

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH V

(IB) 631 (ND)/2019

In the matter of:

Kohinoor India (P) Ltd.

Basti Baba Khel,
Kapoorthala Road,
Jalandhar-144021

.....*Operational Creditor*

VERSUS

Container Corporation of India Limited

Concor Bhawan
C-3, Mathura Road,
Oppo. Apollo Hospital,
New Delhi-110076

.....*Corporate Debtor*

ORDER DELIVERED ON: 27.05.2020

CORAM :

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. Kapal Kumar Vohra, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Mr. Surinder Kumar for IRP

For the Respondent/ Corporate Debtor: Mr. Sidharth Agarwal

ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present application has been filed by the IRP under Section 12A of the IBC praying therein to allow the operational creditor to withdraw the application admitted under Section 9 of the IBC along with the direction to the Corporate Debtor to pay the remaining expenses/remuneration of the IRP amounting to RS. 1,03,850/-.

2. In pursuance of order dated 12.02.2020, IRP has also filed an application stating the reasons for not disclosing the name of persons from whom the claim has been received.
3. We have heard the Ld. Counsel for IRP and perused the averment made in the application.
4. Ld. Counsel for IRP submitted that earlier the Operational Creditor has directly move an application for withdrawal of main application without approaching the IRP and without submitting the Form FA to the IRP and subsequently on 04.01.2020 the IRP received an e-mail from the Operational Creditor regarding the scanned copy of Form FA. He further submitted that he has received the amount of expenditure till 14.11.2019 and claimed a remuneration from 15.11.2019 till date amounting to Rs. 1,03,850/-.
5. In the light of the submissions made by the IRP, we have gone through the averments made in the application as well as order passed by this adjudicating authority on different dates and we find that earlier Operational Creditor on 03.12.2019 filed an application for withdrawal of the main application without informing the IRP and same was heard and reserved for orders on 07.01.2020 and on 09.01.2020 present application has been filed on behalf of IRP which is registered as CA-241/2020 and placed before us on 09.01.2020 and it was again listed on 03.02.2020 and on 12.02.2020, the direction was given to the IRP to disclose the name of persons from whom the claim has been received, accordingly, in pursuance of that order, the IRP has filed the compliance report stating the facts that no claim has been received on behalf of Financial Creditor but claim of Operational Creditor has been received but since there was status quo order passed by this adjudicating authority on 24.10.2019, therefore, it was not considered

6. Therefore, we would like to refer Regulation 30A and the same is quoted below-

30 A. Withdrawal of application.

(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).

(7) 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.]

7. Since, no CoC has been constituted and earlier application was filed on behalf of Operational Creditor but subsequently the IRP received Form FA and filed this application along with Form FA and it is mentioned in the application that he received the expense of IRP till 14.11.2019, but IRP claimed that from 15.11.2019 till date amounting to Rs. 1,03850/- are pending but no detail has been given, therefore, we think it proper to direct the IRP to file the details of the expenses incurred after 15.11.2019 by filing separate application thereafter same will be considered. Accordingly, we hereby approve the application submitted by the IRP on behalf of Operational Creditor. Accordingly, main application stands dismissed as withdrawn.

Sd/-

K.K. Vohra

(Member Technical)

Sd/-

Abni Ranjan Kumar Sinha

(Member Judicial)