

## Learning Curve-1027

March 01, 2024

**Application for withdrawal of CIRP is to be necessarily filed by the Applicant who have initiated CIRP against the CD under Sec 7/9/10 of the IBC.**

CASE TITLE	JoinUp Corporation Vs. Mr. R. Sugumaran & Ors.
CASE CITATION	Company Appeal (AT) (CH) (Insolvency) No. 51/2023
DATE OF ORDER	February 27, 2024
COURT/ TRIBUNAL	NCLAT, Chennai

### BRIEF FACTS:

The AA through the impugned order allowed withdrawal of CIRP against the CD Safire Machinery Company Pvt. Ltd. The appellant submitted that as per the provisions of Sec 12A of IBC, CIRP can be withdrawn only on the application of the applicant who had filed the application under Sec 7, 9 or 10.

### DECISION:

The Hon'ble NCLAT, Chennai held that,

*"We find that the proposal to file Form 'FA' and seek withdrawal of CIRP was considered as item no.5 in 5th CoC meeting held on 12.09.2022. Even in the said meeting Mr. Monish Surendran representing the operational creditor/appellant (Joinup Corporation) had submitted his objection on signing of Form 'FA' and on the non-consideration of interest portion due to the appellant in the admitted claims. The minutes also recorded that the Form 'FA' was submitted by Tamilnad Mercantile Bank Limited. Thus, the respondents were well aware that the applicant of the application under Section 9 of IBC, 2016 was not willing to sign Form 'FA' and that Form 'FA' has been signed by the Financial Creditor (Tamilnad Mercantile Bank Limited). The impugned order in Para-6 has recorded as under, which is not factually correct, as Form 'FA' was not signed or submitted by the Operational Creditor..."*

*The Adjudicating Authority has over looked and ignored the fact that Form 'FA' has not been signed by the applicant of application under Section 9 of IBC, 2016. No finding in this regard has been given in the impugned order..."*

*We hereby hold that the Form 'FA' was not proper, and was not as prescribed under the provisions of Regulation 30A of IBBI (CIRP) Regulations, 2016 and Section 12A of IBC, 2016 and hold that withdrawal of CIRP was not correct as per Law. The impugned order dated 09.11.2022 is set aside."*