NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No. 227/2025
IA Nos. 647 & 648/2025

In the matter of:

M/S. K COMPUTERS
Represented by Mr. Borra Vijay Vardhan
Managing Partner
#1-2-234/13/45, Plot No.45, Aravind Nagar Colony,
Domalguda, Hyderabad - 500029 **…APPELLANT**

Vs

MR. PESALADINNE MADHUSUDHAN REDDY,
(Interim Resolution Professional appointed
vide order dated 04.03.2022)
Name of the Corporate Debtor:
M/s. Pi Data Centers Private Limited
IBBI/IPA-002/IP-N00926/2019-2020/12982
Having office at Unit 3B, 6-3-569/2, Above Vibrant Ford,
Opp: RTA Khairtabad, Rockdale Compound, Somajiguda,
Hyderabad, Telangana - 500082

…RESPONDENT NO.1/IRP

MR. KALYAN MUPPANENI
Erstwhile Director of the Corporate Debtor
M/s. Pi Data Centers Private Limited
Survey No. 49/P, Plot No. 12, IT Layout,
Autonagar, Mangalagiri, Guntur,
Andhra Pradesh – 500503

…RESPONDENT NO.2/ERSTWHILE DIRECTOR

Present :

For Appellant : Mr. Y. Suryanarayana, Advocate
For Respondents : Mr. TK Bhaskar, Advocate
Ms. Niveditha Narayanan, Advocate
Mr. Vasant S., Advocate for R1
Mr. PH Arvindh Pandian, Senior Advocate
For Mr. Pawan Jhabakh, Advocate for R2

JUDGMENT
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant, being the operational creditor is the Applicant to the application that was preferred under Section 9 of I & B Code, 2016, seeking for initiation of the CIRP process as against the Respondent, i.e., M/s. Pi Data Centres Private Limited, the Corporate Debtor (CD).

2. By virtue of the impugned order dated 28.03.2025, which is subjected to challenge in the instant company appeal, and which has been passed by the Ld. NCLT Amaravati Bench in IA (IBC)/32/2025 in CP(IB)71/9/AMR/2020, the Ld. Adjudicating Authority, has proceeded to consider the implications of Section 12A of the I & B Code, 2016, to be read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and has allowed the aforesaid application and consequently has permitted the proceedings that were initiated under Section 9 of the I & B Code, 2016, to be dismissed as withdrawn.

3. The primary ground, which has been argued by the Ld. Counsel for the Appellant, is that the impugned order of 28.03.2025, has to be tested on an anvil of, as to whether at all it satisfies, the parameters that are prescribed under the Regulation 30A of IBBI (Insolvency Resolution Process from Corporate Persons) Regulation, 2016, for the purposes of passing of an order, under Section 12A. Besides that, he further contends that, the order, which has been passed, is based upon an arrangement/agreement which was obtained by the Respondent 2 through "threat" and "coercion", and hence

the resultant order cannot be permitted to be sustained and be permitted to be perpetuated, because it creates a restriction as against the Appellant in contesting the proceedings under Section 9 of the I & B Code, 2016, on its own merits.

4. The brief facts which engage consideration are, that initially the Respondent No.2 had approached this Appellate Tribunal, by way of the proceedings of a **Company Appeal (AT)(INS) No. 192/2022 and Company Appeal (AT)(INS) No. 193/2022**, which was dismissed by this Tribunal by judgment passed by this Appellate Tribunal on 18.12.2024. The said order of dismissal by NCLAT in the aforesaid company appeal was subjected to challenge at the instance of Respondent No.2 before the Hon'ble Apex Court, in **Civil Appeal No. 857-858/2025, Kalyan Muppaneni Vs M/s. K. Computers & Another**. The Hon'ble Apex Court did not venture into the merits of the order, which was subject of the challenge and passed an order on 22.01.2025, disposing the Civil Appeal, by observing that in view of the Appellant's (Respondent No.2 herein) stand and claim based upon the settlement agreement of 02.01.2025 and Form – FA dated 02.01.2025, being the application for withdrawal of the company petition signed on behalf of M/s. K Computers, addressed to the Interim Resolution Professional (IRP), having been placed on record before it, it is left open for the IRP to proceed, in accordance with law and to file an application under Section 12A of the I & B Code, 2016, if deemed appropriate. Hon'ble Apex

Court in the said order also observed that the claim of M/s. K Computers that settlement agreement and Form FA were obtained under force, coercion, and threat, are aspects to be adjudicated and decided in terms of provisions of the I & B Code.

5. The provisions contained under Section 12A the I & B Code, 2016, prescribes for a conferment of a right on an Applicant to the proceedings for withdrawal of an application admitted under Section 7, 9, or 10 of the I & B Code, 2016. But the right which has been attached for exercising of the powers under Section 12A is required to be governed by the provisions contained under Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which prescribes certain modalities which are required to be satisfied prior to passing of any order under Section 12A of the I & B Code, 2016, permitting withdrawal of proceedings under the aforesaid sections of the Code as listed above.

6. It has been attempted to be argued by the Ld. Counsel for the Appellant that in the absence of there being a satisfaction recorded with regards to the procedure contemplated under Regulation 30A of IBBI (Insolvency Resolution Process from Corporate Persons) Regulation, 2016, which he alleges to be mandatory, the orders which has been passed on the application preferred under Section 12A, for withdrawal of the proceedings under Section 9 the I & B Code, 2016, in the instant case, would be bad in the eyes of law. The Ld. Counsel for the Appellant, in support of his

contention, had specifically drawn the attention of this Tribunal to Sub-Regulation (3) of Regulation 30A on which he has argued, which is extracted hereunder: -

> ***"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 [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 subregulation (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.****"*

7. He intends upon to submit is that, when an application for withdrawal under Section 12A of the I & B Code, 2016, is submitted by the IRP under the provisions of Rule 30A(1)(a), for the parameters, it has to be on behalf of the Applicant, and it has to be submitted within three days of its receipt. What is being attempted to be argued by the Ld. Counsel for the Appellant that, as a matter of fact, he was never an applicant to the application under Section 12A of the I & B Code, 2016, and as such, the entire procedure would be vitiated, in the eyes of law.

8. This contention of the Appellant, at this matured stage of the proceedings of Section 12A of the I & B Code, 2016, cannot be appreciated to be accepted by this Tribunal, for the reason being that when in the earlier phase of litigation, the Appellant came before this Tribunal in a proceedings by way of Company Appeal (AT)(INS) No. 192/2022 and Company Appeal (AT)(INS) No. 193/2022, which was ultimately subjected to consideration before the Hon'ble Apex Court, the Hon'ble Apex Court did refer to the settlement agreement of 02.01.2025, which was submitted in the shape of Form – FA, as statutorily mandated. Further, since the Hon'ble Apex Court has left it open for the IRP to proceed in accordance with law, it will be absolutely contrary to the records to submit as of now that no Form-FA was ever submitted for seeking withdrawal of the proceedings under Section 9 of the I & B Code, 2016, by invocation of the provisions contained under Section 12A of the I & B Code, 2016, when there is no such doubt regarding

the existence of agreement settlement dated 02.01.2025. It was, of course, pleaded before the Hon'ble Apex Court, that the settlement agreement was obtained under force, coercion, and threat. Hon'ble Apex Court had ruled then that this matter would be adjudicated and decided in terms of the provisions of the I & B Code. Besides that, the judgment of the Hon'ble Apex Court dated 22.01.2025 had observed that the orders passed by this Tribunal on 18.12.2024 in Company Appeal (AT)(INS) No. 192/2022 and Company Appeal (AT)(INS) No. 193/2022, will not create any impediment as such in consideration of 12A application, in an independent consideration of Form – FA, for deciding as to whether or not the proceedings should be dropped in terms of Section 12A of the I & B Code, 2016, to be read with Regulation 30A of IBBI (Insolvency Resolution Process from Corporate Persons) Regulation, 2016.

9. In order to substantiate his argument pertaining to the act of 'threat' and 'coercion', the Appellant herein has contended that he had filed a complaint before the competent police authorities on 21.01.2025. it is seen that this is the first time he had agitated the grounds pertaining to the commission of an act of force, threat and coercion by Respondent No. 2. In fact, if the said complaint is taken up into consideration, apart from the fact that, it was submitted at a much belated stage with a structured allegation of threat and coercion on 21.01.2025, the said complaint would add no sanctity to it, for the reason being that, the application under Section 12A of the I &

B Code, 2016, was itself a subject matter of consideration before the Hon'ble Apex Court in Civil Appeal No. 857/2025 which was filed on 13.01.2025, and since being an application being prior in time to the complaint submitted by the Appellant to the police authorities, it will not cloud the consideration of application preferred under Section 12A of the I & B Code, 2016, by the Appellant himself seeking withdrawal of the proceedings under Section 9 of the I & B Code, 2016.

10. There is another argument, which has been extended by the Ld. Counsel for the Appellant is which he has questioned the way his complaint dated 21.01.2025 was handled by the concerned authorities contending thereof that, since the set of allegations relate to the cognizable offences as contained under Section 409, 420, and 120B of the Indian Penal Code (IPC), 1860, it should not have been registered as a complaint case under Section 190 read with Section 200 of the Cr.PC., and rather, an FIR ought to have been registered under Section 154 of Cr.PC. Admittedly, there is nothing on record to show that any FIR was ever got registered by the Appellant qua the set of allegations relating to the fraudulent filing of the application under Section 12A of the I & B Code, 2016, on 02.01.2025. Even assuming, for the time being, that the Appellant has not filed any application, on his own and the application that was filed, was by way of exercise of threat and coercion, the said version of the Appellant at this belated stage, may not be acceptable by this Tribunal for the reason being that when he was conscious of a

Criminal Act being committed against him by forcing him to file an application under Section 12A of the I & B Code, 2016, which prompted him to file a police complaint on 21.01.2025, before the police, the fact that the same was not permitted to be registered an FIR, he was not left remedy-less under law, that that eventuality the law did contemplate and provided him a remedy in form of invoking Section 173(4) of (BNS) Bharatiya Nyaya Sanhita (2023), or Section 156(3) of Cr.PC., (which is a pari materia provision) which provides for that in an eventuality of a failure by the police authority to register a complaint, such an aggrieved person will always have a remedy to file an appropriate application before the Magistrate concerned for seeking an appropriate directions for the police to register the FIR with regards to the set of allegations, which apparently and admittedly was not resorted to by him.

11. It is not the case of the Appellant at any point of time that, he has resorted to any of the remedies as contemplated under Section 173(4) of (BNS) Bharatiya Nyaya Sanhita (2023), (corresponding provisions contained under Section 156(3) of the Code of Criminal Procedure). Hence, the contention , which has been raised at the behest of the Appellant that, he attempted to register a complaint qua the illegal action of submission of the settlement on 02.01.2025 by commission of an act of threat, fraud or coercion, cannot be accepted.

12. Further, we are of the view that, the Appellant's contention that he has been subjected to criminal intimidation, threat, coercion and fraud to enter into the alleged settlement dated 02.01.2025 cannot be accepted merely on basis of an averment or, by way of filing a complaint, which is being developed by the Appellant, until and unless the same is established prima facie by way of a criminal investigation being carried over a set of act of criminality of threat and coercion. Thus, the contention which has been sought to be pressed into by the Appellant for the purposes of asserting that he had never been an Applicant to the application preferred under Section 12A of the I & B Code, 2016, will not be acceptable.

13. There is yet another argument, which is sought to be developed by Ld. Counsel for the Appellant, on basis of certain documents which are sought to be placed on record by moving an application for additional documents to be taken on record. The same is being vehemently opposed by the Respondent's Counsel on the ground that, all these documents cannot be taken into consideration for the purposes of deciding the instant appeal, until and unless the same were placed for scrutiny before the Ld. Adjudicating Authority and were judicially tested. Apart from it, it was also argued by the Ld. Counsel for the Respondent, that so far as the implications of the complaint is concerned, that, was never a pleading that was raised before the Ld. NCLT has no reference of the alleged Criminal complaint, has been made in the counter affidavit that was filed by the Appellant, and therefore,

the said stand cannot be permitted to be taken into consideration at the time of deciding the appeal as against the application under Section 12A of the I & B Code, 2016.

14. The Ld. Counsel for the Appellant further elaborately submitted that the submission of the application itself is doubted because he has submitted a complaint to the Prime Minister's office on 12.12.2024 regarding the said act of coercion and duress being exercised by the Respondents for the purposes of forcing upon him to submit the settlement dated 02.01.2025 under Section 12A of the I & B Code, 2016. This contention as developed by the Appellant cannot be accepted by this Tribunal for the reason being that, the complaint, which was submitted to the Prime Minister's office happens to be prior in time to the date of submission of application itself under Section 12A of the I & B Code, 2016, besides being a procedure unknown to law. Hence, it cannot be said that the act of fraud, threat, or coercion could have at all been settled to be constituted as to be an element of the complaint dated 12.12.2024.

15. Reverting back to the argument that was extended by the Ld. Counsel for the Appellant pertaining to the legal parameters required for establishment of an act of threat or coercion under the IPC, it entails consideration of the commission of an act of coercion or threatening to commit an act which has been forbidden by the Indian Penal Code or an unlawful detention or threatening to detain any person or a forceful

performance of an act. It always requires an element of trial and establishment of the same by a process of investigation and leading of evidence or an adjudication to be made by the court of law. Admittedly, in the instant case, after filing of the complaint, the Appellant has not made any effort towards resorting to the appropriate recourse prescribed under law to establish the alleged act of threat and coercion having been exercised by the Respondents for the purposes of soliciting a settlement of 02.01.2025.

16. Another limb of argument being extended by the Ld. Counsel for the Appellant, is that there was an exercise of threat. The answer to this argument would be almost identical to the one, which we have extended for the purposes of establishing an act of coercion. Threat always involves an act of individual exerting pressure, which is not known to the eyes of law for forcing upon a person to do an act. Act of threat here, once again, will be and is required to be established by due process of law through proceedings by Criminal Courts. Circumstances or events with the potential to cause harm to an individual, forcing him to do an act contrary to his intentions cannot be established by an averment above, rather it has to be established by leading credible evidence in a proceedings by criminal courts act, which is proved by law. Since there was no effort ever made, by the Appellant herein to prove the act of threat by initiating criminal proceedings, soliciting an investigation, qua the allegation of threat, the pleadings extended in support of exertion of threat cannot be relied upon.

17. Since the fact of threat and coercion has not been established by the Appellant, to substantiate his claim that he was never instrumental in filing of the Application under Section 12B of I & B Code, 2016, the same cannot be appreciated by this Tribunal in the absence of there being a corresponding proceedings drawn by him on the criminal side for establishment of the aforesaid fact. Apart from it, the additional documents, through which he intends to establish about the act of commission of fraud, threat and coercion, cannot be accepted by this Tribunal to be placed on record for consideration because these documents are being placed before this Tribunal for the first time without the same being considered by the Ld. Adjudicating Authority, besides being subsequent in time, which cannot be appreciated by this Tribunal at the stage when the company appeal itself is being considered at the admission stage.

18. Hence, the 'appeal' lacks 'merit' and the same is accordingly 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

22/07/2025
SN/MS/RS