

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Company Petition (IB) No. 1639/ND/2019
(IA/3277, IA/3390 & IA/3543 of 2020)

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

Section 9 of the Insolvency and Bankruptcy Code, 2016 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016

AND

In the matter of :

MR. NAWAL KISHORE PRASAD

.....*Operational Creditor*

VERSUS

M/s HOSPITECH MANAGEMENT CONSULTANTS PRIVATE
LIMITED

.....*Corporate Debtor*

ORDER DELIVERED ON: 09.09.2020

CORAM :

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

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

For the Operational Creditor: Mr. Mani Bhushan Sinha,

Mr. Pawanjit S. Bindra, Mr. Lakshay Dhamija -- for Ex. Director.

For the Respondent/ Corporate Debtor: Mr. Kumd Shekhar RP

ORDER

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

1. All these three IAs i.e. **IA/3277, IA/3390 & IA/3543 of 2020** are related with each other, therefore, we would like to dispose of all these 3IAs with this common order.
2. The RP has filed IA/3390/2020 and IA-3543/2020.
3. The facts mentioned in IA/3390/2020 in short is that the Operational Creditor and the Corporate Debtor through its director have settled all their disputes and settlement, consideration amount of Rs. 12,50,000/- has already been paid by the suspended Director of the Corporate Debtor to the Operational Creditor and a settlement dated 03.06.2020 has been arrived between the Operational Creditor and the suspended director of the Corporate Debtor.
4. Further, the RP had received the application in Form FA from the applicant under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) regulations, 2016 and thereafter, asked the suspended directors to pay the CIRP cost till June 2020 amounting to Rs. 17,75,683/- but the Suspended Board of Directors filed an application before this Adjudicating Authority vide IA no. 2383/2020 and the RP preferred an application for direction to the suspended Directors of CD to pay the CIRP cost vide IA No. 2394/2020 and both the IAs were heard and disposed of on 13.07.2020 and a direction was given to the suspended director of the Corporate Debtor to pay the CIRP cost.
5. Further, being aggrieved with the order, the Suspended Board of Directors preferred an appeal before the Hon'ble NCLAT vide company appeal (AT) No. 631/2020 and the Hon'ble NCLAT without giving opportunity of being heard to the RP on the very first day of hearing i.e. on

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29.07.2020, in the absence of RP recorded the consent and agreement of the counsel for RP and further, directed the appellant director to pay the CIRP cost in terms of the impugned order dated 14.08.2020, which includes Rs. 63000/- GST.

6. Further, the RP had filed an application for review of the order dated 29.07.2020 but the same was denied and against that the RP preferred an appeal before the Hon'ble Supreme Court.

7. Further, in pursuance of the order passed by the Hon'ble NCLAT in the said appeal, a sum of Rs. 650638/- vide DD No. 010565 dated 03.08.2020 was paid to the RP.

8. Further, in the light of the above settlement agreement, the applicant has filed this application for withdrawal of main application admitted under Section 9 of the IBC, 2016, in terms of Section 12A read with Regulation 30A of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons), 2016 and made the following prayers and the same is quoted below:-

a. Allow withdrawal of the application filed under Section 9 of the IBC by the Applicant which was admitted vide order dated 27.01.2020 by this Hon'ble Bench of NCLT;

b. Direct to discharge the RP from the continuation of Corporate Insolvency Resolution Process and handover the management and affairs of the Corporate Debtor back to the erstwhile management/directors of Corporate Debtor;

c. Direct the Respondent Directors of the corporate debtor to pay the due CIRP cost of Rs.63,000/- as per the NCLAT Order dated 29.07.2020 and further any other amount as the Hon'ble NCLAT or Hon'ble Supreme Court of India directs in this matter.

d. Pass any such and further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.

9. Since, the RP has not enclosed the Form FA along with this application, therefore, the RP has again filed an application, which is numbered as IA-3543/2020.
10. By filing this IA-3543/2020, the RP has enclosed the Form FA for withdrawal of the CIRP. The Form FA is sent by the Nawal Kishore Prasad, the Operational Creditor, by which, he authorized the RP to withdraw the application. It is mentioned in the Form FA that in pursuant of the order dated 29.07.2020 passed by the Hon'ble NCLAT, the Suspended Board of Directors, Mr. Avtar Singh has paid the fee of the RP and the same is also placed on record .

IA/3277/2020:-

11. The facts mentioned in this application in short is that the present application has been filed under SECTION 60(5) OF INSOLVENCY AND BANKRUPTCY CODE, 2016 read with RULE 11 OF THE NATIONAL COMPANY LAW TRIBUNAL RULES, 2016 praying therein to permit the Corporate Debtor to withdraw the CIRP, despite receipt of CIRP fee from the applicant in compliance of the consent order dated 29.07.2020 passed by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 631/2020, the R.P has failed to comply with the order dated 13.07.2020 passed by this Adjudicating Authority in IA/2383/2020 and IA/2394/2020, by which the respondent/RP on receipt of CIRP fee was directed to file application for withdrawal.
12. Further, the applicant earlier preferred an appeal before the Hon'ble NCLAT against order dated 27.01.2020 passed by this Adjudicating Authority and during the pendency of that appeal, a settlement

agreement was arrived in between the Operational Creditor and the Corporate Debtor on 03.06.2020 and settlement amount of Rs. 12,50,000/- has already been paid to the Operational Creditor and joint application was filed before the Hon'ble NCLAT on 05.06.2020 and the same was heard and disposed of on 10.06.2020, with a liberty to the Corporate Debtor to approach CoC through respondent/IRP/RP for permitting the Operational Creditor/sole creditor to withdraw the application in view of settlement.

13. Further, although the matter was settled between the parties, but the RP deliberately delayed the process in order to get more benefit, the copy of the Form FA has sent by the applicant vide email dated 19.06.2020 and the same is annexed with this application.
14. Further, the RP even after receiving the Form FA vide email dated 19.06.2020, sent the reminder notice for submission of Form FA.
15. Further, the applicant has challenged the common order dated 13.07.2020 before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 631/2020 and Hon'ble NCLAT modified the order dated 13.07.2020 passed by this Adjudicating Authority and on consent of the parties directed the applicant to pay an amount of Rs. 650638/- towards the CIRP cost and accordingly, it is further ordered that the respondent cannot lay any claim other than the amount granted by the Hon'ble NCLAT in the order dated 29.07.2020 and the applicant has paid that amount vide demand draft No. 010565 dated 03.08.2020 and the said amount was deposited in the account of RP on 05.08.2020 but even than no withdrawal application has been filed by the RP, so, the present application is filed on behalf of Corporate Debtor and made the following prayers and the same is quoted below:-

- a. Pass appropriate direction thereby taking Form FA dated 19.06.2020 filed by the Applicant with the Respondent on record and withdraw the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. Hospitech Management Consultants Pvt. Ltd. and/or,
- b. Hold the Resolution Professional/Respondent guilty of having committed the contempt of the directions of this Hon 'ble Adjudicating Authority as despite receipt of CIRP cost, the Respondent has not filed the withdrawal application as directed by this Adjudicating Authority vide order dated 13.07.2020 passed in IA no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad Vs. Hospitech Management Consultants Pvt. Ltd. and/or,
- c. In the alternative, direct the Respondent to comply with the order dated 13.07.2020 passed by this Hon'ble Adjudicating Authority in IA no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad V s. Hospitech Management Consultants Pvt. Ltd. in its true letter and spirit and file withdrawal application under Section 12A of IBC read with Regulation 30A of IBBI (CIRP) Regulations, 2016, and
- d. Pass any other order/direction in the facts and circumstances of the present appeal and in the interest of the Justice.

16. We have heard the Ld. Counsel for Corporate Debtor/petitioner and Operational Creditor as well as RP who has appeared in person and also through its counsel.

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17. Ld. Counsel for RP submitted that he has already filed the Form FA as well as withdrawal application in compliance with the directions given by the Hon'ble NCLAT and Hon'ble NCLT and he further submitted that he is entitled to get the amount of Rs. 63000 GST, so, the Suspended Board of Directors may be directed to deposit the same.
18. He further submitted that against the order dated 29.07.2020 passed by the Hon'ble NCLAT, RP preferred a review application but the same was also rejected and against that the RP preferred an appeal before the Hon'ble Supreme Court, which is still pending and he further submitted that he has filed the withdrawal application under Section 12A and enclosed the Form FA, which he has received from the Operational Creditor.
19. On the other hand, Ld. Counsel for Corporate Debtor also submitted that the amount which was directed by the Hon'ble NCLAT has already been paid to the RP and it is specifically mentioned in the order passed by the Hon'ble NCLAT that the RP is not entitled to claim any amount other than the amount shown in the order, therefore, he is not entitled to claim more amount, which is not mentioned in the order.
20. He further submitted that the GST is not applicable so for the fee of the RP is concerned.
21. In the light of the submissions raised on behalf of parties, we have gone through the averments made in the IAs, since, the purpose for filing the IA by the Corporate Debtor is to direct the RP to file the Form FA for withdrawal of the CIRP against the Corporate Debtor and also Resolution Professional/Respondent guilty of having committed the contempt of the directions of this Adjudicating Authority.

22. Therefore, in our considered view, since, the RP has already filed the application for withdrawal under Section 12A, which we have already referred in above mentioned paras, hence, this application has become infructuous.
23. So far the **IA/3390 & IA/3543 of 2020** concerned, which have been filed by the RP, the Form FA is duly signed by the Operational Creditor and it is admitted by the RP that he has received the amount of Rs. 650638/- but he further claimed Rs. 63000 GST, therefore, at this juncture, we have gone through the order passed by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 631/2020, which the RP has enclosed at page 70 of IA-3390/2020 and we find that Hon'ble NCLAT while disposing of the appeal in last but one para made it clear that "Before parting with the case, it is made lucidly clear that the 1st Respondent/Resolution Professional cannot lay a claim other than the amounts granted by this Appellate Tribunal as stated supra". Therefore, when we shall consider the submission of the RP in the light of the aforesaid order passed by the Hon'ble NCLAT, on the basis of which, the RP has received Rs. 650638/-, we are of the considered view that the contention of the RP, apart from the amount shown in the para 1, he is also entitled to get the other amount, i.e Rs 63000/ as GST is not liable to be admitted. Hence, this prayer of the RP is hereby rejected. Since, the Form FA has been submitted, therefore in view of Section 12A read with Regulation


30A(6) of the IBBI (Corporate Insolvency Resolution Process for Corporate Persons), 2016, is hereby approved the settlement and RP is permitted to withdraw the application under Section 12A, accordingly, the main application i.e. IB No. 1639/2019 is dismissed as withdrawn and the order dated 27.01.2020 is hereby set aside and the Corporate Debtor is released from the CIRP.

24. With this order, IA-3390 and IA-3543 of 2020 stands disposed off.

25. So far the IA-3277/2020 filed by the Corporate Debtor is concerned, in view of order passed in aforementioned para, this IA stands disposed off as it has becomes infructuous.


K. K. Vohra

4.01.20
(Member Technical)


Abni Ranjan Kumar Sinha

(Member Judicial)