NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.2191 of 2024

In the matter of:

Mehul Patel **...Appellant**
(Member of Suspended Board of Anupam Port Cranes Corporation Ltd.)
Vs.
Nandish S. Vin & Anr. **...Respondents**

For Appellant:	**Mr. Abhijeet Sinha, Sr. Advocate with Ms. Honey Satpal, Advocate.**
For Respondents:	**Mr. Krishnendu Datta, Sr. Advocate for Mitsubishi.**

WITH

Company Appeal (AT) (Insolvency) No. 2304 of 2024

In the matter of:

Mehul Patel **...Appellant**
(Member of Suspended Board of Anupam Port Cranes Corporation Ltd.)
Vs.
Nandish S. Vin & Anr. **...Respondents**

For Appellant:	**Mr. Abhijeet Sinha, Sr. Advocate with Ms. Honey Satpal, Advocate.**
For Respondents:	**Mr. Krishnendu Datta, Sr. Advocate for Mitsubishi.**

J U D G M E N T

(23rd December, 2024)

Ashok Bhushan, J.

These two Appeals have been filed by the Suspended Director of the Corporate Debtor- 'Anupam Port Cranes Corporation Limited' challenging the order dated 12.11.2024 and the order dated 15.10.2024 passed by the Adjudicating Authority (National Company Law Tribunal) Ahmedabad, Division Bench, Court-1 in C.P.(IB)/23(AHM)2024.

2. Brief facts necessary to be noticed for deciding these Appeals are:-

2.1. On an application filed by an Operational Creditor- Ispat Traders (India) Pvt. Ltd. under Section 9 of the IBC. CIRP against the Corporate Debtor commenced vide order dated 09.04.2024. On 17.04.2024, Resolution Professional issued public announcement calling upon creditors to submit their claims. Three Unsecured Financial Creditors submitted their claims. The 1st meeting of the CoC was held on 14.05.2024 in which meeting CoC consisted of three Unsecured Financial Creditors. The Interim Resolution Professional was confirmed as Resolution Professional. There was a settlement between the Operational Creditor and the Suspended Director of the Corporate Debtor. The Operational Creditor filed Form FA seeking withdrawal of the Insolvency Petition. IRP placed withdrawal proposal before the CoC. CoC in 3rd meeting held on 16.08.2024 gave its approval to withdrawal of the insolvency proceedings. Form FA had already been sent to the IRP by the Operational Creditor vide e-mail dated 12.08.2024. The CoC in its 3rd meeting passed resolution approving the withdrawal application under Section 12A of the IBC r/w Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP filed an IA No.1345 of 2024 before the Adjudicating Authority praying for withdrawal of the Section 9 application. In the application, settlement between the parties dated 25.07.2024 was relied as well as the decision of the CoC taken in 3rd meeting approving the withdrawal. Total amount which was claimed by the Operational Creditor was also mentioned of Rs.1,15,05,718/- for which a post dated cheque was also given to the Operational Creditor. One Mitsubishi Heavy Industries Ltd. (hereinafter referred to as "MHIL") has filed its claim as a Financial Creditor on 25.04.2024 which was acknowledged by the Resolution Professional and certain queries were raised by the Resolution Professional. On 11.06.2024, MHIL submitted its claim in appropriate Form C to the Resolution Professional. On 19.08.2024, Resolution Professional informed the MHIL that on 16.08.2024, the CoC had voted to approve an application for withdrawal of the CIRP. Application IA No.1345 of 2024 for withdrawal under Section 12A was filed by the Resolution Professional on 20.08.2024. On 16.09.2024, Resolution Professional verified and admitted the claim of MHIL as Financial Creditor. On 17.09.2024, when matter was being heard before the Adjudicating Authority about admission of the claim of MHIL, the Resolution Professional also informed that cheque issued to the Operational Creditor has been encashed. On 15.10.2024, Adjudicating Authority passed an order in IA No.1345 of 2024 directing the Resolution Professional to delete the name of Suspended Management from array of the parties in IA No.1345 of 2024. Company Appeal (AT) (Ins.) No.2191 of 2024 has been filed by Mr. Mehul Patel, Suspended Management challenging the order dated 15.10.2024 deleting his name from array of the parties which Appeal was filed on 04.11.2024. IA No.1398 of 2024 had been filed by MHIL for accepting its claim which application was filed before 16.09.2024 admitting the claim of MHIL. On 12.11.2024, IA No.1345 of 2024 and other IAs came for consideration. The Resolution Professional filed a purshish before the Adjudicating Authority for withdrawal of the application filed under Section 12A on the ground that MHIL's claim being admitted, CoC was required to be re-constituted. The Adjudicating Authority noticing the aforesaid statement of the Resolution Professional and taking note of the purshish for withdrawal allowed the Resolution Professional to withdraw IA No.1345 of 2024. The Suspended Director of the Corporate Debtor aggrieved by the order dated 12.11.2024 has filed Company Appeal (AT) (Ins.) No.2304 of 2024.

3. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant in both the Appeals and Shri Krishnendu Datta, Learned Senior Counsel for the Financial Creditor- MHIL. We have also heard Counsel appearing for the Resolution Professional.

4. Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant submits that the application under Section 12A for withdrawal of the CIRP having been filed with the approval of the CoC which was taken with 100% vote share in 3rd CoC meeting dated 16.08.2024, the withdrawal of application was not permissible without the approval of the CoC. It is further submitted that the Resolution Professional was only a representative of the Operational Creditor and Resolution Professional had no jurisdiction and authority to withdraw the application under Section 12A. It is submitted that it is the Applicant i.e. the Operational Creditor who alone is

entitled to withdraw the application filed under Section 12A and the Adjudicating Authority committed error in permitting withdrawal of the application filed under Section 12A. It is submitted that the MHIL is a related party and any admission of the claim of related party has no affect on constitution of the CoC. In any view of the matter, as per Regulation 12(3) of the CIRP Regulations where the new Financial Creditor is included in the committee after admission of its claim, such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion. It is submitted that the order of the Adjudicating Authority permitting withdrawal is against the procedures as contemplated by Section 12A r/w Regulation 30A. Counsel for the Appellant relying on the judgment of the Hon'ble Supreme Court in ***"GLAS Trust Company LLC v. BYJU Raveendran & Ors.- Civil Appeal No.9986 of 2024"*** decided on 23.10.2024 submits that the procedures as prescribed in Section 12A has to be followed for withdrawal of the CIRP and no withdrawal can be permitted contrary to the procedure prescribed. Counsel for the Appellant reiterated his submission that the Resolution Professional had no authority or jurisdiction to withdraw the application, hence, the order passed by the Adjudicating Authority dated 12.11.2024 deserves to be set aside. It is further submitted that the Adjudicating Authority also committed error in passing an order on 15.10.2024 directing deletion of the name of Suspended Management from the array of the parties of the application under Section 12A.

5. Shri Krishnendu Datta, Learned Senior Counsel appearing for the MHIL opposing the submissions of the Appellant submits that the Adjudicating Authority has rightly permitted withdrawal of Section 12A application in the facts and circumstances of the present case. It is submitted that although MHIL has filed its claim on 25.04.2024 and thereafter in Form C, it was again submitted on 11.06.2024, the Resolution Professional delayed the verification and admission of the claim. Consequently, the MHIL had to file an application before the Adjudicating Authority being IA No.1398 of 2024 seeking a direction to accept and admit the claim of MHIL. It is submitted that the claim of MHIL was verified and admitted on 16.09.2024 and as per admission of the claim of MHIL, MHIL as a Financial Creditor has voting share of 92.35% in the CoC. It is submitted that the withdrawal of the application under Section 12A without considering the claim of MHIL cannot be permitted. Counsel for the Respondent heavily relied on the judgment of the Hon'ble Supreme Court in ***"GLAS Trust Company LLC"*** (Supra). It is submitted that the decision was taken by the CoC on 16.08.2024 for permitting withdrawal of the CIRP that was prior to admission of the claim of MHIL on 16.09.2024. After 16.09.2024 when the MHIL as Financial Creditor has been accepted which has voting share of 92.35%, no withdrawal can be permitted. It is submitted that the Resolution Professional is obliged to bring all relevant facts in the notice of the Adjudicating Authority and in view of the subsequent events of admission of the claim of MHIL, Resolution Professional has rightly withdrawn Section 12A application since no withdrawal was permissible

after admission of the claim of MHIL on 16.09.2024. It is submitted that the Appellant who is a Suspended Director of the Corporate Debtor has no role to play in application under Section 12A filed by the Resolution Professional and it is the Resolution Professional who has to conduct the Insolvency Process including application under Section 12A. The submission of the Appellant is without any basis that Resolution Professional has no jurisdiction or authority to withdraw the application.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The Adjudicating Authority in the order dated 12.11.2024 has relied on the admission of claim of MHIL. The Adjudicating Authority has also noticed that when the application IA No.1345 of 2024 came for hearing on 17.09.2024 before the Adjudicating Authority, Resolution Professional informed about the admission of claim of MHIL. Relevant facts have been noticed in paragraphs 7, 8 and 9 of the impugned order which are as follows:-

> *"7. Thereafter, the Operational Creditor (Original Applicant) of CP (IB) No. 23 of 2024 sent the application to the Applicant/RP for withdrawal of the CIRP along with copy of the Form-FA. The RP of the Corporate Debtor in 3rd CoC meeting held on 16.08.2024 inform the CoC qua the receipt of Form-FA from the Operational Creditor and the outstanding amount has been settled with the Operational Creditor which was confirmed from the Suspended*

Management as well. The other Financial Creditors also agreed for the settlement Accordingly, voting was conducted and members of the CoC in a meeting with 100% vote in favour of withdrawal of CIRP of the Corporate Debtor agreed.

8. During the pendency of the present application the claim of other Financial Creditor and Operational Creditor, namely, M/s. Mitsubishi Heavy Industries Limited and M/s. Mitsubishi Heavy Industries Machinery Technology Corporation also admitted by the RP, as informed by the RP during the course of hearing held on 17.09.2024. It was also informed that the cheque of settlement amount issued by the Suspended Management in favour of the Operational Creditor was stand enchased by the Operational Creditor.

9. Today, when the matter was taken up, the learned counsel for the Applicant/RP filed a withdrawal purshish across the Bar, mentioning therein that the application was filed under Section 12A of the IB Code, 2016. However, due to the admission of the claim, it is required to reconstitute the CoC, hence, this application is withdrawn with liberty to file an appropriate application in accordance with law. Since the CoC has been re-constituted by admitting new member in CoC, the withdrawal of this IA filed by the Applicant/RP is allowed."

8. The submission which has been much pressed by the Appellant is that the Resolution Professional has no jurisdiction to pray for withdrawal of the application. We, thus, need to first examine whether the Resolution

Professional had any jurisdiction or authority to file a purshish for withdrawal of the application.

9. We need to notice the statutory scheme pertaining to withdrawal of the CIRP. Section 12A of the IBC which deals with 'withdrawal of application' admitted under Sections 7, 9 and 10 provides as follows:-

> ***"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."*

10. Regulation 30A was inserted in the CIRP Regulations, 2016. After insertion of Section 12A in the IBC, Regulation 30A of the Regulations is as follows:-

> ***"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 81[Schedule-I]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

(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."*

11. Regulation 30A clearly provides that application for withdrawal has to be filed through the Interim Resolution Professional or the Resolution Professional as the case may be. The copy of the application which has been filed under Section 12A has been brought on the record by the Appellant as Annexure 23 to the Appeal. Memo of parties indicate that Applicant is Nandish Sunilbhai Vin. Memo of the parties are as follows:-

"MEMO OF PARTIES

Nandish Sunilbhai Vin
RP of Anupam Port Cranes Corporation Limited

Registration No. IBBI/IPA-001/IP-P-02117/2020
2021/13270
Having its address at:
C/53, Shanti Niketan Row House,
Anand Mahal Road, Opp. Sagar Complex,
Beside Sneh Sankul Wadi,
Surat, Gujarat-395009
E: ip.nandish.vin@gmail.com ...*Applicant*

Versus

1. Mr. Mehul Patel
(Member of Suspended Board of Anupam Port Cranes Corporation Limited)
Having its registered office at:
138, GIDC Estate.
Vithal Udyognagar, Gujarat-388121
E: mehul@anupamgroup.com

2. Ispat Traders (India) Private Limited (Operational Creditor)
Having its registered office at:
Narsinhji's Estate, Yamuna Mill Road,
Pratapnagar, Vadodara,
Gujarat-390004
E: info @ispattraders.com, ronak@ispattraders.com

...*Respondents"*

12. Thus, it was the Resolution Professional who has filed the application seeking withdrawal of the CIRP. The Hon'ble Supreme Court had occasion to consider the entire statutory scheme for withdrawal of CIRP in recent judgment of ***"GLAS Trust Company LLC"*** (Supra). The Hon'ble Supreme Court has laid down that after admission of CIRP, the CIRP process becomes ***in rem*** proceeding and it is the Resolution Professional who has to thereafter conduct the proceeding and after proceedings having become *in rem*, they are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants,

become necessary stakeholders. In paragraph 42 of the judgment, following has been held:-

> *"42. From this scheme of Chapter II of the IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant changes take place, including the transfer of the management of the affairs of the corporate debtor to the IRP, the declaration of the moratorium, and the collation of the claims against the corporate debtor. Therefore, the proceedings now change character they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders."*

13. The Hon'ble Supreme Court after noticing the entire statutory scheme in the IBC for withdrawal of the application held that the application for withdrawal has to be filed through the Resolution Professional. In paragraph 66, the Hon'ble Supreme Court laid down following:-

> *"66. We do not concur with the above understanding for two broad reasons.*

a. Firstly, that the application is to be submitted by the IRP rather than the parties themselves is not a distinction without difference. As noted above, once the application is admitted and CIRP is initiated, it is the IRP who takes charge of the affairs of the corporate debtor. The proceedings become collective proceedings and the interests of the former management of the corporate debtor, become disjunct from the interest of the corporate debtor. Therefore, the parties (such as the former management of the corporate debtor) must submit their application for withdrawal through the IRP who is now the person in control of the insolvency proceedings. To subvert this requirement would run contrary to the scheme of the IBC and the underlying principles discussed in this judgment; and

b. Secondly, the NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP. The ILC Report, in response to which, the parent provision, i.e. Section 12A was introduced in the IBC specifically discussed the possibility of the creditors, apart from the applicant creditor agreeing to a settlement as the underlying reason to permit withdrawal even after initiation of the CIRP. It was never fathomed by the ILC that withdrawal of claims would remain a unilateral process, even though the application is admitted and CIRP has been initiated. Similarly, this Court in Swiss Ribbons (supra), in response to which Regulation 30A was amended, specifically observed that in cases where withdrawal is sought after initiation of CIRP, but

> *before the CoC is constituted, the NCLT must decide on the application after "hearing all the parties concerned and considering all relevant factors on the facts of each case." Therefore, the NCLT does conduct an adjudicatory exercise when the application for withdrawal is placed before it, and the procedure is not a mere technicality."*

14. In the above case, the Hon'ble Supreme Court has clearly laid down that once the application is admitted and CIRP is initiated, it is the IRP who takes charge of the affairs of the corporate debtor and the proceedings become collective proceedings and it is the IRP who is now the person in control of the insolvency proceedings. In view of the law as laid down by the Hon'ble Supreme Court in the above paragraph, it is clear that it is the IRP/RP who is the person in control of the insolvency proceedings including the proceedings initiated by Resolution Professional for withdrawal under Section 12A.

15. In view of the aforesaid, we do not find any lack of jurisdiction in the Resolution Professional filing purshish for withdrawal of Section 12A application.

16. When we revert to the facts as noted above, in the present case, the MHIL has filed its claim in Form C on 11.06.2024, as submitted by Counsel appearing for MHIL which claim was kept on verification by the Resolution Professional for long period and could be admitted only on 16.09.2024 and prior to that date, MHIL has to file an application seeking intervention as

well as seeking a direction to accept the claim of MHIL. It has been noticed by the Adjudicating Authority in paragraph 8 of the order as extracted above that during hearing on 17.09.2024, Resolution Professional has informed that claim of MHIL and claim of M/s. Mitsubishi Heavy Industries Machinery Technology Corporation have been admitted by the Resolution Professional. When the claim has been admitted ignoring the admission to such claim, Section 12A application could not have been allowed which was filed much before admission of the claim of Financial Creditor who now controls the vote share of 92.35%.

17. Counsel for the Appellant has relied on Regulation 12(3) of the CIRP Regulations which provides as follows:-

> *"**12. Submission of proof of claims.** (3) Where the creditor in 49[sub-regulation (1)] is [a financial creditor under regulation 8], it shall be included in the committee from the date of admission of such claim:*
>
> *Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion."*

18. There can be no quarrel to the statutory scheme as delineated by Regulation 12(3). What is provided in Regulation 12(3) that validity of any decision taken by the committee prior to such inclusion shall not be affected. Present is not a case where anyone is impugning the validity of decision taken in the 3rd CoC meeting held on 16.08.2024. The withdrawal of the application under Section 12A is on account of subsequent event

which has taken after 16.08.2024 i.e. admission of the claim of MHIL on 16.09.2024 i.e. much before the application filed under Section 12A could be heard or allowed. The Resolution Professional has rightly brought into the notice of the Adjudicating Authority on 17.09.2024 when application came for hearing that claim has been admitted and CoC has to be re-constituted. We, thus, are fully satisfied that the Resolution Professional had every jurisdiction to file purshish to withdraw of the application. In the facts of the present case, Adjudicating Authority has permitted withdrawal of Section 12A application in accordance with law by order dated 12.11.2024.

19. We, thus, do not find any error in the order dated 12.11.2024 passed by the Adjudicating Authority. The Appeal filed against the earlier order dated 15.10.2024 has become infructuous in view of the subsequent order dated 12.11.2024. In result, both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi

Anjali