IRP is duty bound to file the Form-FA before the Adjudicating Authority within 3 days of receiving the settlement agreement and whether the adjudicated authority can allow the withdrawal of CIRP in view of pending claims of

other creditors and whether IRP has followed the letter and spirit of law as enunciated under Section 12A of the Code read with Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

5. It is relevant to refer to the decision of Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt Ltd and Anrs v/s Union of India [WP (Civil) 99 of 2018]* wherein it was stated as follows:

"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."

6. The IRP also relied upon the decision of Hon'ble NCLAT in the case of *K C Sanjeev v/s. Mr. Easwara Pillai Kesavan Nair (IRP) and Ors [Company Appeal (AT) (Insolvency) No. 1427 of 2020]* dated 28 February 2020 wherein it has been held as under:

"4. Considering the Provisions of Section 12 A of IBC and Regulation 30 A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, it is clear that the IRP is duty bound to place the Application for withdrawal within three days of its receipt. The grievance of the Appellant is that in spite of such provision such action was not taken. The Appellant is raising various grievances against the IRP. We have been dealing with these types of matters relating to withdrawal and in this regard various parties do appear to have been facing problems. The date of filing of application for withdrawal to Adjudicating Authority is material considering Judgment in the matter of Swiss Ribbons Pvt. Ltd. vs. Union of India 2019 SCC Online SC 73 ..."

7. It is also important to refer to the judgment of Hon'ble NCLAT in the case of *Gouri Prasad Goenka v/s. Mr. Surendra Kumar Agarwal & Anr* [Company Appeal (AT) (Insolvency) No. 105 of 2020] dated 30 January 2020 wherein it has been held as under:

"2. According to learned counsel for the Appellant, the matter was immediately settled with the 'Operational Creditor' much prior to the constitution of the 'Committee of Creditors' and more than the amount claimed has been paid by two Demand Drafts handed over to the Advocate on record of the 'Operational Creditor' on 9th January, 2020.

3. The 'Operational Creditor' also moved an Application for withdrawal under Rule 11 of the NCLT Rules, 2016 on the same date i.e. on 9th January, 2020, but no order was passed and it was adjourned for 3rd March, 2020. The Adjudicating Authority directed the 'Interim Resolution Professional' to constitute the 'Committee of Creditors' within a week. It is submitted that such direction itself made application under Rule 11 infructuous so that the

parties cannot settle which is against the decision of the Hon'ble Supreme Court in "Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.– Writ Petition (Civil) No. 99 of 2018".

Conclusion:

- i. It is an undisputed fact that the Corporate Debtor settled the dues of the original Operational Creditor soon after initiation of admission of CIRP on 23.10.2019 against Corporate Debtor. The IRP upon receipt of Form FA immediately within 3 days filed an application to withdraw the CIRP against the Corporate Debtor.
- ii. It is a trite law that Section 12A of the Code read with Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, mandates the IRP that upon the receipt of Form FA, has to file an application for withdrawal with adjudicating authority within 3 days of receipt of the same. The date of filing of application for withdrawal to Adjudicating Authority is material considering Judgment in the matter of *Swiss Ribbons Pvt. Ltd. vs. Union of India 2019 SCC Online SC 73* in Para 79 and 80, Hon'ble Supreme Court observed as under:

"79. 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.

80. The main thrust against the provision of Section 12 A is the fact that ninety per cent of the committee of creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (Supra). Also, it is clear, that under Section 60 of the Code, the committee of creditors do not have the last word on the subject. If the committee of creditors arbitrarily rejects a just settlement and/or withdrawal claim, the NCLT, and thereafter, the NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12 A also passes constitutional muster."

(Emphasis supplied) Para 3

- iii. It is clear that once a code gets triggered by admission of CIRP against the Corporate Debtor, 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 his claims. This being a collective

action is a proceeding in rem. The moot question now remains to be answered is whether the Adjudicating Authority can allow a withdrawal of CIRP against Corporate Debtor before constitution of COC. The Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. vs. Union of India* has categorically held that at any stage where the CoC is not yet constituted, a party can approach NCLT directly, the Tribunal may in exercise of the inherent powers under Rule 11 of NCLT Rules may allow or disallow an application for withdrawal of CIRP. The claim and rights of other creditors as it stands is not prejudiced/altered by the withdrawal of CIRP of Corporate Debtor.

- iv. In my view, it is irrelevant whether the last date for receiving claims is still open or lapsed as per the public notice, upon receiving Form FA, it is bounded duty of IRP to file the application for withdrawal within 3 days under Section 12A of the Code read with Regulation 30A (3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It is an undisputed fact that the IRP has filed the application within 3 days and has acted in letter and spirit of law.
- v. This Adjudicating Authority is not vested with any powers under the Insolvency and Bankruptcy Code to direct settlement of parties while allowing withdrawal of CIRP against Corporate Debtor. Hence, I am not agreeing with the observation of the Judicial Member. Further, I do not find any misconduct of the IRP in filing application for withdrawal, within 3 days of receiving Form FA. The Cost of Rs. 10 lakhs on the Corporate Debtor is set aside.
- vi. I agree with the decision of Hon'ble Judicial Member and allow withdrawal of CP No 3010 of 2019 as a result of which the Corporate Debtor is released from the rigour of CIRP and the board of directors will be allowed to function independently with immediate effect.

vii. IA is **allowed** and disposed off with above directions.

SD/-

Suchitra Kanuparthi
Member (Judicial)