

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-204**  
IB-1639/ND/2019  
IA/3277/2020

**IN THE MATTER OF:**

Nawal Kishor Prasad

Vs

Hospitech Managment Consultants Pvt. Ltd.

....Applicant

....Respondent

**SECTION**

U/s 9 of IBC Code, 2016

**Order delivered on 26.08.2020**

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. VOHRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant

: Mr. Pawanjit S Bindra and Mr. Lakshay Dhamija for applicant,  
Mr. Mani Bhushan Sinha for OC

For the Respondent

:

**ORDER**

Since the IA-3277/2020 and IA-3390/2020 are related with each other, therefore, we would like to dispose off both the IAs by this common order.

**IA-3277/2020**

The present IA is filed by the member of Suspended Board of Director under Section 60 (5) of the IBC read with Rule 11 of NCLT rules praying therein “(a) to pass appropriate direction thereby taking Form FA dated 19.06.2020 filed by applicant with the respondent on record and withdraw the CIRP against the Corporate Debtor and/or (b) Hold the RP/Respondent guilty of having committed the contempt of the directions of this Hon’ble Adjudicating Authority as despite receipt of CIRP cost, the Respondent has not filed the withdrawal application as directed by this Adjudicating Authority vide order dated 13.07.2020 passed in IA no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad Vs. Hospitech Management Consultants Pvt. Ltd. and/or (c) In the alternative, direct



*the Respondent to comply with the order dated 13.07.2020 passed by this Hon'ble Adjudicating Authority in IA no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad Vs. Hospitech Management Consultants Pvt. Ltd. in its true letter and spirit and file withdrawal application under Section 12A of IBC read with Regulation 30A of IBBI (CIRP) Regulations, 2016."*

**IA-3390/2020**

During the pendency of this application, the RP also filed an application, which is numbered as IA-3390/2020 and by filing this application the RP made following prayer:-

- (a) "Allow withdrawal of the application filed under Section 9 of the IBC by the applicant which was admitted vide order dated 27.01.2020 by this Hon'ble Bench of NCLT;*
- (b) Direct to discharge the RP from the continuation of CIRP and handover the management and affairs of the Corporate Debtor back to the erstwhile management/directors of Corporate Debtor;*
- (c) Direct the respondent Directors of the Corporate Debtor to pay the due CIRP cost of Rs. 63,000/- as per the NCLAT order dated 29.07.2020 and further any other amount as the Hon'ble NCLAT or Hon'ble Supreme Court of India directs in this matter."*

In both the applications, one common prayer is made on behalf of the parties to pass any other order which this Adjudicating Authority may deem fit and proper.

We have heard the Ld. Counsels appearing for the parties and Ld. RP, who appeared in person and perused the averments made in both the applications as well as the prayers made in both the applications.

On the perusal of the prayers made in both the applications, we find that by filing Form FA to allow the applicant to withdraw the application filed under Section 9 of the IBC which was admitted on 27.01.2020. Therefore, there is no need to pass any order on the first prayer made on behalf of the Suspended Board of Directors in the application which is numbered as IA-3277/2020.

We have gone through the documents specially Form FA enclosed as annexure D at page 56 of the application bearing no. IA-3390/2020 filed by the RP and we find that the Form FA is signed by the Suspended Board of Directors.



In course of writing the order it has come to our notice that the Form FA is signed by the Suspended Board of Directors and not by the Operational Creditor as required under law because it is specifically mentioned in the Form FA that it must be signed by the applicant, who has filed the application for initiation of CIRP. Admittedly, the Suspended Board of Directors are not the person, who filed the application rather he is the person against whom the application is filed by the Operational Creditor for initiation of CIRP, therefore, before passing any further order on both the IAs, we would like to ensure that the Form FA must be filed by a person, who arrived with the settlement with the Corporate Debtor i.e. Operational Creditor, who filed the application. Ld. Counsel for the Operational Creditor seeks two days' time to send the Form FA to the RP and thereafter, the RP is directed to submit the same before us within the period prescribed under the law. Any laches on the part of any person will be dealt in accordance with the provision of law. List the case for **02.09.2020**.

sd/-

(K.K. VOHRA)  
MEMBER (T)

sd/-

(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-205**  
IB-1639/ND/2019  
IA/3390/2020

**IN THE MATTER OF:**

Nawal Kishor Prasad  
Vs  
Hospitech Manaement Consultants Pvt. Ltd.

....Applicant  
....Respondent

**SECTION**

U/s 9 of IBC Code, 2016

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**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI K.K. VOHRA,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant : Mr. Mani Bhushan Sinha for OC, Mr. Kumud Shekhar for RP  
For the Respondent : Mr. Pawanjit S Bindra and Mr. Lakshay Dhamija

**ORDER**

Since the IA-3277/2020 and IA-3390/2020 are related with each other, therefore, we would like to dispose off both the IAs by this common order.

**IA-3277/2020**

The present IA is filed by the member of Suspended Board of Director under Section 60 (5) of the IBC read with Rule 11 of NCLT rules praying therein "*(a) to pass appropriate direction thereby taking Form FA dated 19.06.2020 filed by applicant with the respondent on record and withdraw the CIRP against the Corporate Debtor and/or (b) Hold the RP/Respondent guilty of having committed the contempt of the directions of this Hon'ble Adjudicating Authority as despite receipt of CIRP cost, the Respondent has not filed the withdrawal application as directed by this Adjudicating Authority vide order dated 13.07.2020 passed in IA*



*no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad Vs. Hospitech Management Consultants Pvt. Ltd. and/or (c) In the alternative, direct the Respondent to comply with the order dated 13.07.2020 passed by this Hon'ble Adjudicating Authority in IA no. 2383/ND/2020 and IA no. 2394/ND/2020 in IB-1639/ND/2019 titled Nawal Kishore Prasad Vs. Hospitech Management Consultants Pvt. Ltd. in its true letter and spirit and file withdrawal application under Section 12A of IBC read with Regulation 30A of IBBI (CIRP) Regulations, 2016.”*

**IA-3390/2020**

During the pendency of this application, the RP also filed an application, which is numbered as IA-3390/2020 and by filing this application the RP made following prayer:-

- (a) “Allow withdrawal of the application filed under Section 9 of the IBC by the applicant which was admitted vide order dated 27.01.2020 by this Hon'ble Bench of NCLT;*
- (b) Direct to discharge the RP from the continuation of CIRP and handover the management and affairs of the Corporate Debtor back to the erstwhile management/directors of Corporate Debtor;*
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We have heard the Ld. Counsels appearing for the parties and Ld. RP, who appeared in person and perused the averments made in both the applications as well as the prayers made in both the applications.

On the perusal of the prayers made in both the applications, we find that by filing Form FA to allow the applicant to withdraw the application filed under Section 9 of the IBC which was admitted on 27.01.2020. Therefore, there is no need to pass any order on the first prayer made on behalf of the Suspended Board of Directors in the application which is numbered as IA-3277/2020.



We have gone through the documents specially Form FA enclosed as annexure D at page 56 of the application bearing no. IA-3390/2020 filed by the RP and we find that the Form FA is signed by the Suspended Board of Directors.

In course of writing the order it has come to our notice that the Form FA is signed by the Suspended Board of Directors and not by the Operational Creditor as required under law because it is specifically mentioned in the Form FA that it must be signed by the applicant, who has filed the application for initiation of CIRP. Admittedly, the Suspended Board of Directors are not the person, who filed the application rather he is the person against whom the application is filed by the Operational Creditor for initiation of CIRP, therefore, before passing any further order on both the IAs, we would like to ensure that the Form FA must be filed by a person, who arrived with the settlement with the Corporate Debtor i.e. Operational Creditor, who filed the application. Ld. Counsel for the Operational Creditor seeks two days' time to send the Form FA to the RP and thereafter, the RP is directed to submit the same before us within the period prescribed under the law. Any laches on the part of any person will be dealt in accordance with the provision of law. List the case for **02.09.2020**.

sdl -

**(K.K. VOHRA)**  
**MEMBER (T)**

sdl -

**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**