

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 30.07.2018 at 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.272/2018 in CP(IB)No.15/9/HDB/2017 & CP(IB)No.15/9/HDB/2018
NAME OF THE COMPANY	Kopalle Pharma Chemicals Pvt Ltd
NAME OF THE PETITIONER(S)	Ayeka International
NAME OF THE RESPONDENT(S)	Kopalle Pharma Chemicals Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Y. SURANARAYANA	Adv	9849866556	Y. Suran.

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed vide separate orders.


Member(J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

IA No. 272/2018
In
CP(IB) No. 15/9/HDB/2018

Mr.Kalvakolanu Murali Krishna Prasad,
Resolution Professional of
Kopalle Pharma Chemicals Pvt Ltd,
Corporate Debtor.

Applicant

Order pronounced on 30th July, 2018

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Hon'ble Shri Ratakonda Murali, Member (Judicial)

Counsels / parties present:

For the Applicant :	Y.Suryanarayana, Advocate
For RP :	K.Murali Krishan Prasad, IRP

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

ORDER

1. Resolution Professional filed this application under section 12A of IBC, herein referred as code seeking permission for withdrawal of application filed under section 9 of the code.
2. The averments in the application in brief that this Adjudicating Authority by order dated 06.04.2018 admitted the Application in CP (IB) No. 15/9/HDB/2018, filed by Operational Creditor M/s. Ayeka International, under section 9 of the Code R/W Rule 6 of the IB(AAA) Rules,2016.
3. The Applicant/Resolution Professional avers that he was appointed as Resolution Professional for the Corporate Debtor as per orders of the Adjudicating Authority.

4. It is averred that there was settlement between corporate Debtor represented by its promoter and operational creditor and the claim has been settled between them. It is further averred that promoter of corporate debtor remitted the amount settled to the operational creditor who acknowledged the receipt of amount settled and accepted the same as full and final settlement. The copy of settlement agreement dated 19.07.2018 is shown as annexure-A.
5. It is averred that operational creditor submitted the application in Form FA for withdrawal of CIRP (Corporate Insolvency Resolution Process) initiated against corporate debtor. It was filed under section 12 A of the I&B Code, R/W Regulation 30 A of I&B (Corporate Insolvency Resolution Process) Regulations, 2016. The copy of withdrawal application in Form FA along with Fixed Deposit receipt are shown as Annexure B&C.
6. Resolution Professional further avers that in terms of Regulation 30 A of I&B (Corporate Insolvency Resolution Process) Regulations, 2016 placed withdrawal application before Committee of Creditors in the second meeting on 24.07.2018 and 100% of the voting share of members of Committee of Creditors unanimously approved the withdrawal application filed by operational creditor. The minutes of the meeting of the Committee of Creditors held on 24.07.2018 is shown as Annexure D. Hence application is filed to approve the Application for withdrawal of the Corporate Insolvency Resolution Process against the Corporate Debtor.
7. I have heard the counsel appearing for Resolution Professional the applicant herein. The applicant is Resolution Professional. The Application is filed under Section 12 A of the Code, which is a newly added provision in the code. Sec 12A of the Code read as follows:
“ 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 percent voting share of the committee of creditors, in such manner as may be prescribed”.

8. It is clear from section 12 A of the Code that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10 on an application filed by the applicant with the approval of 90% voting share of the Committee of Creditors. Thus it is clear if 90% voting share of Committee of Creditors approves application for withdrawal then Adjudicating Authority may allow for withdrawing the application filed under section 7 or section 9 or section 10 of the Code.
9. The regulations 30A of I&B(Corporate Insolvency Resolution Process), 2016, deals with Withdrawal of application. It reads as follows:
 - a. An application for withdrawal under section 12 A shall be submitted to the Interim resolution professional or the Resolution Professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of Interest under regulation 36 A.
 - b. The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses© and (d) of regulation 31 till the date of application.
 - c. The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.
 - d. Where the application is approved by the Committee with ninety percent voting share, the Resolution Professional shall submit the application under sub-regulation (1) to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

- e. The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (4).
10. Regulations 30A is a newly added regulation. It provides for the procedure for withdrawal of application filed under section 12 A of the code.
11. The application for withdrawal under section 12 A of the code shall be submitted to the IRP or RP as the case maybe in Form FA of the schedule before issue of invitation for expression of interest and further to be accompanied by a bank guarantee towards estimated cost. Then Committee of Creditors has to approve with 90% of voting share. If approved the RP shall submit the application to the Adjudicating Authority on behalf of applicant and Adjudicating Authority may approve the same by order.
12. RP relied on the copy of settlement agreement which is shown as Annexure A. The settlement agreement disclosed that there was settlement of the claim of the Operational Creditor. The operational Creditor is said to have received amount in Full and Final settlement of the claim. The copy of withdrawal in Form FA is shown as annexure B&C.
13. Thus an application for withdrawal which is accompanied by Fixed Deposit receipt are marked as annexure B&C. Withdrawal application was submitted to the Committee of Creditors for consideration.
14. It is the case of applicant/RP that 100% voting share of Committee of Creditors approve the withdrawal application. The minutes of the meeting of Committee of Creditors dated 24.07.2018 is shown as Annexure D.
15. I have seen the minutes of the second Committee of Creditors meeting held on 24.07.2018. The members of Committee of Creditors having 100 % voting share. Unanimously approved the application for withdrawal filed by the applicant/ Operational Creditor.
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16. Present application is filed by RP before this Tribunal for approval of the withdrawal application. It is clear that Regulation 30A of IB (Corporate Insolvency Resolution Process) regulation 2016, are complied.
17. By virtue of provisions of sec 12 A , Tribunal is empowered to approve the application for withdrawal.
18. This Tribunal by exercising powers under section 12 A of the Code R/W regulations 30A of IBC(Corporate Insolvency Resolution Process) Regulations 2016, approved the application for withdrawal.
19. Consequently, application filed by RP is to be allowed and moratorium order passed under section 14 shall cease to exist. In the result IA No. 272/2018, is allowed and application for withdrawal filed by Operational Creditor which has been approved by the Committee of Creditors with 100 % voting share stands approved. Consequently application filed by Operational Creditor in CP(IB) No. 15/9/HDB/2018, stands withdrawn, and CIRP stands closed.


RATAKONDA MURALI
MEMBER (JUDICIAL)