

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

ITEM NO :7

**ATTENDENCE - CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.07.2020**

**NAME OF THE COMPANY : MANOJ KUMAR DAS V/S HORIZON DWELLING
PVT LTD**

SECTION :Rule 11 of NCLT Rule R/w 12A of IBC

**PRESENT : HON'BLE MR. JUSTICE (RETD.) RAJESH DAYAL KHARE,
MEMBER (J)**

**COUNSEL FOR PETITIONER : SH. SOUMYA ROOP SANYAL, SH.
KARTIKEYA SARAN**

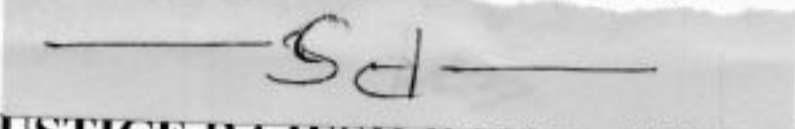
COUNSEL FOR THE IRP :SH. ABHIMAN SINGH

IA NO. 142/2020 IN CP NO. (IB) 290/ALD/2019

Order pronounced through Video Conferencing.

Application allowed, Petition disposed off, vide separate order sheet.

Dated : 08.07.2020


**JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)**

*Typed by :
Shubham Kr Singh
(PS)*

IN THE NATIONAL COMPANY LAW TRIBUNAL AT ALLAHABAD

IA NO. 142/2020 IN CP NO. (IB) 290/ALD/2019

Rule 11 of NCLT Rule R/w 12A

IN THE MATTER OF:

MANOJ KUMAR DAS.....APPLICANT

VS.

HORIZON DWELLING PVT LTD.....CORPORATE DEBTOR

ORDER RESERVED ON: 29.06.2020

ORDER DELIVERED ON: 08.07.2020

CORAM: Justice(Retd) Rajesh Dayal Khare, Member(Judicial)

**COUNSEL FOR THE PETITIONER :SH. SOUMYA ROOP SANYAL
AND SH. KARTIKEYA SARAN.
COUNSEL FOR IRP : SH. ABHIMAN SINGH**

Per se: Justice(Retd) Rajesh Dayal Khare, Member(Judicial)

ORDER

Heard Sh. Kartikeya Saran, alongwith Sh. Soumya Roop Sanyal, Advocates for the Applicant/Suspended Director, Sh. Nirnay Gupta, Advocate for the Operational Creditor and Sh. Abhiman Singh alongwith Sh. Sanjay Singh, Advocate for the IRP who are present through Video Conferencing.

The present Interlocutory Application No. 142/2020 has been filed on behalf of the Suspended Ex-Director of the Company under Rule 11 of NCLT Rule R/w 12A of IBC for withdrawal of the Insolvency Resolution Process initiated against the Horizon Dwelling Pvt Ltd/ Respondent.

It is contended that the petitioner had filed Company Petition (IB) 290/ALD/2019 under Section 9 of IBC read Rule 6 of the Insolvency and Bankruptcy Rule, 2016 before this Court and vide order dated 10.06.2020 this Court had allowed the application for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor (hereinafter referred to as the Respondent). Pursuant to the aforesaid order dated 10.06.2020, the IRP published a paper announcement under Regulation 6 of the IBC Regulations, 2016 inviting all creditors of the Corporate Debtor in National Dailies of Hindi and English.

It is further contended that on 16.06.2020, the Applicant and Petitioner entered into a settlement agreement by which the Applicant paid Rs. 27,50,000/ with

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a specific recital in the settlement that both the parties have jointly agreed to pay the IRP cost.

It is argued that the on 17.06.2020, the Respondent (Corporate Debtor) filed Company Appeal (AT) (Insolvency) No. 567 of 2020 before the Hon'ble NCLAT, New Delhi and the Hon'ble Tribunal vide order dated 25.06.2020 give liberty to the Respondent to approach this Court to pass appropriate order pursuant to the settlement agreement reached between the parties and hence the present application has been filed.

Sh. Sanjay Kumar Singh, Ld. counsel has put in appearance on behalf of the IRP and submitted his first progress report and has prayed that permission of continuance of CIR Process be granted in the larger interest of all stakeholders i.e. Financial Creditor, Home Buyers, unpaid employees and other creditors who have preferred the claim, therefore, prayed that the present application be not allowed.

It is not disputed by Sh. Singh that till date CoC has not been constituted.

This petition has been filed on behalf of Mr. Manoj Kumar Das in his individual capacity for his individual default and now the matter has been settled between him and the Respondent.

Learned counsel for the Applicant(Respondent) has placed reliance upon the judgment of the NCLAT, New Delhi passed in company Appeal (AT) (Insolvency) No. **119/2020** in the matter of Gajendra Sharma vs. M/s Dinesh Sanitary Store and its dated 03.02.2020 and placed reliance on para 3,4 and 5 of this judgment.

It is further argued on behalf of Suspended Management placing reliance on para 5 of the aforesaid judgment of the Hon'ble NCLAT, wherein it has been held that although the CoC was constituted on 21.01.2020 when the matter was had come up before the Tribunal on 23.01.2010, the fact of prior settlement was brought to the notice of the Tribunal. It appears that the Financial Creditor Prema Gupta has filed Intervention Application and filed claim with the IRP but the Hon'ble NCLAT disposed of the appeal on the basis of the compromise entered into between the parties and it was opined that it will be open for the Financial Creditor namely Ms. Prema Gupta to initiate proceedings of her own.

It is thus argued on behalf of the Applicant that in the present case the individual petition filed for the individual claim is settled between the parties and therefore the same cannot be made to continue for other stakeholders who may initiate the legal remedy as is open to them.

In view of the above, I find no merit in the submission made by the Ld. counsel for the IRP.

Learned counsel for the Appellant also states that settlement has been reached between the parties.

As the claim of the petitioner is fully satisfied, in view of the same it is prayed that the CIR process be terminated.

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Keeping in view, the decision of the Hon'ble Apex Court in the matter of 'Swiss Ribbons Pvt. Ltd. & Anr. V.s Union of India & k Ors' W.P (C) 99/2018, since a settlement has been effected before the constitution of any COC, there is no legal impediment in terminating the CIR Process.

Accordingly, the CIR Process stands terminated. The Corporate Debtor is released from the rigorous of the moratorium and is permitted to function through its own Board subject to payment of CIRP dues to the IRP by the parties. Accordingly, the petition stands disposed off. File be consigned to record room.

— Sd —

Dated : 08.07.2020

JUSTICE RAJESH DAYAL KHARE
(MEMBER JUDICIAL)

Typed by :
SHUBHAM KR SINGH
(PS)