

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


**IA 32 of 2020 in C.P(IB) No.526/NCLT/AHM/2018**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.01.2020**

Name of the Company: Chandra Prakash Jain RP For Hillary  
Fashion Cotfab Ltd

Section of the Companies Act : Section 12A r.w 30A of the Insolvency and  
Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NIKITA C. JAIN	ADV	FOR THE APPLICANT	
2.				

**Order**

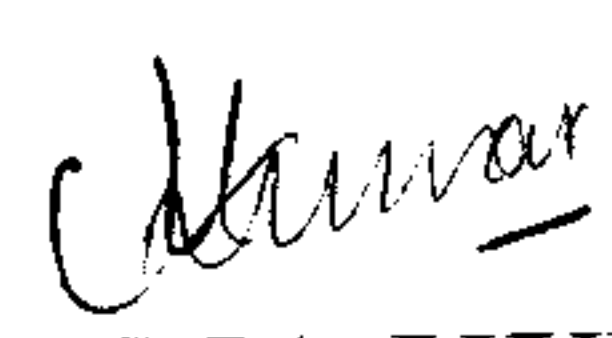
The Applicant is represented through learned counsel.

Heard the arguments.

The detailed order is passed vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 09th day of January, 2020

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. The instant application is filed under section 12A of the IB Code r.w. Regulation 30A of CIRP Regulations, 2016 through IRP for withdrawal of C.P. (I.B) 526/2018.
2. The learned lawyer appearing for the RP is present and submitted that the C.P. (I.B) 526/2018 was filed under section 7 of the IB Code by the Bank of Baroda for non-payment of debt of Rs. 6,46,18,619/- by the Corporate Debtor and accordingly, this bench has admitted the said application on 23.10.2019 by appointing IRP with a direction to take necessary action in accordance with the code.
3. The IRP received the instant order on 31.10.2019 and in compliance of the said order has taken steps as per section 13, 15 and other relevant provisions of the Code r.w. Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The IRP has also made a public announcement on 01.11.2019 in Business Standard Newspaper (English) and Divya Bhaskar Newspaper (Gujarati), inviting claims from the creditors of the Corporate Debtor.
4. Thereafter, the Applicant as per section 21(1) of the Code r.w. Regulation 17(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 constituted COC on 21.11.2019 consisting the Financial Creditor i.e. Bank of Baroda being the sole creditor.

The first COC meeting was to be held on 28.11.2019, however, the same was postponed to 29.11.2019. Accordingly, the Applicant apprised the COC member that no claim was received from the Operational Creditor as on that date.

5. In the first meeting of the COC, the IRP/Applicant raised his concerned that the Suspended Management is not cooperating with the Applicant. Although

*Shalika Hegde*

*Manorama*

several letters were issued to the Suspended Management, which is reflected as per **Annexure D**. The Applicant further submitted that he along with his team visited the factory premises (which is not registered on the MCA website) located at Opp. Hotel Cosy, Narol, Ahmedabad Gujarat on 07.11.2019 but he found that there was no name/board of the Corporate Debtor at the gate of the factory and named as M/s Vartex Cotfab Limited, which was displayed at the front of the factory premises and Mr. Kailash Gupta and Mr. Sanjeev Agrawal (Lessor of the Land) were present at the factory site. In view of that, the Applicant could not contact the Suspended Management, which said fact has been informed to the COC.

6. Meanwhile, as stated by the RP, the representative of the Bank of Baroda in the first meeting of the COC shown their desire to withdraw the instant Application under section 12 A of the Code. Accordingly, the Applicant suggested Bank of Baroda, COC member (having 100% voting share) to submit an application in the prescribed format with prescribed procedure Regulation 30A (amended on 25.07.2019) if CIRP Regulation, 2016. The Applicant also sought the reason for withdrawal to which the representative of the sole COC member assured to submit the explanation in this regard, however, has failed to give any reason and further authorised the Applicant to file a withdrawal application and Accordingly, COC passed a resolution with 100% votes in favour of withdrawal. The said resolution is annexed as **Annexure F**.
7. Heard the RP, also seen the records. It is found that, C.P. (I.B) 526/2018 was admitted on 23.10.2019 appointing the IRP, as proposed by the Financial Creditor. On his appointment, the IRP has performed the necessary duties so as to collate the information by making a public announcement. Since, no claim has been received, the IRP has informed the fact to the COC by constituting the COC, in its first meeting. It is also found that the IRP has made all effort to gather the information from the Suspended Management and has also visited with his team to the factory premises but nothing was found therein rather the board reflected the name of some other company. Finding no alternative, the IRP has appraised the fact to the COC who is the

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sole member. Then the COC has decided to withdraw the instant application and has not given reason for such withdrawal.

8. On perusal of the records, it is found that COC in its application under section 7 of the IB Code, has admitted that they have initiated proceeding before the DRT under SARFAESI Act on becoming NPA of the Corporate Debtor's Account some time in 2015. The COC in its resolution has not shown the cause of withdrawal rather they have also resolved to pay the fee, cost and expenses of the IRP. It is surprising to know that in paragraph 16 of the application it is written viz. reproduced hereunder:

*"That the Applicant herein submits that in accordance with the direction and Resolution passed by the sole COC member, the Applicant is hereby filing the present application. That the Applicant submits that the pending CIRP cost as on the present date is Rs. 2,75,000/- out of which the COC has made payment of Rs. 3.00 lakhs. The Applicant submits that the COC has passed a Resolution no. (iv) accordingly to which COC undertakes to pay the pending CIRP cost."*

On plain reading of the paragraph 16, it is difficult to understand that how the COC has made a payment of Rs. 3 lakhs out of Rs. 2,75,000/-.

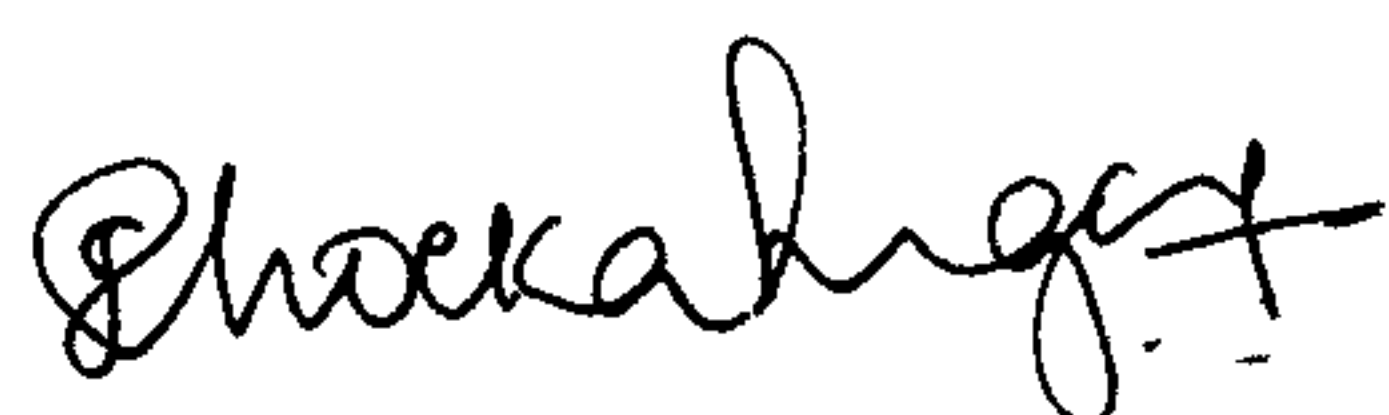
9. Further, the COC has also not clarified the reason why they have passed a resolution to withdraw the application so filed under section 7 of the IB Code which was admitted at the instance of the Financial Creditor. Under such circumstances we feel that the proceeding under section 7 of the IB Code has been initiated fraudulently, which is clear from the own admission of the Financial Creditor that they have already initiated the SARFAESI proceeding on the declaration of the NPA of the Corporate Debtor account sometime in 2015 much prior to the filing of section 7 Application. If that would have been the situation, it is not expected from the Financial Creditor to file section 7 application, when they have already initiated SARFAESI proceeding as admitted by the Financial Creditor and now when nothing

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remained to be realized, the Financial Creditor filed an application for withdrawal of the C.P.(I.B) 526/2018. The filing of the Application under section 7 is nothing but misuse, not only, of the process of law but other resources are also misutilised, causing loss to the Government exchequer.

10. Accordingly, the instant application is allowed and IRP/RP is discharged.



**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 09th day of January, 2020



**MANORAMA KUMARI**  
**MEMBER JUDICIAL**