NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

6. MA 1584/2019
In
C.P(IB)1741(MB)/2017

CORAM : SHRI V.P. SINGH, MEMBER (J)

SHRI V. NALLASENAPATHY, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **30.04.2019**

NAME OF THE PARTIES: Secon Private Limited

v/s.

Pan India Infraprojects Limited

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

MA 1584/2019

This is an application filed by the Applicant/Petitioner in CP No. 1741 of 2017 seeking for withdrawal of this Petition on the ground that the matter has been amicably settled between the parties and they have also filed the consent terms executed between the parties dated 30.04.2019. The Counsel for the Petitioner submits that they have received a sum of Rs. 1.15 Crores by way of five Demand Drafts.

The IRP is also present and he submits that no advertisement has been given and consequently there is no constitution of COC.

The Hon'ble Supreme Court in the matter of "Swiss Ribbons Pvt. Ltd. & Another Vs Union of India & Others" at Para 52 of the order held as below:-

> "*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 101 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."

In view of the order of the Hon'ble Supreme Court, this case is a fit case for the Adjudicating Authority to invoke Rule 11 of NCLT Rules and accordingly this application is allowed and the Order of CIRP passed in this Petition is recalled and the IRP is discharged from his duties.

Accordingly, the Application is allowed and the CP No. 1741 of 2017 is dismissed as withdrawn.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

/NP/