

Supreme Court holds that an application for withdrawal of corporate insolvency resolution process under IBC can be allowed even prior to the constitution of the committee of creditors

A two-judge bench of the Supreme Court of India (“**Supreme Court**”) in its recent judgment *Abhishek Singh v. Huhtamaki PPL Ltd. and Anr.*¹ has *inter alia* held that an application for withdrawal of the corporate insolvency resolution process (“**CIRP**”) under Section 12A of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) can be allowed by the adjudicating authority even before the constitution of the committee of creditors (“**CoC**”) in terms of Regulation 30A of the IBBI Regulation (Insolvency Resolution Process for Corporate Persons), 2018 (“**IBBI Regulations**”).

Brief Facts

Huhtamaki PPL Ltd. (“**Operational Creditor/Respondent No. 1**”) filed a petition against Manpasand Beverages Ltd.’s (“**Corporate Debtor/Respondent No. 2**”) under Section 9 of the IBC before the National Company Law Tribunal, (“**NCLT**”) Ahmedabad for an outstanding amount. The NCLT admitted the Section 9 petition and initiated CIRP against the Corporate Debtor (“**Admission Order**”). Thereafter, prior to the constitution of the CoC, the Operational Creditor and Corporate Debtor entered into a settlement whereby Abhishek Singh, a suspended Director of the Corporate Debtor (“**Appellant**”) duly paid the agreed amount. After receipt of the settlement amount and upon the Operational Creditor’s application under Section 12A of IBC, the interim resolution professional (“**IRP**”) of the Corporate Debtor filed an application under Regulation 30A of the IBBI Regulations before the NCLT seeking withdrawal of the CIRP against the Corporate Debtor (“**Withdrawal Application**”).

However, the NCLT rejected the Withdrawal Application *inter alia* on grounds that – (a) the Appellant made payments to the Operational Creditor from the account of the Corporate Debtor in violation of the moratorium; (b) the Withdrawal Application would adversely affect the rights of 35 creditors who had filed their respective claims against the Corporate Debtor; and (c) Regulation 30A of IBBI Regulations was not binding upon the NCLT (“**Impugned Order**”).

The Appellant filed an appeal before the Supreme Court challenging the Impugned Order *inter alia* on grounds that – (a) Section 12A of the IBC, Regulation 30A of IBBI Regulations and Rule 11 of the NCLT Rules, 2016 permit withdrawal of proceedings even prior to the constitution of the CoC; and (ii) the NCLT committed a grave error of law in holding that Regulation 30A of the IBBI Regulations was not binding on it. The IRP and other creditors of the Corporate Debtor filed intervention applications and opposed the present appeal to *inter alia* uphold the findings in the Impugned Order.

¹ 2023 SCC OnLine SC 349.

Issue

Whether an application for withdrawal of the CIRP under Section 12A of the IBC can be allowed by the NCLT prior to the constitution of the CoC?

Analysis and findings

The Supreme Court allowed the appeal and *inter alia* made the following observations:

1. While Section 12A of the IBC permits withdrawal of applications admitted under Sections 7, 9 and 10 of the IBC with the approval of 90% voting share of CoC, only after the CoC has been constituted, it does not expressly bar entertaining the applications for withdrawal prior to the constitution of the CoC.
2. The IBBI Regulations are binding on the NCLT despite being sub-ordinate in nature to the IBC. Consequently, the NCLT erred in holding that Regulation 30A of the IBBI Regulations does not have a binding effect.
3. Following the decision in *Swiss Ribbons (P) Ltd. v. Union of India*², Regulation 30A of the IBBI Regulations was substituted to allow applications for withdrawal of CIRP to be entertained even before the constitution to CoC. Regulation 30 of the IBBI Regulations is not in conflict with Section 12A of the IBC and the same only furthers the cause introduced in Section 12A of the IBC.
4. The NCLT had inherent powers under Rule 11 of the NCLT Rules, 2016 to either allow or disallow an application for withdrawal of the CIRP even prior to the constitution of the CoC.
5. Regulation 30A of IBBI Regulations provides a complete mechanism even for the purposes of dealing with the claim for expenses of the IRP.
6. The other creditors of the Corporate Debtor have their independent rights against the Corporate Debtor which would not be adversely affected if the settlement between the Corporate Debtor and Operation Creditor is accepted in the present case and the proceedings are allowed to be withdrawn.

Considering the above, the Supreme Court set aside the Impugned Order and allowed the Withdrawal Application. The Supreme Court clarified that its observations would not affect the other creditors who would be free to raise their own independent claims in appropriate proceedings which would be dealt in accordance with law.

JSA Comment

By this judgment, the Supreme Court has clarified the contours of Section 12A of the IBC and Regulation 30A of the IBBI Regulations. In doing so, the Supreme Court has not only filled the void appearing in Section 12A of the IBC by clarifying that withdrawal applications can be filed even prior to the formation of the CoC, but has also acknowledged the binding nature of Regulation 30A of the IBBI Regulations, which are subordinate to the IBC.

² 2019 (4) SCC 17.

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This Prism has been prepared by:



Farhad Sorabjee
Partner



Pratik Pawar
Partner



Shanaya Cyrus Irani
Partner



Ananya Verma
Associate



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