

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

TCP No. 417/IBC/NCLT/MB/MAH/2017

Under Section 12A of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Deepak Jain, HUF
Through its Karta, Mr. Deepak Jain
..... Operational Creditor
v.

M/s. Kerkar Fitness Private Limited
..... Corporate Debtor
(Respondent)

Order Pronounced on : 22.10.2018

Coram :

Hon'ble M. K. Sh rawat, Member (J)

For the Applicant :

Mr. Kailash Dubey, Advocate i/b. Mr. A. K. Saxena, Advocate – Advocate for the
Operational Creditor.

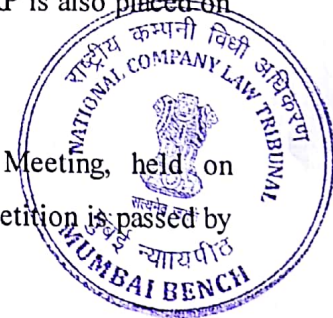
Per: M. K. Shrawat, Member (J)



ORDER FOR WITHDRAWAL

1. In this case, the Petition U/s. 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) filed by the Operational Creditor viz. 'Deepak Jain, HUF Through its Karta, Mr. Deepak Jain' (hereinafter as **Operational Creditor**) against 'M/s. Kerkar Fitness Private Limited' (hereinafter as **Corporate Debtor**) was Admitted vide an order dated 22.03.2018 by this very Bench wherein 'Mr. Jitendrakumar R. Yadav (IBBI/IPA-003/IP-P00022/2017-18/10169)' was appointed as Interim Resolution Professional (IRP) and also confirmed as Resolution Professional (RP) by the Committee of Creditors (CoC) in its First Meeting held on 29.05.2018.
2. After the Admission of the Petition, the Public Announcement to that effect had been done on 27.04.2018, immediately after the certified copy of the Order has been received by the appointed IRP. Pursuant to the said advertisement there was 1 claim, by the Operational Creditor himself, has been received by the IRP. It is informed that beside this claim no claim has been received by the IRP / RP.

3. Accordingly the IRP has constituted the CoC with only 1 member i.e. Mr. Deepak Jain, as there is no claim by any Financial Creditor, and conducted the first meeting on 29.05.2018 In the same meeting the IRP was confirmed as RP.
4. On 17.07.2018 this case was fixed for the progress report of the RP. On the same date the RP has informed that the Operational Creditor and the Debtor has settled their dispute amicably, admittedly, during the CIRP period.
5. Through the progress report the RP has also informed that, as per the books of accounts of the Debtor, there are some Financial Creditors but no one has filed the claim with him. Consequently, the RP has stated that, since, the Operational Creditor, being sole member of the CoC, has settled his dues with the Debtor, the Admitted Insolvency Petition may be withdrawn by the Operational Creditor.
6. However, this Bench in the interest of Justice, had ordered the RP to examine the position of the Financial Creditors of the Debtor. To revert back with the progress the next date was given 01.08.2018.
7. On 01.08.2018, the Learned Advocate for the Operational Creditor / CoC has appeared and stated that the Operational Creditor has received ₹ 7,00,000/- towards the full and final settlement against the outstanding dues of ₹ 10,58,658/-. The Learned Advocate has also stated that the RP has also been paid towards his professional fees. The No Objection Certificate furnished by the RP is also placed on record.
8. The Learned Advocate has submitted that, in the 2nd CoC Meeting, held on 21.06.2018, the resolution for withdrawal of present Insolvency Petition is passed by 100 % voting share.
9. The Learned Advocate has further pleaded that, since, the Operational Creditor has received the outstanding amount and there is no claim filed by any other Creditor till date, and the CoC has also voted in favour of withdrawal of the Petition, the Operational Creditor may be permitted to withdraw this Insolvency Petition.
10. The Bench has considered the factual matrix of this case and noticed that the Operational Creditor has settled its claim with the Debtor, admittedly, after Admission of the Petition. It is also noticed that the Operational Creditor is a sole member of the CoC as there is no claim filed by any Financial Creditor.



11. It is also noteworthy that the RP has also taken due deliberations for inviting claims by the Financial Creditor. The Bench has also given a chance to the Financial Creditors, to submit their claims, as against the Debtor vide an Order dated 17.07.2018.

12. Further the Bench has also gone through the provisions of S. 12A of the Code, which is reproduced as under :

"12A. The Adjudicating Authority may allow the withdrawal of application 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 prescribed."

and from going through the above Section it is noticed that, if the CoC, with a 90 % approval, accepts for the withdrawal of the Admitted Petition then the AA may approve the same.

13. In this case, in fact, the CoC, by 100% voting share, have accepted the withdrawal of the Petition filed U/s. 9 of the Code, by the Operational Creditor. Hence, the Bench is of the view that, it would not be appropriate to interfere in the decision of the CoC. Specifically, when the Operational Creditor has settled its dues and the RP has also been paid towards his professional fees.

14. Considering above facts and circumstances, this Bench hereby permits for withdrawal of the Insolvency Petition bearing no. TCP 417/IBC/NCLT/MB/MAH/2017.

15. Accordingly, it is hereby Ordered that, the Petition bearing no. TCP 417/IBC/NCLT/MB/MAH/2017 is disposed-of as Withdrawn. Consequently, the RP is discharged from his duties from the date of this Order. The RP is further directed to dissolve the CoC by communicating this Order. The RP shall also communicate this Order to the IBBI, New Delhi for its Records.

16. Ordered Accordingly. The Petition shall be consigned to Records.

Dated : 22.10.2018

Avinash



SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)

B. A. Patel,
B. A. - Patel
By Registrar
NCLT, Mumbai
30.11.2018
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