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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.03.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.243/7/HDB/2018
NAME OF THE COMPANY	MS Biotech Pvt Ltd
NAME OF THE PETITIONER(S)	Vijaynagar Sugar Pvt Ltd
NAME OF THE RESPONDENT(S)	MS Biotech Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
A. Venkatesh Sahithi Namula	Adv.	9676078105	Sahithi

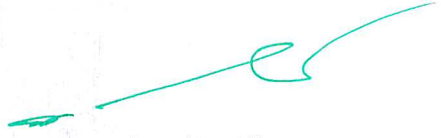
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Sridhar v.s.	IR P	sridharaema@gmail.com 9949551805	v.s. sridhar.
Y Suryanarayana	Adv.	9849866556	Y Suryanarayana

ORDER

IA No.246/2019, is taken up today.

IA No.246/2019, is allowed vide separate order.


Member(Judl)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No. 246/2019 in
CP (IB) No. 243/7/HDB/2018

U/s 7 of IBC, 2016
R/w Rule 11 of NCLT Rules, 2016

In the matter of

M/s. Vijayanagar Sugar Private Limited
Registered Office:
Plot No.359, Road No.80,
Jubilee Hills, Hyderabad- 500033.

... Petitioner/
Financial Creditor

VERSUS

M/s. MS Biotech Private Limited
Registered Office:
Plot No.64, Sagar Society, Road No.2,
Banjara Hills, Hyderabad- 500034.

...Corporate Debtor/
Respondent

Date of order: 28.03.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For the Petitioner: Shri A.Venkatesh, Advocate.

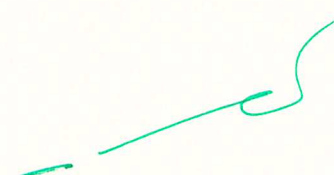
For the Respondent: Shri Y.Surya Narayana, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on: 28.03.2019



ORDER

1. IA 246 of 2019 is listed today. This Application is filed on behalf of Financial Creditor under Rule 11 of NCLT Rules, 2016 seeking permission for withdrawal of the Petition filed by Financial Creditor/Applicant herein under Section 7 of IBC, 2016 and also to set aside the order dated 15.03.2019 passed by this Tribunal in admitting the Petition and by setting aside the appointment of Interim Resolution Professional and to allow Board of Directors to function independently with immediate effect.
 2. Counsel for Applicant is present. Counsel for Corporate Debtor is also present. Mr. Sridhar Venkataraya Sundararaja, IRP is also present. Both the Counsels reported matter is compromised between the Financial Creditor and Corporate Debtor. Memorandum of Understanding is enclosed to the Application.
 3. Counsel for Applicant would contend that Tribunal has power under Rule 11 of NCLT Rules, 2016 to grant permission to the Applicant / Financial Creditor to withdraw the petition since CoC is not constituted. In this connection, Learned Counsel has relied on the decision of Hon'ble Apex Court in Swiss Ribbons Private Limited and Another Vs. Union of India, in
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Writ Petition (Civil) No. 99 of 2018 dated 25.01.2019 reported in 2019 SCC Online SC 73.

4. I have gone through the decision of Hon'ble Apex Court. Hon'ble Apex Court has held in para 52 of the Judgement as follows:

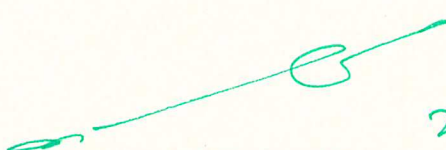
52. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the Adjudicating Authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted 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 100 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. Hon'ble NCLAT also held in IA 312 & 336 of 2019 in Company Appeal (AT) (Insolvency) No. 94 & 95 of 2019 between Jogendra Kumar Arora Vs Dharmender Sharma & Anr by relying on the decision of Hon'ble Apex Court in Swiss Ribbons Private Limited and Another Vs. Union of India and in exercise of inherent powers under Rule 11 of NCLT Rules, 2016, granted permission for withdrawal of the Application following settlement. Hon'ble NCLAT set aside the order of admission and dismissed the petition as withdrawn and orders of moratorium and appointment of IRP were also set aside and Company is allowed to function independently with its Board of Directors.
 6. I have gone through the decision of Hon'ble NCLAT and the decision of Hon'ble Apex Court in Swiss Ribbons Private Limited and Another Vs. Union of India. IRP is present. He reported CoC is not yet constituted. Hence, the Tribunal can exercise powers conferred under Rule 11 of NCLT Rules and permission can be granted to Financial Creditor to withdraw the petition.
 7. Accordingly, permission is granted to the Financial Creditor to withdraw the petition by exercising powers under Rule 11 of NCLT Rules and order of this Tribunal dated 15.03.2019 is set aside and CP (IB) No. 243/7/HDB/2018 is dismissed as settled.
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However, withdrawal of the Application does not affect the rights of other Creditors, if any. Secondly, the appointment of IRP is set aside including moratorium and Board is directed to function independently with immediate effect.

- 8.** It is also brought to my notice that IRP has engaged professional agency to assist him during CIRP and fee is payable to the agency. Counsel for Corporate Debtor undertakes to pay the same. It is hereby ordered the same will be paid by the Corporate Debtor within two weeks.
- 9.** In the result IA 246/2019 is allowed accordingly and order dated 15.03.2019 is set aside. The settlement memo is recorded.
- 10.** This Application is disposed of with above directions.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

28.3.19

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