

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Ins.) No. 235 of 2021

IN THE MATTER OF:

Abhishek Singh,

S/o Shri Dhirendra Singh,
R/o 13, Sangeet Society,
Vasna Road,
Vadodara- 390007

...Appellant.

Versus

1. Huhtamaki PPL Ltd.,

12A-06, B- Wing, 13th Floor,
Parinee Crescenzo,
C-38/39, G-Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400051

...Respondent No. 1

2. M/s. Manpasand Beverages Ltd.

1768 & 1774 Patki-1, Village Manjusar,
Tai. Savli, Vadodra – 391775

...Respondent No. 2

3. Interim Resolution Professional

of M/s. Manpasand Beverages Ltd.,
Through Mr. Arpan Maheshkumar Shah
301, Shoppers Plaza-4, Opp. BSNL,
C.G. Road, Navrangpura,
Ahmadabad, Gujarat – 380009.

...Respondent No. 3.

Present:

**For Appellant: Mr. Vikram Nankani, Sr. Adv. with
Mr. Mahesh Agarwal, Mr. Nachiket Anil Dave,
Mr. Swaroop George, Mr. Himanshu Satija,
Mr. Divyang Chandira, Advocates.**

**For Respondent: Mr. Salil Thakore, IRP, R-3.
Mr. Hitesh Buch, PCS for R-1.**

ORDER
(Virtual Mode)

26.03.2021 Mr. Vikram Nankani, Advocate appears for the Appellant. He submits that Respondent No. 1-Operational Creditor filed C.P. (IB) No.

503/9/NCLT/AHM/2019 before Adjudicating Authority (NCLT Ahmedabad Bench, Court No. 1). The Application was filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in short) against the Respondent No. 2 M/s. Manpasand Beverages Ltd. the Corporate Debtor. Appellant is the Director of the Suspended Board of the Corporate Debtor. Respondent No. 3 is Interim Resolution Professional.

2. Learned Counsel for the Appellant submits that the Application was admitted by the Impugned Order and Appeal is filed. It is stated that thereafter the Appellant has settled the claim of Operational Creditor and the Operational Creditor has filed Application for withdrawal copy of which is at Page 348 and even the IRP has filed Application before the Adjudicating Authority copy of which is at Page 368. The Application for withdrawal under Section 12A of IBC has been filed through IRP. Mr. Salil Thakore, Advocate agrees with the Learned Counsel for the Appellant that there has been a settlement and accordingly Application under Section 12A of IBC has been filed. The Learned Counsel for IRP however states that the money has been paid violating moratorium which the IRP has reported to the Adjudicating Authority.

3. Mr. Hitesh Buch, PCS also agrees that settlement has taken place.

4. Learned Counsel for the Appellant submits that considering these facts, the Appeal may be allowed to be withdrawn with liberty to seek restoration in case the effort with regard to Section 12 A of IBC runs into difficulty. The Learned Counsel for IRP accepts that Committee of Creditors (CoC in short) has not been constituted.

5. The Learned Counsel for the Appellant submits that he is making request for withdrawal of the Appeal under instructions from the Appellant.

6. Considering the objects of IBC, we have no reason to doubt that the Adjudicating Authority without standing on technicalities would pass appropriate Orders, if settlement has taken place between the Original Operational Creditor and Corporate Debtor and CoC is not yet constituted.

7 (A). For reasons stated above, the Appeal is permitted to be withdrawn with liberty to seek restoration of the Appeal in case at any future time the effort to settle in terms of Section 12A of IBC runs into difficulty and does not happen.

7 (B). Till the Adjudicating Authority decides Application under Section 12A of IBC which is stated to have already been filed, CoC may not be constituted.

The Appeal is disposed with observations and directions as above.

[Justice A.I.S. Cheema]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

Basant B./md.

Company Appeal (AT) (Ins.) No. 235 of 2021