

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

MA NO. 3059/2019

IN

C.P. (IB) 1798/2018

Under section 9 of the IBC, 2016

Samarth Lifters Private Limited

.... Applicant

C.P. (IB) 1798/2018

Under section 9 of the IBC, 2016

**In the matter of:**

Samarth Lifters Private Limited

...Petitioner

V/s

DBM Geotechnics and Constructions Private  
Limited

... Corporate Debtor

**Order delivered on: 09.01.2020**

**Coram:** Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

**For the Operational Creditor/Applicant:** Ms Yasmeen M Sabir, Advocate

**For the Corporate Debtor:** Mr. Gaurav Joshi, Sr. Advocate a/w Mr. Dev Parek,  
Advocate; Mr. Hrishikesh Nandkarni, Advocate

**For the Intervenors:** Mr. Gautam Ankhad, Advocate; Mr. Shyam Kapadia,  
Advocate

**Per: Bhaskara Pantula Mohan, Member (Judicial)**

**ORDER**

1. This Miscellaneous Application No. 3059/2019 has been filed by the Samarth Lifters Private Limited under Section 12A of the Insolvency and Bankruptcy



Code, 2016 seeking permission to withdraw the Petition under Section 12A of the IBC, 2016 in view of the memorandum of settlement dated 06.09.2019.

2. By the order of this Hon'ble Tribunal dated 30.08.2019 CIRP was initiated against the DBM Geotechnics and Constructions Private Limited (Hereinafter referred to as the "Corporate Debtor") which was passed in view of the Petition filed by Samarth Lifters Private Limited (hereinafter called "Petitioner") under section 9 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.
3. Due to an inadvertent omission on the part of this Tribunal, even though the Petition filed under section 9 was admitted, moratorium was not initiated against the Corporate Debtor and no Interim Resolution Professional was appointed. In view of the same, since no IRP was appointed, CoC could not be formed.
4. Following Intervention Applications / Miscellaneous Applications have been filed by various creditors before the Tribunal, pleading a serious objection against the 12A Application for withdrawal filed by the Petitioner:

MA No. 3781/2019; MA No. 3782/2019; MA No. 3126/2019; MA 3834/2019;  
MA No. 4045/2019; MA No. 4019/2019; MA No. 3795/2019

5. It is argued by the Interveners that the Application filed under Section 12A seeking withdrawal should not be allowed because the order passed by this Tribunal admitting the Petition against the Corporate Debtor is *in rem* and not an order *in personam*. It is urged that the Petitioner should only be allowed to withdraw this Application once the Corporate Debtor may have settled with all the other Creditors.
6. The Counsel representing the Corporate Debtor argues that the contentions of the Interveners cannot be accepted. Reliance has been placed on **Swiss Ribbons Pvt Ltd Vs Union of India (2019 SCC Online SC 73)**:

"It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a committee of creditors is constituted (as per the



timelines that are specified, a committee of creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). **We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement.** This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.”

It is argued that Insolvency against the Corporate Debtor has not yet been initiated. It is submitted that in this case since no IRP has been appointed as on date, therefore, the insolvency commencement date has not yet arrived.

7. Herein, it is important to note that due to an inadvertent omission by this Tribunal, the Corporate Debtor and the Petitioner cannot use it to their advantage. Therefore, we place reliance on Hon'ble Supreme Court in the case of **Alchemist Asset Reconstruction Company Ltd. Vs Hotel Gaudavan Pvt. Ltd. & Ors.** wherein it was held as follows:

**“The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14 (1) (a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors.”**

Therefore, it is a settled law that as soon as the Petition against the Corporate Debtor is admitted, the moratorium is automatically initiated.

8. The Corporate Insolvency Resolution Process against the Corporate Debtor was initiated as on 30.08.2019 and the moratorium had also started, rendering all the other petitions filed by rest of Creditors as infructuous. Hence, in this case based on the facts & circumstances if the Application under section 12A of the Code for withdrawal is allowed, it would cause heavy prejudice to the rest of the Creditors. Therefore, based on the above discussion Miscellaneous Application No. 3059 of 2019 is disposed off as dismissed.



Sd/-  
**V. NALLASENAPATHY**  
Member (Technical)

Assistant Registrar

Sd/-

**BHASKARA PANTULA MOHAN**  
Member (Judicial)

Assistant Registrar  
National Company Law Tribunal Mumbai Bench

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**  
**SPECIAL BENCH**

1. M.A. 4045/2019
  - M.A. 4019/2019
  - M.A. 3834/2019
  - M.A. 3795/2019
  - M.A. 3781/2019
  - M.A. 3782/2019
  - M.A. 3126/2019
- IN

C.P.(IB)-1798(MB)/2018

CORAM :SHRI BHASKARA PANTULA MOHAN, MEMBER (J)  
SHRI V.NALLASENAPATHY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **09.01.2020**

NAME OF THE PARTIES: Samarth LifetersPvt.Ltd.

V/s

DBM Geotechnics & Constructions Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

**M.A. 3059/2019**

The registry has mistakenly not listed this application, the same is taken on board, this M.A. is dismissed, vide separate orders.

**C.P. 1798/2018**

This Bench hereby appoints Mr. Naren Sheth, Office at 1014-1015, Prasad Chamber, Tata Road No. 1, Opera House, Charni Road (East), Mumbai 400 004 having Registration No. IBBI/IPA-001/IP-00133/2017-2018/10275 as an



interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

**M.A. 4045/2019**

**M.A. 4019/2019**

**M.A. 3834/2019**

**M.A. 3795/2019**

**M.A. 3781/2019**

**M.A. 3782/2019**

**M.A. 3126/2019**

In view of appointment of IRP, all the above MA's are dismissed as infructuous.

The learned senior counsel for the corporate debtor seeks for stay of this order for a period of two weeks and the same is rejected.

SD/-

V.NALLASENAPATHY  
Member (Technical)

/SUNIL /

SD/-

BHASKARA PANTULA MOHAN  
Member (Judicial)



Certified True Copy  
Copy Issued "free of cost"  
On 29.01.2020  
  
Assistant Registrar  
National Company Law Tribunal Mumbai Bench