

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

IA 430 of 2019 in C.P. (I.B) No. 224/9/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.10.2019**

Name of the Company: Harmony Multimedia Pvt Ltd  
V/s  
Karington Club and Resort Ltd & Anr

Section of the Companies Act : IA For Withdrawal of Main Admitted Petition

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
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**ORDER**

None for the parties.

The case is fixed for pronouncement of order.

The Order is pronounced in the open court, vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 16th day of October, 2019.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**Interlocutory Application No.430 of 2019**

**In**

**CP (IB) No.224/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Harmony Multimedia Private Limited**

(Operational Creditor)

905, Vishwakarma Arcade

Majura Gate, Ring Road

Surat-395 003, Gujarat

..... Applicant

***Versus***

**1. M/s. Karington Club and Resort  
Limited**

(Corporate Debtor)

Shop No.415, Silver Stone Arcade

Singapore Causway Road

Katargam

Surat-395 004

**2. Shri Manish Kumar Bhagat**

(Interim Insolvency Resolution  
Professional)

104, Panchdeep Complex

Mithakhali Six Road

Navrangpura

Ahmedabad

.....Respondents

Order delivered on 16<sup>th</sup> October, 2019.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)**

**And**

**Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Mr. Dhiren R. Dave, PCS, for the Applicant.




**ORDER**

[Per: Mr.Harihar Prakash Chaturvedi, Member (J)]

1. The present application is filed by the Operational Creditor under Section 12A of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'I & B Code') seeking withdrawal of IB Petition, i.e., CP (IB) No.224 of 2019, and for recalling the process of Corporate Insolvency Resolution in respect of the Corporate Debtor. The same was initiated vide this Court's order dated 10.07.2019, admitting the IB petition and by declaring Moratorium, in respect of M/s. Harmony Multimedia Private Limited and, thus, appointed the Interim Resolution Professional (IRP).
2. It is submitted that the corporate debtor made approach to the applicant and gave certain cheques and requested the applicant to withdraw the present IB Petition. It is stated that entire settlement amount of Rs.19,94,800/- has been agreed to be paid through post-dated cheques. The particulars thereof are described as under;

Sr. No.	Cheque No.	Amount	Date of Cheque
1	000382	2,83,333	17.07.2019
2	000380	2,18,300	17.07.2019
3	000390	76,500	17.07.2019
4	000383	2,83,333	15.08.2019
5	000384	2,83,334	15.09.2019

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6	000386	2,83,333	15.10.2019
7	000389	2,83,333	15.11.2019
8	000388	2,83,334	15.12.2019

Total : Rs.19,94,800/-

3. The applicant in the present application has annexed with a copy of the undertaking given by the corporate debtor. The relevant paragraphs, i.e. 2,4,5,7,8,9 & 10, of such undertaking given are narrated as under;

- 2 The amount claimed in the present proceedings by the Applicant from the Corporate Debtor is Rs.20,30,843.75 (the principal amount of Rs.17,00,000/- and Rs.3,30,843.75 is the amount of interest calculated @2.5% per month from date of each outstanding invoice till the filing of the above petition.
- 4 The Corporate Debtor hereby admit and acknowledged that the debt was due and hereby proposes to settled the same by making payment of Rs.19,94,800 by way of current as well as postdated cheques as detailed below.
- 5 Accordingly, the Corporate Debtor had signed, executed and handed over eight different Account Payee Cheques drawn in favour of the Applicant, the description of which are as under:-

Sr. No.	Cheque No.	Amount	Date of Cheque
1	000382	2,83,333	17.07.2019
2	000380	2,18,300	17.07.2019
3	000390	76,500	17.07.2019
4	000383	2,83,333	15.08.2019
5	000384	2,83,334	15.09.2019
6	000386	2,83,333	15.10.2019
7	000389	2,83,333	15.11.2019
8	000388	2,83,334	15.12.2019

- 7 The first payment as per above schedule of payment shall be made on 17.07.2019. The Corporate Debtor undertakes



that each and every Cheque mentioned hereinabove towards payment of the total outstanding dues of Rs.19,94,800/- would be honoured on presentation of each cheque on its due date, as mentioned in each Cheque.

- 8 The Corporate Debtor agrees that in case of any single default committed by the Corporate Debtor or in case of dishonour of any single Cheque for whatsoever reason, the Corporate Debtor is liable to make immediate payment of the remaining outstanding amount to the Applicant.
- 9 On failure of the Corporate Debtor to immediately make the payment of the remaining outstanding amount to the Applicant as aforesaid, the balance amount that remains outstanding shall be payable by the Corporate Debtor to the Applicant along with interest @2.5% per month as claimed in the present petition.
- 10 The Corporate Debtor undertakes to abide by the schedule of payment as aforesaid to the Applicant. The Corporate Debtor also agrees that in case of any single default in making the aforesaid payment/s on its due date/s or in case of dis-honour of any single cheque mentioned hereinabove, the Applicant is entitled to approach this Hon'ble Tribunal and file Company Petition under Insolvency and Bankruptcy Code, 2016 against Corporate Debtor before this Hon'ble Tribunal and is also entitled to proceed further with the same in accordance with law and we will not take any objection or defense against this admitted debt. The Applicant is also entitled to other legal remedies available under the Law against the Corporate Debtor in order to recover the outstanding amount together with interest @2.5% per month on the amount as claimed in the present petition.

4. During the course of argument, our attention is drawn to the judgment of the **Hon'ble Supreme Court in the matter of Swiss Ribbons vs. Union of India** (Writ Petition (Civil) No.99 of 2018 decided on 25.01.2019). For the sake of convenience, the relevant paragraph of the same Judgment is being reproduced herein below;

"52. 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

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*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".*

5. On the strength of such judicial precedent, the applicant has now contended that this Adjudicating Authority has been conferred with necessary power and jurisdiction to permit the applicant to withdraw this IB Petition at post admission stage even without seeking consent of the CoC and its members.
6. The applicant further placed reliance on another decision of Hon'ble NCLAT in the matter of **Ashish Garodia vs. Impact Event Management &Anr.** in Company Appeal (AT) (Insolvency) No.67 of 2019, wherein Their Lordships have been pleased to permit withdrawal of a IB Petition at post admission stage by observing as such;

4. *In spite of service of notice, the 'Interim Resolution Professional' has not appeared but it is informed that the 'Committee of Creditors' has been constituted on 5th February, 2019, i.e. after issuance of the notice to the parties.*

5. *Having heard learned counsel for the parties and taking into consideration the fact that there is a 'pre-existence of dispute', we hold that that the application under Section 9 was not maintainable. Further, before the constitution of the 'Committee of Creditors', the parties having settled the matter. It is a fit case to accept the settlement. For the reasons aforesaid, we set aside the order dated 14th January, 2019.*



*7. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned.*

7. By following the above referred judicial precedent, the petitioner has contended that the present matter has also been settled much prior to the constitution of CoC. Hence, such settlement deserves to be accepted and the CIRP to be recalled. The petitioner further makes clear that such settlement for withdrawal of the IB Petition will no manner affect the right of the other Financial Creditor(s), if any, in respect of the Corporate Debtor as they are still entitled to move fresh IB Petition against it, if they desire so. Hence, it is expedient in the interest of justice, this Adjudicating Authority should permit post-admission withdrawal of the present IB Petition and to recall the CIRP.
8. It is reported that the IRP is having no objection for allowing the present application, i.e., for recalling of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor company, viz. M/s. Harmony Multimedia Private Limited, filed under Section 12A of the I&B Code.
9. We duly considered the above stated submission of the PCS for the Applicant. It is now undisputed position in the matter that the present application for settlement was filed on 19<sup>th</sup>





July, 2019 before this Adjudicating Authority, which was soon after the date of admission, i.e., 10.07.2019, but prior to the constitution of the CoC.

10. We heard the PCS for the Petitioner-Operational Creditor and also the IRP.
11. By considering the above given facts and circumstances of the present case in the light of above referred judicial precedents, it is matter of record that the Operational Creditor has moved this withdrawal application by settling its dues for an amount of Rs.19,94,800/- (Rupees Nineteen Lakh Ninety Four Thousand Eight Hundred only) as full and final settlement has been arrived at between <sup>the parties</sup> prior to the formal constitution of the CoC. Therefore, this Adjudicating Authority is bound by the above referred decision of Hon'ble Supreme Court in **Swiss Ribbons vs. Union of India** read with the decision of Hon'ble NCLAT in **Ashish Garodia vs. Impact Event Management & Anr**, to accept such settlement at the post-admission of the present IB Petition. Hence, it is hereby accepted. The present IA is allowed.
12. Notwithstanding the above, it is expedient to issue necessary direction to the Petitioner-Operational Creditor and Corporate Debtor jointly or severally to bear the fee of the IRP and CIRP cost as incurred by the present IRP, which shall be



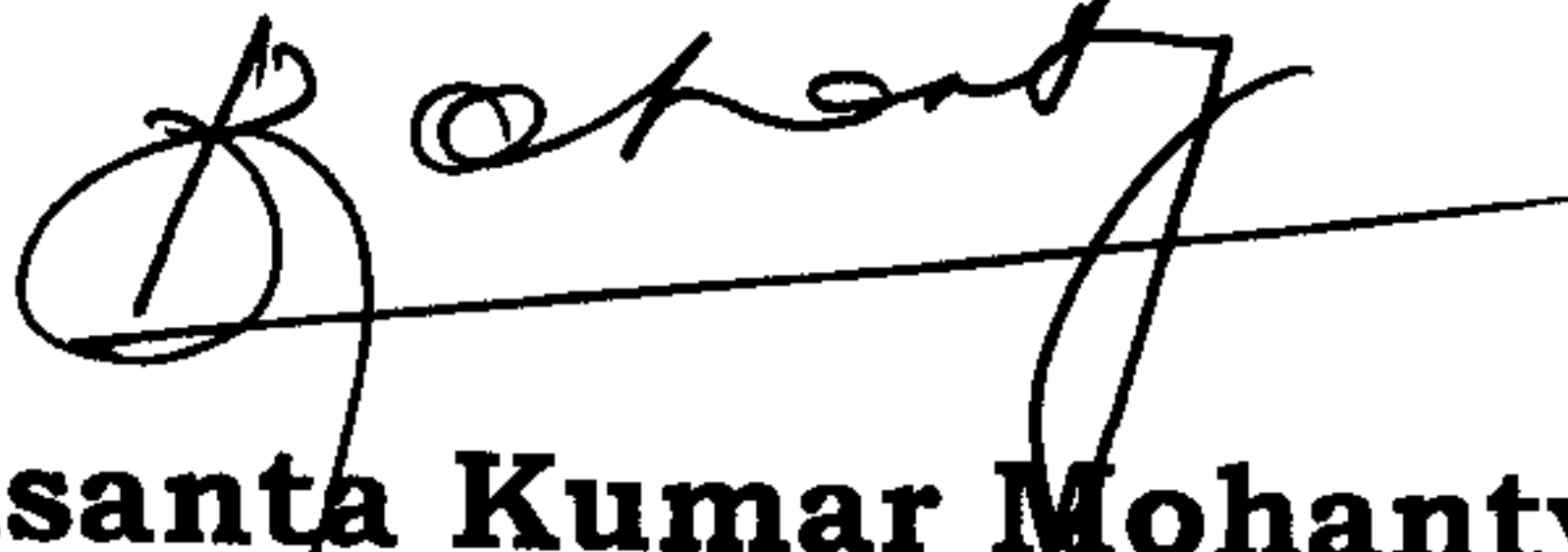
prerequisite for approval of the present settlement. In view of this, the Petitioner as well as Corporate Debtor company is hereby directed to make payment of fee Rs.50,000/- (Rupees Fifty Thousand only) to the IRP along with reimbursement of actual expenses, if any, incurred by the IRP towards cost of the CIRP , i.e. administrative expenses, etc.


13. The amount of the above stated cost will be payable to the **IRP** within four weeks, by the petitioner and corporate debtor jointly or severally, from the date of receipt of an authentic copy of this order. They shall furnish proof of payment through the IRP to the Registry of this Tribunal, thereafter, the present IA deemed to be allowed.
14. It is further made clear that in case such payment is not made within the stipulated period nor is extended by this Adjudicating Authority, then the IRP shall be at liberty to approach this Adjudicating Authority for non-payment of his fees of Rs.50,000/- (Rupees Fifty Thousand only) as stipulated.
15. With the above stated observations/conditions, present Interlocutory Application No.430 of 2019 in CP(IB) No.224/9/NCLT/AHM/2019 is conditionally allowed and stands disposed of.

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16. Consequently, CP (IB) No.224/9/NCLT/AHM/2019 stands disposed of as withdrawn.

  
(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member (Technical)

  
(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member (Judicial)

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