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Scrip code: 532902

Trading Symbol: CCCL

Dear Sir/Madam,

Dear Sir/Madam,

Further to our intimation on Jan 5, 2024, please find attached the order copy from the Hon. NCLT, Chennai. The matter came up for hearing on January 5, 2024.

For your information and records please,

For CONSOLIDATED CONSTRUCTION CONSORTIUM LIMITED

S.S.ARUNACHALAM

COMPANY SECRETARY

311

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

IA(IBC)/2119/CHE/2023 in IBA/483/2020

*(Application filed under Section 12A of the Insolvency and Bankruptcy Code, 2016
and Read with Rule 11 of NCLT Rules, 2016)*

In the matter of Consolidated Construction Consortium Limited

Krishnasamy Vasudevan

Resolution Professional of

M/s. Consolidated Construction Consortium Limited

Office at 17B/7B, Maruthi Nagar,

Hasthinapuram, Chrompet,

Chennai – 600 064

...Applicant

-Versus-

- 1. State Bank of India**
Stressed Assets Management Branch
No.32, Montieth Road, Egmore,
Chennai – 600 008
- 2. Bank of Baroda**
Stressed Assets Management Branch
No.45, Moore Street, 4th Floor, JBAS Building,
Chennai – 600 001
- 3. IDBI Bank Limited**
NMG, 115, Anna Salai, Saidapet,
PB No. 805, Chennai – 600 018
- 4. ICICI Bank**
SSG Department, 3rd Floor,
No. 1, Cenotaph Road,
Chennai – 600 018

5. **TATA Capital Financial Services Limited**
1st Floor, Centennial Square, 6A Dr. Ambedkar Salai,
Kodambakkam, Chennai – 600 024

6. **Edelweiss Asset Reconstruction Company Limited**
EARC SC Trust 40, Edelweiss House, Off CST Road,
Kalina, Mumbai – 400 098

7. **R. Sarabeshwar & S. Sivaramakrishnan**
8/33, Padmavathiyar Road,
Jeypore Colony, Gopalapuram,
Chennai – 600 086

...Respondents

Order Pronounced on 5th January 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *E. Om Prakash, Senior Advooacte*
K. Vasudevan, RP

For Respondents : *M.L. Ganesh, Advocate for R1*

B. Dhanraj, Advocate for R2 & R3

Dev Eshwar for R4

P.S. Raman, Senior Advocate
Abitha Banu, Advocate for R7

ORDER

(Heard through Video Conferencing mode)

IA(IBC)/2119(CHE)/2023 is an Application filed under Section
12A of the Insolvency and Bankruptcy Act, 2016 (hereinafter the “IBC,

2016”) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter the “NCLT Rules”), seeking reliefs as follows;

- (a) *to treat this Petition as urgent.*
- (b) *To direct all the parties to abide by the terms of the settlement plan in repayment of the dues to the creditors including release of charge and release of all shares held by the creditors for the compliance of effective settlement.*
- (c) *Pass an order allowing the present Application filed under Section 12A of the Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and permit the Applicant i.e. Petitioner Creditor namely, the 1st Respondent herein, to withdraw the Corporate Insolvency Resolution Process of the Corporate Debtor namely Consolidated Construction Consortium Limited in IBA No. 483 of 2020.*
- (d) *Pass such further and other orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.*

2. The Corporate Insolvency Resolution Process (CIRP) in relation to the Corporate Debtor was initiated by this Tribunal vide order dated 20.04.2021. The Applicant herein was appointed as the Interim Resolution Professional (IRP).

3. In the 1st CoC meeting, the Applicant was appointed as the ‘Resolution Professional’ in respect of the Corporate Debtor. It is stated

that during the CIRP of the Corporate Debtor, the Applicant has issued Expression of Interest for 4 times and the details of which are given below;

DATE	EOI ISSUED FOR	REMARKS
06.09.2021	1 st EoI	No. of Prospective Resolution Applicants C'PRA) participated - I
04.11.2021	EoI (Re-issued)	In order to get more PRA the EOI was reissued. There was no response to the EOI.
17.01.2022	Modified EoI	Since the existing PRA had not submitted any Resolution Plan, the COC resolved to modify the eligibility criteria of EOI. In this EOI, 5 PRAs showed interest in submitting a Resolution Plan. Among the 5 PRA, 3 PRAs got qualified and 2 PRA were rejected. No offer came till the final date.
25.07.2022	Reissue of Expression of Interest pursuant to NCLT order dated 14.07.2022 in IA/725(CHE)12022 which directed the Resolution Professional to come out with another Form-G	No. of PRAs participated in the EOI was 4 however, no Resolution Plan was received from any of them.

4. It is stated that the Promoters of the Corporate Debtor / 7th Respondent filed IA(IBC)/1484(CHE)/2022 praying for a direction to the members of the CoC to consider the Settlement proposal. In the meantime, CoC meeting was convened for the purpose of passing a

Resolution for Liquidation of the Corporate Debtor on 29.12.2022.

During the said meeting, the CoC did not take any concrete decisions as to the Liquidation of the Corporate Debtor, instead decided to wait for the outcome of the Application filed by the Promoters.

5. It is stated that since the CoC did not take any decision both on Liquidation and on the Application filed by the Promoters of the Corporate Debtor, the Applicant / RP moved an Application under Section 33 of IBC, 2016 seeking Liquidation of the Corporate Debtor in IA(IBC)/627(CHE)/2023. This Tribunal vide its order dated 12.05.2023 ordered for Liquidation of the Corporate Debtor.

6. As against the order of Liquidation passed by this Tribunal, the 7th Respondent preferred an Appeal before Hon'ble NCLAT in Company Appeal (AT)(Ins) No. 139 of 2023. In the meantime, the lenders granted their approval for the settlement plan submitted by the 7th Respondent. The Hon'ble NCLAT vide its Judgment dated 21.09.2023 set aside the Liquidation order passed by this Tribunal, as follows;

It is represented on behalf of the 'Appellant' that a Memo dated 18.09.2023, filed before the 'Office of the Registry' on 19.09.2023 vide Diary No.0918, stating that Section 12A Proposal in I&B Code, 2016, submitted by the 'Appellants' was approved by the 'Committee of Creditors' and further the said Section 12A Proposal was approved by the

'Committee of Creditors', with 95.34%, as against required 90% approval of 'Committee of Creditors', under the I & B Code, 2016.

On behalf of the Appellants, a request has been made through a Memo dated 18.09.2023, before this 'Tribunal', to take the same on record and the said 'Order on Liquidation', passed in IA(IBC)/627/CHE/2023 in IBA No.483/2020, resultantly direct the 3rd Respondent to file 'Form FA' before the 'Adjudicating Authority', and to take necessary steps for withdrawal of IBA No.483/2020 on the file of National Company Law Tribunal, Division Bench – I, Chennai.

There is no dispute to the factum of 'Memo', being filed by the 'Appellants' dated 18.09.2023 (filed before the 'Office of the Registry' on 19.09.2023) and the Respondents' have admitted the contents of 'Memo'.

Considering the fact that the Section 12A Proposal, under the I&B Code, 2016, submitted by the 'Appellants', was approved by the 'Committee of Creditors' and that the said 'Approval' by the 'Committee of Creditors', was in a majority, as against the required 90% of approval of 'Committee of Creditors'. This 'Tribunal', refers to take the 'Memo' on record in the instant Comp App (AT) (CH) (Ins) No.139 / 2023 and sets aside the 'Liquidation Order', dated 12.05.2023, passed in IA(IBC)627/CHE/2023 in IBA No.483/2020, directs the Resolution Professional, to file 'Form FA', before the 'Adjudicating Authority', as prescribed under I&B code, 2016 and take final steps, in regard to the withdrawal in IBA No.483/2020, on the file of the National Company Law Tribunal, Division Bench – I, Chennai, of course, in the manner known to 'Law' and in accordance with 'Law'.

With the above said observations, the instant Comp App (AT) (CH) (Ins) No.139 / 2023, stands 'disposed of'. The connected pending IA Nos.464, 465 & 466/2023 are closed.

7. Thereafter, the Petitioning Creditor viz. State Bank of India submitted the Form – FA dated 21.10.2023 to the Applicant / RP. In the 21st CoC meeting dated 25.10.2023, the Form – FA was placed before the

CoC and the same was discussed as Item No. 6, which is extracted hereunder;

To consider and vote on the Form - FA submitted by the State Bank of India for withdrawal of CIRP initiated against M/s Consolidated Construction Consortium Limited.

The Chairman informed the members that upon approval of the Settlement Plan submitted by the Promoters by a vote of 94,10% in favour of the plan, the State Bank of India, the applicant to the Company Petition IBA/483/2020 had submitted the Form FA dated 21.10.2023 being application for withdrawal of Corporate Insolvency Resolution Process initiated against the Corporate Debtor

The Chairman informed the members that in terms of the Regulation 30A of the CIRP Regulations, the application for withdrawal of CIRP i.e. Form FA is placed before the COC for its consideration and approval.

The COC discussed the Form FA and approved the same by passing the following Resolution.

RESOLVED that the application for withdrawal of Corporate Insolvency Resolution Process filed by the State Bank of India, the petitioner to the original Company Petition IBA/483/2020 in Form FA-dated 21 10:2023 to the Insolvency, and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 has been approved

RESOLVED FURTHER that the Resolution Professional shall make necessary application before the Adjudicating Authority and such other deeds to withdraw the Corporate Insolvency Resolution Process against the Corporate Debtor

Voting Results

S. No.	CoC Members	Voting %	Favour %	Against %	Abstain %
1	State Bank of India	56.00	56.00	--	--
2	IDBI Bank Limited	16.30	16.30	--	--
3	Bank of Baroda	19.90	19.90	--	--

4	ICICI Bank Limited	4.60	--	4.60	--
5	TATA Capital Financial Services Limited	1.90	1.90	--	--
6	Edelweiss Asset Reconstruction Company	1.30	--	--	1.30
	Voting Result	100	94.10	4.60	1.30

The above Resolution is approved with 94.10% voting in favour of the Resolution by the Committee of Creditors.

8. Pursuant to the same, the present Application has been filed before this Tribunal by the Applicant.

OBJECTIONS

9. ICICI Bank / 4th Respondent has filed its objections to IA(IBC)/2119(CHE)/2023.

10. It is stated that the prayer encompassed under relief (b) *seeking to release the shares held by the creditor* (i.e.) the non-consenting financial creditor / 4th Respondent who has not voted in favour of the settlement proposal is not maintainable under IBC, 2016 and the Resolution Professional does not have any control or locus to seek such a prayer thereby forcing any creditor to release the shares held in its favour.




11. It is stated that Section 12A of IBC, 2016 permits only withdrawal of application upon approval of 90% of voting percentage of CoC members. In the present case, it has 94.10% and there is no embargo for withdrawal of CIRP against the Corporate Debtor, however the relief can be limited only to the extent of seeking withdrawal of CIRP and not to seek release of the securities and shares held by the other non – consenting financial creditor who has not voted in favour.

12. It is stated that there is no provision of law under IBC, 2016 that permits the Applicant / RP to compel the non – consenting Financial Creditor to enter for settlement with the Corporate Debtor under Section 12A of IBC, 2016. Under such circumstances, the Learned Counsel for the 4th Respondent has prayed for dismissal of relief (b).

13. The 7th Respondent / Promoter of the Corporate Debtor has filed written submissions.

14. It is stated that as per the final settlement plan, the time period for payment of Rs.175.00 cores is 30 days from the date of the order of the NCLT. Furthermore, the 7th Respondent has already paid Rs.138.25

crores which is kept in a No Lien Account and the remaining Rs.36.75 crores is to be paid on sale of obsolete materials after receipt of no objection from the Lenders.

15. It is stated that the Respondents 1 to 5 hold *pari passu* (first and second) charge over the movable and immovable assets of the Corporate Debtor including pledged shares and they also hold equity shares in the Corporate Debtor which were allotted to Lenders, namely the Respondent No 1 to 5 as conversion of loan to equity during CDR proposal in 2015, through fresh issue by diluting promoters stake holding percentage. The share allotment and pledge details are follows:-

Lender name	No of shares allotted by loan to equity	No of shares pledged
BoB	53539765	Pari Passu Charge
ICICI	39811267	
SBI	116949462	
IDBI	17307177	
TATA Capital	416472	
Total	228024143	47113476

16. It is stated that as per Settlement proposal, charges over all the fixed assets, current assets and shares and all Guarantees are to be released to implement the 12A proposal successfully.

17. It is stated that the Code requires the members of CoC holding 90% of voting share to agree for withdrawal of the Petition. In the present case including the voting share of 6 Respondent who abstained from voting, the settlement plan has been approved by 95.40%. The 4th Respondent who holds voting rights of only 4.60% cannot claim that it is not bound by the terms of the settlement. The 4th Respondent has also objected for the release of their charge over the collateral securities including the shares both pledged and equity shares held by it.

18. It is stated that the 4th Respondent ICICI Bank is bound to act as per the terms of the plan for the following reasons:

- a. In view of CDR, all creditors are having *pari passu* charge over the security and as per 12A plan and the same has to be released by all the creditors.
- b. ICICI Bank vide email dated 10.05.2023 agreed for the release of the collateral security, transfer of equity shares etc on payment of the entire plan amount of Rs.175 Crores by the 7th Respondent and insisted for relevant modifications in the plan.

- c. After modification of the plan as insisted by ICICI Bank, it gave in principle approval for 12A plan in the Joint Lenders Meeting held on 29.05.2023.
- d. After giving in principle approval, ICICI Bank cannot refuse to transfer the equity shares and release the securities.
- e. Joint Lenders Meeting held on 18.05.2023, 29.05.2023, 08.08.2023 and 22.08.2023 would clearly show that there were wide deliberations amongst the members of JLM while considering the settlement plan and its implementation as submitted by the 7th Respondent and it was unanimously approved by all lenders in principle. In spite of this in the 19th CoC, ICICI has gone back from its approval.
- f. In view of 12A plan being approved by 94.10% of CoC members as against the required percentage of 90%, the ICICI Bank which dissented cannot refuse to release the collateral security and shares both issued and pledged.

19. It is stated that if the ICICI Bank withholds the collateral securities, guarantees and the equity shares, it will make the entire 12A proposal as a failure and it might lead to liquidation of the Corporate Debtor.

20. It is stated that since the Corporate Debtor is coming out of IBC, the promoters will not be in a position to raise any loan from any Financial Institutions immediately. The only option for the promoters to

honour present and future commitment to the remaining stakeholders is to raise funds from Strategic investors. The prospective strategic investors are insisting the Promoters to hold minimum of 75% of Shareholding to have a strong control of the affairs and management of the Company to infuse further money. Hence release of 9.99% of Equity which is held by ICICI Bank is critical to secure the 75% of shares. Also, ICICI Bank releasing its share will be in line with the other Creditors who have approved 12A plan with 95% majority. It is stated that after receiving the money due to ICICI Bank out of overall Rs.175.00 Cr as per the plan, the ICICI Bank cannot refuse to release the equity shares, guarantees and collateral securities. Therefore, it is essential that the entire stakes held by the Lenders should devolve to the Promoters.

21. It is stated that 12A plan is more beneficial to the lenders and all the stakeholders. Once the amount of Rs.175.00 Crore is paid as mentioned in 12A plan, ICICI Bank has no right to withhold its charge on all collateral securities including share which were allotted as part of loan conversion. The fact is that the other lenders have agreed to release charge on all guarantees, collateral securities including release of the equity shares on receipt of the dues as per the plan in order to implement

the 12A plan successfully. It is stated that the 12A plan is implementable only when all the secured creditors follow the terms of plan by virtue of mutual obligation specified in 12A plan. The implementable plan has been finalised based on the confirmation received from all the lenders including ICICI Bank but ICICI Bank has rejected the plan. It is stated that if ICICI continues to hold the shares, no investor would come forward to invest in the company to revive the same and inspite of approval of 12A plan, the Company will not be able to survive.

FINDINGS OF THIS TRIBUNAL

22. Heard the submissions made by the Learned Counsel for the parties.

23. The present Application has been filed under Section 12A of IBC, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Section 12A of IBC, 2016 states 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 CoC, in such manner as may be specified.*

24. Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states 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.

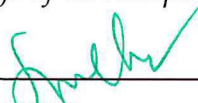
(2) *The application under sub-regulation (1) shall be made in Form FA of the Schedule-I accompanied by a bank guarantee-*

(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.*

(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 subregulation (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.

25. Section 12A of IBC, 2016 read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals only with **withdrawal of Application** filed under Section 7, 9 or 10 of IBC, 2016 and not approval of a Settlement Proposal.

26. Section 30 of IBC, 2016 which deals with the approval of Resolution Plan contemplates 66% of the CoC to approve a Resolution Plan. If so approved, the said Resolution Plan would bind the Creditors even those who did not vote in favour of the Resolution Plan. However, under Section 12A of IBC, 2016 the CoC does not vote or approve for a

Settlement proposal, the CoC is required to vote and approve only for **withdrawal simpliciter**.

27. The Hon'ble Supreme Court in the case of **Arun Kumar Jagatramka v. Jindal Steels and Power Limited and Anr;** (2021) 7 SCC 474 compared the Scheme under Section 230 of the Companies Act, 2013 (which is akin to a Resolution Plan under Section 30 of IBC, 2016) with the withdrawal applications under Section 12A of IBC, 2016 and held as under;

Distinction between a withdrawal simpliciter and scheme of arrangement

77. The submission is that on the withdrawal of the application under Sections 7, 9 and 10, as the case may be, the company goes back to the same promoter in spite of such a promoter being ineligible under Section 29-A for submitting a resolution plan. As such, it was urged that there is no reason or justification then to preclude a promoter from presenting a scheme of compromise or arrangement under Section 230.

78. There is a fundamental fallacy in the submission. **An application for withdrawal under Section 12-A is not intended to be a culmination of the resolution process.** This, as the statutory scheme would indicate, is at the inception of the process. Rule 8 of the Adjudicating Authority Rules, as we have seen earlier, contemplates a withdrawal before admission. Section 12-A subjects a withdrawal of an application, which has been admitted under Sections 7, 9 and 10, to the requirement of an approval of ninety per cent voting shares of the CoC. The decision of this Court in *Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17]* (para 82 extracted above) stipulates that where the CoC has not yet been constituted, NCLT, functioning as the adjudicating authority, may be moved directly for withdrawal which, in the exercise of its inherent

powers under Rule 11 of the Adjudicating Authority Rules, may allow or disallow the application for withdrawal or settlement after hearing the parties and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor. A withdrawal under Section 12-A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the 2013 Act. A resolution plan upon approval under Section 31(1) IBC is binding on the corporate debtor, its employees, members, creditors (including the Central and State Governments), local authorities, guarantors and other stakeholders. The approval of a resolution plan under Section 31 results in a “clean slate”, as held in the judgment of this Court in *Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443]. Rohinton F. Nariman, J. speaking for the three-Judge Bench of this Court, observed : (*Essar Steel case* [*Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , SCC p. 615, para 105)

“105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In *SBI v. V. Ramakrishnan* [*SBI v. V. Ramakrishnan*, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , this Court relying upon Section 31 of the Code has held : (SCC p. 411, para 25)

‘25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety’s consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by

such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.'"

80. The benefit under Section 31, following upon the approval of the resolution plan, is that the successful resolution applicant starts running the business of the corporate debtor on "a fresh slate". The scheme of compromise or arrangement under Section 230 of the 2013 Act cannot certainly be equated with a withdrawal simpliciter of an application, as is contemplated under Section 12-A IBC. A scheme of compromise or arrangement, upon receiving sanction under sub-section (6) of Section 230, binds the company, its creditors and members or a class of persons or creditors as the case may be as well as the liquidator (appointed under the 2013 Act or the IBC). Both, the resolution plan upon being approved under Section 31 IBC and a scheme of compromise or arrangement upon being sanctioned under sub-section (6) of Section 230, represent the culmination of the process. This must be distinguished from a mere withdrawal of an application under Section 12-A. There is a clear distinction between these processes, in terms of statutory context and its consequences and the latter cannot be equated with the former.

(emphasis supplied)

28. The withdrawal of an Application under Section 12A of IBC, 2016 is not intended to be a culmination of Resolution process. The Hon'ble Supreme Court in the Judgment as referred above has categorically held that the withdrawal under Section 12A of IBC, 2016 leads to a *status quo ante* in respect of the liabilities of the corporate debtor.



29. Under Section 12A of IBC, 2016 this Tribunal has no powers to approve / adjudicate upon a Settlement Proposal entered into between the Creditors and the Promoters of the Corporate Debtor.

30. In the said circumstances, we are of the view that the relief (b) as prayed for by the Applicant transcends beyond the scope of Section 12A of IBC, 2016 and hence stands **rejected**.


31. In the present case, as per Regulation 30A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016, the Applicant / has filed the Form – FA along with the Application and the same is appended as Annexure – 13. Further, the Form – FA was placed before the CoC in its 21st meeting held on 25.10.2023 and the same was approved with **94.10%** voting rights by the CoC. Thus the mandate as required under Section 12A of IBC, 2016 is satisfied.

32. It is also stated in Form – FA that as per the email received from the RP dated 19.10.2023, no expected liability towards CIRP expenses is payable and accordingly the bank guarantee as per sub – regulation (2) of Regulation 30A is not required.

33. Taking into consideration the said submissions made by the Learned Counsel for the Applicant/RP as well as the averments contained in the Application, relief (c) stands **allowed**. In the circumstances, IBA/483/2020 stands **withdrawn**.

34. The CIRP initiated by this Tribunal against the Corporate Debtor in IBA/483/2020 vide order dated 20.04.2021 stands **withdrawn**. The powers of the Board of Directors which stood suspended is restored and the management and affairs of the Corporate Debtor is directed to be handed over to them by the RP, including the possession and control of books and assets of the Corporate Debtor, if any taken during the CIRP period. The RP is discharged from all his responsibilities. The position of the Corporate Debtor is restored to *status quo ante* prior to the Insolvency Commencement date. The Corporate Debtor shall operate through its own Board.

35. It is made clear that this Tribunal is allowing **withdrawal simpliciter** under Section 12A of IBC, 2016 and not approving the terms of the Settlement proposal.



36. Accordingly IA(IBC)2119/CHE/2023 stands **allowed**.
IBA/483/2020 stands **dismissed as withdrawn**. All the connected
Applications stands **closed**. File be consigned to records.

- Sd -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond