

In the National Company Law Tribunal
Mumbai Bench.

MA 783 of 2018 in CP (IB) No.200 of 2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

Anchor Enterprises Private Limited : Applicant / Petitioner / Financial Creditor
V/s
Bombay Slum Redevelopment Corp (P) Ltd. : Respondent / Corporate Debtor

Coram: Order delivered on: 24.08.2018
Hon'ble Shri M.K. Shrawat, Member (Judicial) *ms*

For the Petitioner(s): 1. Mr. Abhishek Adke, Advocate
2. Mr. Prathamesh Kamat, Advocate, a/w
Ms. Gayatri Tamchandran, Advocate, I/b
Acuity Law, For IRP,
3. Mr. Arun Kapoor, IRP.

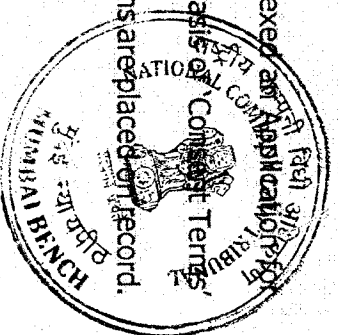
For the Respondent(s): 1. Mr. Chetan Kapadia, Advocate, a/w
2. Mr. Rahul Sarda, Advocate, a/w
3. Mr. Atman Mehta, Advocate,
4. Ms. Vaishali Shah, Advocate,
5. Ms. Parthvi Gotecha, Advocate, I/b. Haresh
Mehta & Company.
6. Mr. Kiran Ghemani, Director.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. An Application (MA 783/2018) is submitted on 08.08.2018, on receiving an Order of this NCLT Bench bearing CP No.200/IBC/NCLT/MB/MAH/2018 titled as "M/s. Anchor Enterprises Private Limited, Financial Creditor (Petitioner/Applicant) V. M/s. Bombay Slum Redevelopment Corporation Private Limited, Corporate Debtor (Respondent) dated 06.08.2018 admitting a Petition submitted on 08.02.2018 u/s. 7 of the Insolvency & Bankruptcy Code, 2016 for a default of alleged outstanding Financial Debt of ₹2,80,28,750/- including interest as on 31st January, 2018. The date of default occurred was 21.06.2017.

2. In this impugned MA No.783/2018, the Petitioner has annexed an Application for "withdrawal" of main Petition No. CP(IB) No.200 of 2018 on the basis of Consent Terms entered into between the Parties on 06.08.2018. The consent terms are placed on record.



3. It is informed that, the parties had negotiated and the Corporate Debtor had agreed and undertaken to pay the entire Debt with interest to the Financial Creditor in terms of the Consent Terms duly executed between the parties on 06.08.2018. The mutually agreed Consent Terms dated 06.08.2018 are placed on record. The Petitioner, therefore, expressed his desire to withdraw the Company Petition No.200 of 2018.

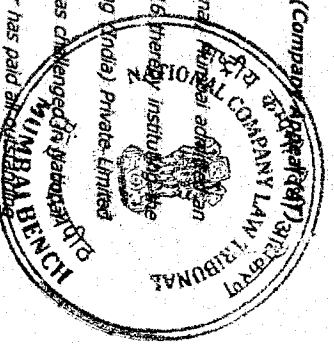
3.1. Photocopy of three cheques (i) dated 06.08.2018 for ₹48,07,125/-, and (ii) dated 30.09.2018 for ₹2,50,00,000/- and (iii) dated 30.09.2018 for ₹6,41,250/- are placed on record in favour of the Petitioner Creditor, drawn on Kotak Mahindra Bank, Kalina, Mumbai-400098.

4. On the date of hearing, Advocate Mr. Chetan Kapadia appeared from the side of the Respondent (Debtor Company) and vehemently pleaded that in a situation when the Cheques for the outstanding Debt amount has already been handed over to the Petitioner and the Petitioner is *suo moto* withdrawing the Petition, request for withdrawal by the Petitioner be permitted considering the totality of the facts and circumstances of the case. He has stated that the Company is Solvent having good reputation with its Financial Creditors. Learned Representative of the Petitioner has also drawn attention that the Petitioner Anchor Enterprises Private Limited had not communicated the impugned Order of the NCLT, Mumbai to the appointed IRP Mr. Arun Kapoor, Mumbai-400 013 and did not approach him to initiate the Insolvency Proceedings. Reliance was placed on certain Case Laws referred in an Order passed by this Bench in the case of Shrikant Poddar, Operational Creditor/Petitioner Vs. Skil Infrastructure Ltd., Respondent/Corporate Debtor, in MA No.740/2018 in CP 1321/18BC/NCLT/MB/MAH/2017 U/s. 9 of 18B Code, 2016 Order dated 08.08.2018 wherein on identical circumstances held as under:-

"4. In addition to the above, the Applicant would like to rely upon certain judgments pursuant to which the Applicant requests the Hon'ble Tribunal to permit withdrawal of the insolvency proceedings instituted pursuant to the Order dated 18th May, 2018:

(A) **Mr. Dinesh Kumar Bhasin v. Batiboi Impex Limited & Anr. (Company Appeal (Insolvency) No. 318 of 2018)**

"In the abovementioned matter the Hon'ble National Company Law Tribunal, Mumbai applied Section 9 of the Insolvency and Bankruptcy Code, 2016 thereby instituting the insolvency proceedings with respect to a company, Tiger Steel Engineering (India) Private Limited (being the Corporate Debtor). Subsequently, the abovementioned order was challenged in this Bench (being the Corporate Debtor) on the grounds that the Corporate Debtor has paid back the dues."



amounts to the creditor and settled the outstanding claim. The Hon'ble National Company Law Appellate Tribunal set aside the order of the Hon'ble National Company Law Tribunal, Mumbai and permitted the withdrawal of the insolvency proceedings".

(B) HGS India Limited v. Geo Api Solutions Private Limited

"In the abovementioned matter the Hon'ble National Company Law Tribunal, Mumbai admitted an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 thereby instituting the insolvency proceedings with respect to a company, Geo Api Solutions Private Limited (being the Corporate Debtor). Subsequent to the commencement of the insolvency proceedings, no committee of Creditors has yet been formed and that the Corporate Debtor is willing to settle the disputed amount, for which, the Operational Creditor has agreed and thus the said Company Petition for Insolvency was disposed of and the IRP was recused from further proceedings"

(C) Lokhandwala Kataria Construction Private Limited Vs Nisus Finance and Investment Managers Limited (Order dated 24th July, 2017 in Civil Appeal No.9279 of 2017 passed by the Hon'ble Supreme Court of India)

"In the abovementioned matter the Hon'ble Supreme Court of India in exercise of its powers vested under the Article 142 of the Constitution of India took the Consent terms dated 28.6.2017 and 12.7.2017 entered into between the parties on record and also record the undertaking of the Appellant before us to abide by the Consent Terms in toto. The Appellant also undertakes to pay the sums due on or before the dates mentioned in the aforesaid Consent Terms".

5. The Petitioner has entered into the settlement with the Corporate Debtor and thereafter on receiving the outstanding debt of Rs.3,52,000/- (Rupees three lakh fifty two thousand only) given his consent to withdraw the Company Application. The outcome of the withdrawal of the Company Application is that the Petitioner is not proposing to continue with the insolvency process or to assist the IRP so appointed. Further, the Petitioner has till date not forwarded a copy of the order dated 16th May, 2018 or provided any other communication/ information to the IRP with respect to the IRP's appointment and the insolvency process. As a consequence, the appointment of IRP has become redundant de facto and de jure.

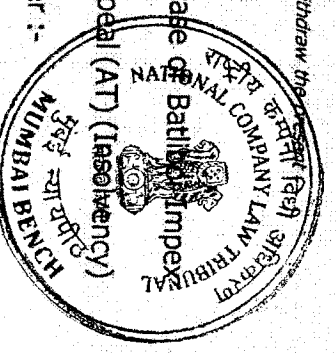
6. The next implication of execution of the Consent Terms and Withdrawal Memo is that the Petitioner is no more willing to bear the insolvency resolution process cost as prescribed under Regulation 31, 32 and 34 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. In view thereof on technical grounds as well the insolvency resolution process may not continue since the Petitioner will not be bearing the insolvency resolution process cost.

7. The Applicant humbly submits that in accordance with the provisions of Section 60(5) of the Insolvency and Bankruptcy Code, this Hon'ble Tribunal be pleased to decide question of priority and question of law that in a situation when the Petitioner / Creditor has settled the outstanding debt and does not want to pursue the insolvency proceedings in such a case whether the Order dated 16th May, 2018 be strictly adhered to."

The Applicants therefore pray that:-

"A. This Hon'ble Tribunal be pleased to grant leave and permit the Financial Creditor to withdraw the said Petition in view of the Consent Terms dated 6th August 2018 (Exhibit A hereto)";

5. Almost on identical circumstances, Hon'ble NCLAT in the case of **Balmain Impex Ltd. V/s. Tiger Steel Engineering (India) Private Ltd.** in Company Appeal (AT) (Insolvency) No. 318 of 2018, vide an order dated 29.06.2018 has held as under :-



6. Having heard learned counsel for the parties and taking into consideration the fact that the impugned order dated 18th May, 2018 was passed by the Adjudicating Authority without hearing the 'Corporate Debtor' in violation of rules of natural justice and all the time the 'Corporate Debtor' was ready to settle the matter, we have no other option but to set aside the impugned order dated 18th May, 2018. However, taking into consideration the fact that the parties are ready to settle the dispute, the case is not remanded to the Adjudicating Authority.

7. In effect, order(s), passed by the Adjudicating Authority appointing any 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed. Learned Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' (company) is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

8. As agreed by the parties, the Respondent will now pay a sum of ₹ 1.5 (sic) lakhs (Rupees One lakh five thousand only) to the 'Interim Resolution Professional', for the period he has functioned and towards the resolution cost. The appeal is allowed with aforesaid observation. However, in the facts and circumstances of the case, there shall be no orders as to cost."

6. As a consequence, in the said case titled as "Batilboi Impex Vs. Tiger Steel (India) Pvt. Ltd. (MA No. 596 of 2018 in CP No. 146/I&BC/NCLT/MB/MAH/2018) Order dated 31.07.2018 NCLT, Mumbai has closed the Insolvency Proceedings by consigning the case files to records.

7. Respectfully following the view expressed by Honble NCLAT and taking due cognizance of the fact that Cheques for the Debt amount had been handed over to the Petitioner and that the Petitioner has suo moto withdrawn the Petition and that the appointed IRP has not taken any step for commencement of Insolvency and that the Petitioner has not even communicated the order to IRP for further action, I hereby hold that this is a fit case to grant permission of "withdrawal". Resultantly, this Miscellaneous Application stood allowed.

8. As a consequence, Petition (CP (IB) 200/2018) is disposed of as "withdrawn". To be consigned to records.

Date : 21.08.2018
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SD/-
(M.K. SHRAWAT)
Member (Judicial)

Certified True Copy
Copy Issued "free of cost"
On 21/8/2018

Assistant Registrar

National Company Law Tribunal Mumbai Bench

