

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Restoration Application No.02 of 2021**  
**in**  
**Company Appeal (AT) (Ins) No.235 of 2021**

**IN THE MATTER OF:**

Abhishek Singh, ...Applicant

**Versus**

Huhtamaki PPL Ltd. and Ors. ...Respondents

**AND**

**IN THE MATTER OF:**

Abhishek Singh ...Appellant

**Versus**

Huhtamaki PPL Ltd. & Ors. ...Respondents

**For Appellant: Shri Swaroop George, Advocate**

**For Respondents: Shri Salil M Thakore, Advocate (IRP - R-3)  
Shri Sunil Fernandes and Shri Darpan Sachdeva,  
Advocates**

**ORDER**  
**(Virtual Mode)**

**16.04.2021** Heard Restoration Application No.02 of 2021. This Application has been filed by the Appellant to restore Company Appeal (AT) (Ins) No.235 of 2021 and hear the said Appeal on merits. The Applicant/Appellant also seeks stay to the CIRP (Corporate Insolvency Resolution Process) which has been initiated against the Corporate Debtor - Manpasand Beverages Ltd.

When Company Appeal (AT) (Ins) No.235 of 2021 had come up before us on 26<sup>th</sup> March, 2021, we had passed the following Order:-

**“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.”

Accordingly, the Appeal was permitted to be withdrawn with liberty to seek restoration in case the effort to settle in terms of Section 12A does not happen.

Now this Restoration Application is filed claiming that Section 12A effort has not succeeded and copy of Order passed in IA No.196, 265, 266, 269 of 2021 in CP(IB) No.503 of 2019 is filed and the concluding portion of the Order reads as under:-

**“33.** In view of the facts of the case and applicable legal position, we hold that IA 196 of 2021 is liable to be dismissed. We order accordingly. We further order that Interim Resolution Professional shall proceed with the CIRP with full force as per provisions of CODE r.w. Regulations made thereunder. Stay on the constitution of Committee of Creditors and CIRP is set aside. The IRP shall constitute Committee of Creditors without any further delay. In case of any non-cooperation, the IRP should make all efforts at his end in terms of powers given to IRP under the CODE at the first instance and, in case, desired results are not achieved, he may approach this Forum.

- 34.** Thus, IA 196 of 2021 stands dismissed and disposed of.
- 35.** Other IAs including IA 265 of 2021, IA 266 of 2021 and IA 269 of 2021 stands disposed of accordingly in terms of our order in IA 196 of 2021.
- 36.** Urgent certified copy of this order, if applied for, be issued upon compliance with all requisite formalities to all concerned parties. However, copy of this be supplied to IRP forthwith.”

The learned Counsel for the Applicant/ Appellant is submitting that the Appeal deserves to be restored. The Learned Counsel is also critical of the observations made by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench) in this Order passed on 13<sup>th</sup> April, 2021 by the Adjudicating Authority in the various IAs. It is being submitted that heaven would not have fallen if the IRP would have waited for constitution of COC (Committee of Creditors) as already this matter was mentioned yesterday for listing as the filing process was yet to be completed.

The Learned Counsel for IRP submits that the CIRP is already much delayed and that after the Impugned Order was passed, the IRP has constituted the COC.

The Learned Counsel for the Applicant/Appellant is submitting that the COC has not been duly constituted and required Financial Creditors have not been included.

Considering the Order dated 13<sup>th</sup> April, 2021 passed by the Adjudicating Authority (copy of which is filed with Restoration Application No.02 of 2021) in view of the liberty given to the Appellant when we passed Order dated 26<sup>th</sup> March, 2021, we recall the said Order dated 26<sup>th</sup> March,

2021, with regard to disposing the Appeal as withdrawn. We restore Company Appeal (AT) (Ins) No.235 of 2021 to the file.

Parties in the Company Appeal (AT) (Ins) No.235 of 2021 should file their Replies with regard to the merits of the Appeal within two weeks. The Appellant herein may file Rejoinder, if any, within a week thereafter.

As regards, the prayer made in the Restoration Application to stay the original Impugned Judgement dated 1<sup>st</sup> March, 2021 against which Company Appeal (AT) (Ins) No.235 of 2021 is pending, we do not think that there should be any such stay to the admission Order dated 1<sup>st</sup> March, 2021.

The Learned counsel for the Applicant/Appellant is submitting that the further proceedings in CIRP may be stayed as COC has been hurriedly formed. Considering the aims and objects of the Insolvency and Bankruptcy Code, 2016 (IBC - in short) and the fact that even if COC had been formed, the doors of Section 12A of IBC still remain open in case parties are able to make out a case, we do not intend to stay the further proceedings of CIRP as well as further steps after formation of COC. As regards the submissions made with regard to the Judgement dated 13<sup>th</sup> April, 2021, copy of which is filed with Restoration Application No.02 of 2021, if the Appellant is aggrieved, it would be a matter of separate Appeal if the Appellant is so advised.

The Restoration Application is disposed accordingly.

Company Appeal (AT) (Ins) No.235 of 2021 is listed on 12<sup>th</sup> May, 2021 'for admission (after Notice) hearing'.

Counsel for Applicant/Appellant submits that the Appellant would be filing separate Appeal with regard to the Orders passed as regards Section

12A of IBC within two days and the further proceedings with CIRP may be stayed.

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

[Dr. Alok Srivastava]  
Member (Technical)

*rs/md*