

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III

I.A. 366/2024

In

C.P. No. (IB) 1569/MB/C-III/2017

Under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with
and Rules of the National Company Law Tribunal Rules 2016

Filed by

Mr. Fanendra H. Munot

Liquidator of Mrunmaha Agro
foods Pvt. Ltd
Having his address at,
6th Floor, Mafatlal House Building,
H.T. Parekh Marg, Backbay Reclamation,
Mumbai- 4000020.

...Applicant/Liquidator

IN THE MATTER OF

Fairmacs Shipping and Transport Services Ltd.

... Petitioner/Operational Creditor

Vs

Mrunmaha Agro Foods Pvt. Ltd.

... Respondent/Corporate Debtor

Order pronounced on: **28.06.2024**

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

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Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Liquidator : Adv. Rohit Gupta a/w. Prashansha Agarwal,
Adv. Kunal Chheda

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The above I.A. has been filed by the liquidator under section 12A of the Insolvency and Bankruptcy Code, 2016 ("the Code"), seeking following reliefs:

a) This Hon'ble Tribunal be pleased to allow the Application for withdrawal of Company Petition U/S 12 A or any other provisions of Law;

b) In alternative, this Hon'ble Tribunal be pleased to pass appropriate orders in interest of Corporate Debtor and Stakeholders;

c) Cost of this Application.

d) Any other order and/or direction that the Tribunal deems necessary in the interest of justice.

2. **Submissions of the Applicant, in brief:**

2.1 On 20.11.2018, the Application for commencement of CIRP against Corporate Debtor was admitted and public announcement for submissions of claims was made. After receiving the claims, Committee of Creditors (CoC) was formed.

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- 2.2 On 07.01.2019, the applicant was appointed as a Resolution Professional (RP). RP diligently performed all the duties as per section 25 of the Code.
- 2.3 After publication of Form G one resolution plan was received. However, the same was not approved by the CoC. Hence, CoC was left with no other option but to liquidate the Corporate Debtor. Pursuant to resolution for liquidation, the Order for liquidation was allowed and the Applicant was appointed as a liquidator on 22.05.2020.
- 2.4 On 29.05.2020, the Applicant invited for claims vide newspaper publications. The Applicant verified claims, took into custody and control of the assets, property, effects and actionable claims of Corporate Debtor.
- 2.5 The constitution of Stakeholders' Committee is as under:

Sr. No.	Name of the creditor	Amount of claim (Rs.)	Amount of claim accepted (Rs.)	Voting shares (%)	Class of Creditor
1	Union Bank of India	9,05,47,389	9,05,47,389	94	Secured Financial Creditor
2	Fairmacs Shipping & Transport Services Pvt. Ltd.	59,87,690	59,87,690	6	Operational Creditor
	Total	9,65,35,079	9,65,35,079	100	

- 2.6 The applicant conducted e-auctions on various occasions but the same has not fructified. The public notice was given on 25.09.2020, 09.12.2020, 17.03.2021, 29.03.2021, 16.05.2021, 25.01.2022, 07.02.2022, 04.04.2022 and 11.06.2022.

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2.7 Details of e-auctions held since commencement of liquidator are summarized below:

Sr. No.	Date of e-auction	Reserve price for sale of business (Rs.)	Reserve price for sale of Plant & Machinery (Rs.)	Reserve price for sale of Land (Rs.)
1	10.11.2020	3,50,00,000	Not put for auction separately	
2	19.01.2021	3,32,50,000		
3	30.03.2021	3,00,00,000	1,05,41,400	78,00,000
4	09.04.2021	2,75,00,000	1,05,41,400	97,50,000
5	27.05.2021	2,50,00,000	94,87,260	87,75,000
6	05.02.2022	2,50,00,000	94,87,260	87,75,000
7	20.02.2022	2,50,00,000	94,87,260	87,75,000
8	20.04.2022	2,25,00,000	85,38,534	78,97,500
9	28.06.2022	2,02,50,000	76,84,681	71,07,750

2.8 The applicant had made various attempts to sell the assets through public auction. The applicant had also explored option 1) Sale of business as a going concern – wherein the prospective buyers can bid for the business of the Company and 2) Sale of assets – wherein the prospective buyers can bid for Plant and machinery and/or Land of the Company.

2.9 There are two members in the SCC i.e. Union Bank of India and Fairmacs Shipping & Transport Services Pvt. Ltd. The Applicant has received communication from one stakeholder who is Operational Creditor stating that he was not interested in pursuing the matter.

- 2.10 The Applicant has also received communication from other stakeholder that they were in consideration of OTS proposal.
- 2.11 It is submitted that on 07.09.2023, meeting of stakeholders was held for considering OTS proposal and Stakeholders Consultation Committee has approved the OTS proposal.
- 2.12 Therefore, The Application has been filed by the liquidator u/s 12A for withdrawal of Petition.
- 2.13 The Applicant submits that the present Application is made before completion of stipulated time and is in limitation. The Applicant also submits that this Hon'ble Tribunal has discretion to exercise inherent powers and allow withdrawal of the company petition.

Findings

3. Heard Ld. counsel for the liquidator and perused the record.
4. During the course of hearing a query was put to the applicant whether any provisions exist under IBC for withdrawal of the company petition during the liquidation period.
5. It was submitted that there is no provision pertaining to the withdrawal of company petition during the liquidation period though there is provision relating to scheme of compromise and arrangement under section 230 of the Companies Act. However, the applicant has relied on the order of the Hon'ble NCLAT in the case **V. Navaneetha Krishnan Vs. Central Bank of India, Coimbatore & Another [Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018]** wherein it was held as under:

“5. However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A, satisfy the demand of ‘Committee of Creditors’ then such person may move before the Adjudicating Authority by giving offer which may be considered by the ‘Committee of Creditors’, and if by 90% voting share of the ‘committee of creditors’, accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order”

6. The only provision relating to withdrawal of CP is under section 12A of the IBC which is reproduced below:

“12A. 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”.

7. Thus, withdrawal can be allowed only upon approval of at least 90% voting share of the CoC.
8. In the present case OTS proposal has been submitted by the promotor of the corporate debtor during liquidation period when there is no COC. The OTS proposal has been accepted by the sole financial creditor namely Union Bank of India which constitutes 94% of voting share in the SCC.
9. Minutes of meeting of the SCC held on 07.09.2023 wherein OTS proposal has been approved is reproduced below:

“1. To approve the OTS proposal received from the promoters of the corporate debtor:

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Chairman stated that improved OTS proposal received from the Promoters of the corporate debtor is already shared with the stakeholders. The OTS proposal was discussed during previous meetings of Stakeholders.

Since it may take time to receive the approval of NCLT for OTS proposal, Chairman suggested to change the date of payment for Tranche 1 and Tranche 2.

Mr. Santosh Shinde, Authorised Representative of OTS proposers agreed with the same.

After discussion, the proposed resolution was modified as under and put for voting;

Resolved that *the approval of the Stakeholders Consultation Committee be and is hereby accorded for the OTS proposal under Section 230 of Companies Act, 2013 submitted by Mr. Santosh Gulabroa Shinde, Promotor, Mrs. Tejasvini Santosh Shinde, Promotor, Mr. Gulabrao Khanderao Shinde, Guarantor and Mortgager and Mrs. Bebitai Gulabroa Shinde, Guarantor and Mortgager by offering to pay Rs. 6.30 crores to the secured creditors towards the full and final settlement of the outstanding debt. Schedule of payment, as per the OTS proposal is as follows:*

Particulars	Date of payment	Amount(Rs.)
<i>Upfront amount (already paid)</i>	<i>15.02.2019</i>	<i>40,50,000/-</i>
<i>Tranches 1</i>	<i>On or before 18.10.2023 or by 30th day from the date of approval of NCLT for the OTS proposal, whichever is later</i>	<i>3,00,00,000/-</i>
<i>Tranches 2</i>	<i>On or before 08.12.2023 or by 90th day from the date of approval of</i>	<i>2,89,50,000/-</i>

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	<i>NCLT for the OTS proposal, whichever is later</i>	
	Total	6,30,00,000/-
<i>In case of delay in payment beyond 90 days from the date of approval of the OTS proposal, interest as per MCLR will be paid on the balance amount.</i>		

10. The voting share is also annexed to the petition in which the secured financial creditor i.e. Union Bank of India has approved the resolution for accepting the OTS proposal under section 230 of the Companies Act, 2013 submitted by the promoters of the corporate debtor.
11. Thus, the SCC has approved the OTS proposal and withdrawal of company petition by 94% voting share which is more than 90% voting share required for withdrawal application under section 12A of the Code.
12. Regulations 2B of IBBI (Liquidation Process) Regulations, 2016 provides for compromise and arrangement under section 230 of the Companies Act, 2013 with proviso that a person who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.
13. As far as 29A of the IBC is concerned, the applicant has filed additional affidavit dated 28.02.2024 declaring his eligibility under section 29A of IBC.
14. We are of the considered view that the above application filed by the liquidator deserves to be allowed in the true letter and spirit of the provision of the IBC and driving authority from order passed by Hon'ble NCLAT in the case of **V. Navaneetha Krishnan Vs. Central Bank of**

India, Coiminator & Another [Company Appeal (AT) (Insolvency) Nos. 288 & 289 of 2018].

15. We also note that after withdrawal of the Company Petition the corporate debtor would be running as a going concern and will be managing its affairs under ordinary course of business and the interests of all Operational Creditors will be protected.
16. Operational Creditor has liberty to approach the corporate debtor for their dues in accordance with law. We feel that granting the approval for withdrawal of the company petition would be beneficial to all stakeholders including the secured Financial Creditor, Operational Creditor and the Corporate Debtor. We also enquired about the fees of the liquidator who confirmed that he has received his professional fees.
17. Accordingly, IA. 366 of 2024 is **allowed** and stands **disposed** of consequently the main Company Petition No. 1569 of 2017 stands **dismissed as withdrawn** and the Corporate Debtor is released from the process of liquidation and liquidator to take appropriate steps in accordance with law.

Sd/-

Charanjeet Singh Gulati
Member (Technical)
--Rajeev, PS --

Sd/-

Lakshmi Gurung
Member (Judicial)