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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 28-02-2020

PRESENT: SHRI R.VARADHARAJAN, MEMBER-JUDICIAL
SHRI ANIL KUMAR B, MEMBER - TECHNICAL

APPLICATION NUMBER : IA/(IB)/245/2020 IN
PETITION NUMBER : CP/636/IB/2019
NAME OF THE PETITIONER(S) : G.BALASUBRAMANIAM (SHREE MURUGAN
FLOUR MILLS PVT LTD)
NAME OF THE RESPONDENT(S) : MRS.RAJASHREE SANTHANAM & 1 ANOTHER
UNDER SECTION : SEC 9 RULE 6 OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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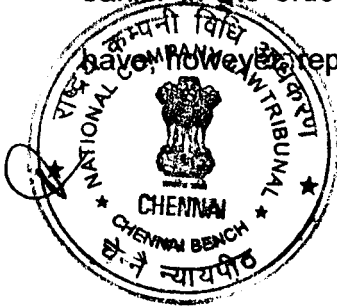
REPRESENTATION FOR WHOM

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|----|---------------------|---|---------------|
| 1. | B. R. Shankarshivan | Counsel In Petition /
Operational Creditor | Shankarshivan |
| 2. | S. Manjula Devi | FOR ASR & CO | Manjula |
| 3. | Rajashree S. | I R A R, | Rajashree |



ORDER

This is an Application moved by the parties to withdraw the Company Petition namely CP/636IB/2019 stating that a settlement has been arrived at between the parties, subsequent to the admission of the Petition and the initiation of the CIRP against the Corporate Debtor, on 22.02.2020 by entering into a Memorandum of Compromise. The settlement has been arrived at between the parties was also duly communicated to the IRP it is stated well before filing of this Application. However, in relation to the Application seeking for withdrawal of the Application ^{it} is filed under Rule 11 of the NCLT Rules, 2016, taking into consideration that the CoC has not been constituted subsequent to the admission and appointment of the IRP and relying on the judgment passed by the Hon'ble Supreme Court of India in the matter of Swiss Ribbons Pvt. Ltd. & Anr. versus Union of India & Ors. filed in Writ Petition (Civil) No. 99 of 2018. The IRP is present in person and represented that on 24.02.2020 itself the report has been filed by her and thereby bringing to the notice of this Tribunal about the constitution of the CoC comprising of Asset Recovery Management Branch, Indian Overseas Bank and Indian Overseas Bank, Large Corporate Branch and in the circumstances, since the CoC has been constituted and parties are not directly entitled to approach this Tribunal and if at all required, to be moved only after taking into consideration Section 12-A of IBC, 2016 as well as IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and thus it is required to approach before this Tribunal with the Application as already stated earlier in the order only with the consent of the IRP. The Counsel for the parties have, however, represented that even before the constitution of the CoC, for which a



the report had been filed by the IRP, it is represented by both the Counsels for the parties namely, Operational Creditor and Corporate Debtor that the IRP was duly intimated about the settlement as arrived at between the parties as at that point the committee of creditors was not constituted and the Application should have been filed seeking for withdrawal of the main Company Petition which it is represented by the Learned Counsel for the parties that the IRP has failed to do for whatever reasons known only to her.

It is seen from the recent decision as passed by this Tribunal in the matter of M/s. MOD Forge Pvt. Ltd. versus- M/s. Dhanyasree Precision Pvt. Ltd., in MA/1306/2019 filed in IBA/408/2019 rejecting the Application filed by the parties under Rule 11 of NCLT Rules, 2016 as well as in few other similar matters prior to the constitution of the CoC, the Hon'ble NCLAT has taken a contrary view in relation to the order passed by this Tribunal overruling the said decisions adopting a liberal attitude. Thus, taking into consideration that the Corporate Debtor should not be unnecessarily put into insolvency even though the Petition has been admitted and the CIRP has been initiated demonstrating the solvency of the Corporate Debtor by reaching a settlement. Thus this Application has been moved by the parties by arriving at settlement even before the constitution of the CoC even though it is opposed by the IRP. Learned Counsel for the parties with a view to negate the same produced an e-mail as communicated between the parties as well as to the IRP on 24.02.2020 at 10.30 A.M. to sustain the representation made by both the parties i.e., Operational Creditor and Corporate Debtor before this Tribunal, even though the same has not been filed along with the Application seeking for withdrawal. From the



said e-mail communication, it is evident that the Operational Creditor has duly communicated to the IRP to proceed in effect with the Application under Section 12-A of IBC, 2016 for withdrawal in view of the settlement. It is also further evident from the endorsement made by the Registry of this Tribunal that the report of the IRP in relation to the constitution of the CoC has been received vide diary No.1312 dated 24.02.2020 only at 15.11 P.M., which it is to be noted obviously subsequent to the receipt of the e-mail from the parties, namely, the Operational Creditor intimating the IRP to withdraw the main Company Petition. Taking into consideration the above facts as well as the established position of Law in light of the judgments of the Hon'ble NCLAT as well as the Hon'ble Supreme Court of India, this Tribunal which has inherent powers available to be exercised under Rule 11 of NCLT Rules, 2016 this Application under the circumstances is required to be allowed, CIRP which was initiated by this Tribunal against the Corporate Debtor is withdrawn as against the Corporate Debtor. In relation to the fees of the IRP, Learned Counsel for the Operational Creditors represents that the initial fee payment as directed by this Tribunal at the time of admission of the main Petition to the IRP will be duly remitted to the IRP in a sum of Rs.2,00,000/-, if sustained by invoice for fee payment and by furnishing the vouchers in relation to expenses incurred to the said effect to the Operational Creditor, including the fees which may be chargeable by the IRP. Further anything in excess which is claimed as payable to the IRP shall be paid by the Corporate Debtor if sufficient documents in this regard to sustain the claim of balance payment in excess of Rs.2 lakhs shall be paid by the Corporate Debtor.

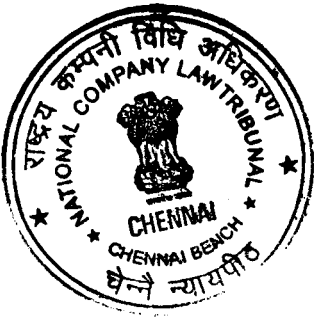
With the above directions, the Application stands disposed of.



The IRP on being discharged henceforth shall hand over all records and other assets in relation to the Corporate Debtor which has been taken possession of and the powers of the Board of Directors which were suspended by virtue of admitting the main Petition shall also stand restored to the Board of Directors as a consequence of this order.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)



Certified to be True Copy

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)


1/3/2021
N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
CHENNAI BENCH
CORPORATE BHAVAN, 3rd FLOOR
29, RAJAJI SALAI, CHENNAI-600001.