IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2209/2021

Under Section 12A of Insolvency & Bankruptcy Code, 2016

Ms. Sudha P. Navandar
Interim Resolution Professional/
...Applicant

AND

IA No. 1670/2022

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Ms. Sudha P. Navandar
Interim Resolution Professional/
...Applicant

Vs.

Nalin Virji Shah & Ors.
..... Respondent

AND

IA No. 1882/2021

Under Regulation 16A (2) of the IBBI Regulations, 2016

Ms. Sudha P. Navandar
Interim Resolution Professional/
...Applicant

AND

IA No. 1901/2022

Under section 19 (2) r/w section 60 (5) of Insolvency & Bankruptcy Code, 2016

Ms. Sudha P. Navandar
Interim Resolution Professional/
...Applicant

In the matter of

CP (IB) No. 2207/MB/C-IV/2019

Satish Sadashiv Rane
...Financial Creditor

Vs.

Shah Group Builders Limited
[CIN: U70101MH2005PLC154243]
...Corporate Debtor

Order Pronounced on: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s) : Ms. Sudha Navandar, Interim Resolution Professional, Mr. Devarajan Raman, Ld. Authorised Representative.

Per*: *Kishore Vemulapalli, Member (Judicial)

ORDER

1. This is an Application filed by the Interim Resolution Professional (RP) u/s 12A for withdrawal of Corporate Insolvency Resolution Process (herein after referred as *"CIRP"*) of the M/s Shah Group Builders Limited on 04.10.2021 numbered as IA-2209/2021.
2. The CIRP was initiated against the Corporate Debtor order dated 08.07.2021 and this order was challenged before Hon'ble NCLAT wherein an interim stay was granted on 06.08.2021 directing not to constitute the CoC till the next date of hearing and allowing the Corporate Debtor and Financial Creditor to settle the matter, which got finalized on 20.09.2021.
3. The Copy of acknowledgement cum settlement agreement signed between the Financial Creditor and the Corporate Debtor dated 20.09.2021 and copy of Form-FA duly signed by Mr. Anand Laxamrao Dhumal, Authorised Power Attorney Holder of Mr. Satish Shadashiv Rane- Financial Creditor.

4. The Canara Bank, Edelweiss Asset Reconstruction Company Limited and Shah Kingdom Cooperative Housing Society Limited ("Home buyers") have filed Interlocutory Application(s) No. as IA-223/2022, IA-1094/2022 and IA-2813/2021 praying before this Bench not to allow the withdrawal under section 12A by the Financial Creditor on account of settlement. Further, the Promoters of Corporate Debtor Interlocutory Application No. 2563/2021 supporting the Application for withdrawal under section 12A.

5. Ld. Counsel for the Corporate Debtor submitted that no objection from any party can be entertained while deciding the Application of withdrawal prior to the constitution of CoC. In this regard, he placed reliance on Hon'ble Supreme Court decision in the case of ***Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC*** wherein the Hon'ble Court at para 52 held that-

> *".....A question arises as to what is to happen before a committee of creditors is constituted (as per the timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement....."*

He further placed reliance on Hon'ble Supreme Court's decision in case of ***Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors. (2022) ibclaw.in 115 SC*** wherein the Hon'ble Court at para 24 held that-

> "*Section 12A of the IBC clearly permits withdrawal of an application under Section 7 of the IBC that has been admitted on an application made by the applicant. The question of approval of the Committee of Creditors by the requisite percentage of votes, can only arise after the Committee of Creditors is constituted. Before the Committee of Creditors is constituted, there is, in our view, no bar to withdrawal by the applicant of an application admitted under Section 7 of the IBC*".

6. Ld. Counsel for the Interim Resolution Professional submitted that this Bench has recorded wrongly in the daily order dated 05.01.2023 that "*Intervenor Application cannot be entertained*", while he had not made any such statement. In view of assertion, we order that the order dated 05.01.2023 shall be read without these words.

7. In view of the law laid down by the Hon'ble Apex Court we find no reason to dismiss the prayer for withdrawal in the Application as in this case also CoC has not been constituted and present Application has been filed by the Interim Resolution Professional on the basis of Form-FA received from the Financial Creditor. Accordingly, we allow this Application and order the withdrawal of CIRP against the Corporate Debtor with immediate effect. Accordingly, IA-2209/2021 is **allowed** and **disposed of**.

IA-1670/2022

8. During hearing, in **IA-1670/2022**, this Bench sought clarification from the Ld. Counsel for the Corporate Debtor whether fee of the IRP along with CIRP cost incurred by her shall be paid to IRP by the Corporate Debtor, in case, this Bench decided to allow the withdrawal application filed under section 12A of the Code. The

Ld. Counsel confirmed that the CIRP cost incurred by the IRP and her fee shall be reimbursed by the Corporate Debtor upon withdrawal of CIRP against the Corporate Debtor. In view of this assertion the Applicant IRP is directed to intimate her claim to the Corporate Debtor for payment thereof. In view of this, this **IA-1670/2022** is **allowed** and ordered accordingly.

9. Since, the Corporate Debtor has been taken out of rigours of CIRP, the **IA-1882/2021** (seeking appointment of appointed representative of home buyers' class) and **IA-1901/2022** (seeking indulgence of this Tribunal for co-operation of the management and other persons) have become **infructuous** and accordingly **disposed of**.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 223/2022

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Canara Bank

.... Intervenor/ Applicant

AND

IA No. 1094/2022

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Edelweiss Asset Reconstruction Company Limited

.... Applicant

Vs.

Ms. Sudha Pravin Navanadar and Ors.

.... Respondents

AND

IA No. 2813/2021

Mr. Vinay Kumar Yadav and Anr.

.... Intervenors/ Applicants

AND

IA No. 2563/2021

Under Section 60(5) of Insolvency & Bankruptcy Code, 2016

Shah Kingdom Co-operative Housing Society Limited

.... Applicant/
... Intervenor

In the matter of

CP (IB) No. 2207/MB/C-IV/2019

Mr. Satish Sadashiv Rane

...Financial Creditor

Vs.

Shah Group Builders Limited
[CIN: U70101MH2005PLC154243]

...Corporate Debtor

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Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Applicant(s)	:	Mr. Darshit Dave Applicant in IA-1094/2022. Ms. Priya Nigwekar i/b Mr. O. A. Das, Applicant in IA-223/2022. Mr. Aditya R. Deolekar, Intervenor in IA-2563/2021. Mr. Sachin Daga, Intervener in IA-2813/2021, Advocates.
For the Respondent(s)	:	Ms. Sudha Navandar, Interim Resolution Professional.
For the suspended Board	:	Mr. Ashish S. Kamat, Ld. Sr. Counsel a/w Mr. Kunal Mehta, Mr. Jayesh Nishar, Advocates.

Per*: *Kishore Vemulapalli, Member (Judicial)

ORDER

1. As noted, the withdrawal of Application before constitution of CoC is a matter between Applicant/Financial Creditor and the Corporate Debtor only, hence, we cannot allow Interlocutory Application No(s). **IA-223/2022**, **IA-1094/2022**, **IA-2813/2021** and **IA-2563/2021**. In view of this, these Applications are **dismissed** as not maintainable. However, the Applicant in IA-223/2022 is given liberty to file an appropriate Application for restoration of CP(IB)/137/2020, which was earlier dismissed as

infructuous in view of initiation of CIRP in C.P. (IB)/2207(MB)2019. The other applicant(s) shall be at liberty to initiate any proceeding as permissible under this Code or any other Law.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)