

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB)-1874(ND) 2019
CA-1739/C-V/ND/2020

In the matter of

M/s Anurutan Textiles Private Limited
1092, Shri Mahavir Market
KuchaNatwan, Chandni Chowk
Delhi-110006

.....Operational Creditor

V/S

1. Sarveshwar Creations Private Limited
(Through Interim Resolution Professional Mr. M L Vij)
Regd. Office At:-
CR-274, Lalit Park
Laxmi Nagar, Delhi-110092

.....Corporate Debtor

2. Mr. Apporva Joshi and Others
B-107, Sector-63
Noida

..... Applicants/
Suspended Directors

SECTION: 9 of IBC, 2016

Order delivered on: 21/08/2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)



For the Applicant : Mr. Abhishek Naik Adv. appearing on behalf of Mr. Manohar, IRP
For the Respondent : Adv. Vansdeep Dalmia, Adv. Aayushman Aeron
appearing on behalf of Suspended Board of Directors

ORDER

Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)

1. The Present Applicant^{is} being filed by the promoters, shareholders and suspended directors of the Corporate Debtor to terminate the Insolvency Resolution Process / proceedings initiated vide order dated 13-02-2020 in the Insolvency petition filed U/s 9 of the Insolvency and Bankruptcy Code 2016.
2. The facts mentioned in the application in short is that the outstanding amount of the Operational Creditor M/s Anurutan Textiles Private Limited has been amicably settled between the parties and the settled amount has already been paid to the Operational Creditor on the basis of Settlement Agreement dated 26.02.2020. Further, after the settlement, the Operational Creditor has no grievance against the Corporate Debtor and wishes to withdraw the insolvency petition and the Operational Creditor has also agreed to support the present application for termination of CIRP, and as such the present application has been filed.
3. Further by putting the Corporate Debtor through Resolution Process no purpose would achieve.



4. Further, in terms of law settled by Hon'ble Supreme Court of India in the case of Swiss Ribbons, ~~held~~[✓] this Tribunal is empowered to terminate the Resolution Process in terms of settlement arrived in between the parties before the meeting of the CoC. Further, the applicant has agreed to pay an / or reimburse the costs and charges of the IRP.
5. Further, the following prayers are made on behalf of the applicant: -
- a) Allow the present application and terminate the Insolvency Resolution Process and recall the order dated 13.02.2020 passed in IB/1874/ND/2019 and the Interim Resolution Professional be discharged;
 - b) Direct or order that the Corporate Debtor is released from the provisions of IBC, 2016 and allowed to function freely through it's board of directors;
 - c) Pass such order or further order(s) as deemed fit and appropriate in interest of justice.
6. We have heard Ld. Counsel appearing for the applicant, Operational Creditor and the IRP, who is also present in person and perused the averments made in the application. Ld. Counsel for the applicant/suspended board of directors submitted that he has settled the matter with the Operational Creditor and Settlement Agreement dated 26.02.2020 has been executed between the parties, which is at page 22-25 as Annexure-B of the application.

7. He further submitted that at page 24-25 of the application, the agreement arrived between the parties has been referred, which is as follows: -

- (i) *The First Party has agreed to withdraw the Insolvency Application / Petition registered as CP (IB)/ 1874/ND/2019 in terms of present settlement.*
- (ii) *The First Party has received part payment during pending of Insolvency Proceedings and towards full and final payment a further sum of Rs 600000/- (Rs Six lacs) received by the Second Party through RTGS DT 26/02/2020 before signing present Agreement and for the balance amount of Debit Notes. There will be no claim left of the First Party after the payments in the present agreement.*
- (iii) *The parties will file Joint Application with request to Hon'ble NCLT to take present Settlement on record and the First Party to withdraw the Insolvency Petition No I 1874/ND/2019 'and also to recall order dated 13-02-2020 so that the Corporate Debtor will come out of Insolvency Proceedings.*
- (iv) *The expenses of IRP and litigation charges will be borne by the 'Second Party*
- (v) *The First Party will sign affidavit(s), application(s), confirmation for the purpose of getting the order dated thon-2000 recalled / set-aside and shall also appear and / or-appoint advocate before the Competent Court.*



(vi) *The Parties have agreed that costs and expenses, stamp duty, court fees, professional expenses for present agreement will be paid by Second Party.*

And on the basis of aforesaid terms and conditions, ld. Counsel for the applicant submitted that the petitioner may be permitted to withdraw the case after recording the terms of settlement.

8. He further submitted that the Operational Creditor has also agreed to withdraw the main application. He further submitted that in terms of judgment given in the Swiss Ribbons & Anr. Vs. Union of India & Ors. Reported (2019) 4 SCC 17, even the Corporate Debtor can file an application for withdrawal of the main application filed by the Operational Creditor.
9. Ld. Counsel for the Operational Creditor submitted that the matter has been settled between the parties, hence the Operational Creditor has no grievance against the Corporate Debtor and he has no objection, if the prayer of the applicant is allowed.
10. On the other hand, Ld. Counsel for IRP and IRP, who also appeared in person submitted that he has already received the claim of the Financial creditors and after the constitution of COC, he also received the resolution plans. He further submitted that this application has been filed without informing the IRP and the IRP had no information in respect of filing of this application, whereas in view of the Regulation 30A, the application must be filed through the IRP.
11. In the light of the submissions raised on behalf of the applicant/ Suspended board of Directors of the Corporate Debtor, Operational



Creditor and the IRP, we have gone through the averments made in the application but before considering the submissions of the Operational Creditor, we would like to refer the provisions contained under Section 12A, which relate to withdrawal of application admitted under Section 7, 9 and 10 of IBC, 2016 alongwith Regulation 30A of Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 [CIRP Regulations]. Both are quoted below: -

“12A. Withdrawal of application admitted under section 7, 9 or 10. –

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 per cent. voting share of the committee of creditors, in such manner as may be specified.”

“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 24

(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.”

12. Bare perusal of the provisions shows that Section 12A is inserted by the amendment dated 06.06.2018 under which an application which was admitted under Section 7, 9 or 10 can be withdrawn and regulation 30A, which has been amended recently *with effect from 25.07.2019*,[✓] after the decision of Swiss Ribbons, which provides how the withdrawal applications filed under Section 12A can be entertained by the Adjudicating Authority while considering the prayer of withdrawal of applications, which have been admitted under Section 7, 9 or 10.



13. Bare perusal of the amended provision made in the regulation 30A shows that there are two circumstances under which withdrawal is permissible. One is before the admission of the application under Section 7, 9 or 10 and before the constitution of COC and second one is after admission of the application under Section 7, 9 or 10 and after constitution of the COC and appointment of IRP. The present application herein was admitted on **13.02.2020** and IRP was appointed and the Operational Creditor was also directed to deposit of Rs. 2 lacs to meet the immediate expense of the IRP but here in place of IRP, the Suspended Board of Directors have filed the present application under Rule 11 of the NCLT Rules, 2016 by placing reliance upon the decision of Swiss Ribbons & Anr. Vs. Union of India & Ors. Reported (2019) 4SCC 17.

14. At this Juncture, we would also like to refer the decision of Hon'ble NCLAT in case of Jai Kishan Gupta Vs. Green Edge & ORs. in Company Appeal (AT) (Ins) No.969-970 of 2019, in this case, the matter regarding the withdrawal of application in terms of settlement was discussed and the Hon'ble NCLAT also discussed the judgment of Swiss Ribbons & Anr. Vs. Union of India & Ors. Reported (2019) 4SCC 17 and after discussing the aforesaid judgment, the Hon'ble NCLAT at page 9 held that ***"The Regulation 30A referred to in para - 81 of the Judgement of Swiss Ribbons appears to have been amended after the above Judgement dated 25th January, 2019. The amendment***



brought in the Regulations with effect from 25.07.2019 by way of substitution is as under:-

30 A. Withdrawal of application.....

(this regulation has already been discussed in aforementioned para)

13. The question, however, remains that the Hon'ble Supreme Court has in the above para - 82 left discretion with the Adjudicating Authority to allow or disallow an Application for withdrawal or settlement. The last sentence of the paragraph states that "this will be decided after hearing of Company Appeal (AT) (In) No.969-970 of 2019 the parties concerned and considering all relevant factors on the facts of each case." Thus, Adjudicating Authority has to consider all relevant factors on facts of each case and to take a decision. Para - 83 of the Judgement in the matter of "Swiss Ribbons" has dealt with a decision being taken by COC under Section 12A and left the door open that if COC arbitrarily rejects a just settlement and/or withdrawal claim the NCLT, and thereafter NCLAT can set aside such decisions under Section 60 of the Code.

16. We do not find fault with the Impugned Orders passed. Adjudicating Authority did not accept or reject the withdrawal Application. It referred it to COC. The decision taken by COC in



rejecting the request for withdrawal has not been challenged before the Adjudicating Authority. Considering these developments noticed also, no interference is called for.”

15. In the light of the aforesaid decision and discussions made in the aforementioned paras, when we shall consider the case in hand then we are of the considered view that in the present case, even the application has not been filed by the Operational Creditor rather it has been filed by the Suspended Board of Directors of the Corporate Debtor.

16. At this juncture, we would like to refer FORM-FA, which is required to be submitted through the IRP before the Adjudicating Authority and the same is quoted below: -

“88] FORM FA APPLICATION FOR WITHDRAWAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS [Under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

[Date] To The Adjudicating Authority [Through the Interim Resolution Professional / Resolution Professional] [name of corporate debtor]

Subject: Withdrawal of Application admitted for corporate insolvency resolution process of [name of corporate debtor]

I. [Name of applicant], had filed an application bearing [particulars of application, i.e, diary number/ case number] on [Date of filing] before the Adjudicating Authority under [Section 7 / Section 9/ Section 10] of the Insolvency and Bankruptcy Code, 2016. The said application was admitted by the Adjudicating Authority on [date] bearing [case number].



2. I hereby withdraw the application bearing [particulars of application, i.e, diary number/ case number] filed by me before the Adjudicating Authority under [Section 7 / Section 9/ Section 10] of the Insolvency and Bankruptcy Code, 2016.

3. I attach the required bank guarantee as per sub-regulation (2) of regulation 30A.

(Signature of the applicant)

Date:

Place:

[Note: In the case of company or limited liability partnership, the declaration and verification shall be made by the director/ manager/ secretary/ designated partner and in the case of other entities, an officer authorised for the purpose by the entity]”.

From the perusal of the FORM-FA, we find that FORM-FA is required to be submitted by the applicant, who filed the application either under Section 7, 9 or 10 of the IBC, 2016.

17. At this juncture, we would like to refer Section 12A which says that the application made by the applicant, therefore, only the person, who filed an application either under Section 7, 9 or 10 of the IBC, 2016 is empowered to file a withdrawal application and the Corporate Debtor against whom the CIRP is initiated under Section 7 or 9, in our considered opinion is not empowered/ entitled to file a withdrawal application but the present application has been filed by the Suspended Board of Directors of the Corporate Debtor.



18. For the reason discussed above, in our considered opinion, there is a specific provision under Section 12A for withdrawal of application admitted U/S 7, 9 & 10 of IB Code and the procedures are prescribed under regulation 30A for withdrawal of applications after the admission of application and before and after the Constitution of the COC, therefore, we can say that before the constitution of the COC the application must be filed by the applicant through the IRP, in view of Regulation 30A (1)(a) and application under Sub Rule (1) shall be made in Form-FA accompanied with bank guarantee and when such application is filed under Clause (a) of Regulation (1) then the IRP is required to submit the application to the Adjudicating Authority within 3 days of its receipt but in this case, the Operational creditor has not filed the application in terms of Regulation 30A rather it has been filed by the Suspended Board of Directors of the Corporate Debtor. Therefore, in our considered opinion, the present application is not in terms of Section 12A read with Regulation 30A of the CIRP Regulations, hence it is not maintainable and liable to dismissed.

19. Accordingly , it is therefore,

ORDERED
that the same is hereby DISMISSED.

-Sd/-

K K VOHRA
Member (T)

-Sd/-

ABNI RANJAN KUMAR SINHA
Member (J)