

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

IA 20 of 2020 in
C.P.(I.B) No. 463/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.05.2020**

Name of the Company: Sumit Shah RP Shree Sachidanadn
Industires Pvt Ltd

V/s

Prabhakar Processors Pvt Ltd

Section :

Section 12(A) r.w 60(5) IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

Advocate, Mr. Tirth Nayak is present on behalf of the Applicant.
The Order is pronounced in the open court vide separate sheet.


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 26th day of May, 2020

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

IA 20 of 2020

In

C.P.(IB) No. 463/NCLT/AHM/2018

In the matter of:

Sunit Shah, IRP of Shree Sachidanand Industries Pvt. Ltd.,
3rd Floor, Abhijeet-1, Mithakhali six road,
Navarangpura, Ahmedabad-380009

Applicant

Versus

Prabhakar Processors Pvt. Ltd.,
Plot No. 13, 14, Block No. 296 & 313,
Village Tantitjaiya,
Tal- Palsana, Surat.

Respondent

Order delivered on 26th May, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (Judicial)

ORDER

- 1) The instant case is assigned to the undersigned by the Hon'ble President, NCLT for disposal vide order dated 11.03.2020 having file no. 10/03/2020-NCLT on being difference of opinion while passing the order by Hon'ble Member (Judicial), Mr. Harihar Prakash Chaturvedi and Hon'ble Member (Technical), Mr. Prasanta Kumar Mohanty. Gone through the record, also seen the order so passed by the Member (Judicial) as well as Member (Technical).
- 2) The brief fact of the case is that the instant application is filed under section 12(A) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016, Regulation 30A of the Insolvency Resolution Process for Corporate Persons Regulation, 2016 r.w. Rule 11 of the National Company Law Tribunal Rules, 2016.
- 3) The Operational Creditor filed an application under section 9 of the IB Code for initiation of CIRP. On hearing the application so filed under section 9 of the IB Code, was admitted and accordingly IRP was appointed.

- 4) On perusal of the records, it is found that the application so filed under section 9 of the IB Code was heard in absence of the Respondent as reflected from the order dated 25.11.2019, however notice was duly served and reply by the Corporate Debtor has also been filed, which is a matter of record.
- 5) The Applicant/IRP stated that the Respondent/ Corporate Debtor came to know only after appointment of the IRP on 20.12.2019. Immediately, thereafter, the Corporate Debtor approached Operational Creditor and made a payment of the due amount, amounting to Rs. 32,00,000/- towards the full and final settlement of claims made in the application filed under section 9 of the IB Code.
- 6) On perusal of the records, it is also found that Corporate Debtor had issued a Demand Draft dated 24.12.2019 for Rs. 30,40,602/- (after deducting TDS of 10% on interest).
- 7) The said DD is annexed with the application as **Annexure-B** at page no. 19 and accordingly have also entered into consent terms, which is also annexed as **Annexure-C**. It is also submitted by the Applicant that the Committee of Creditors is not yet constituted, hence, the consent of the COC is not required.
- 8) On perusal of the records, it is found that Hon'ble Member (Judicial), Mr. Harihar Prakash Chaturvedi and Hon'ble Member (Technical), Mr. Prasanta Kumar Mohanty had a difference of opinion while passing/pronouncing the order in the instant application. Hon'ble Member (Judicial) has allowed the instant application, so filed under section 12(A) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016, Regulation 30A of the Insolvency Resolution Process for Corporate Persons Regulation, 2016 r.w. Rule 11 of the National Company Law Tribunal Rules, 2016, relying on the judgment passed by **Hon'ble Supreme Court** in the matter of **Swiss Ribbon Vs. Union of India**, where, Hon'ble Supreme Court observed that, "**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 of the facts of each case.

However, Hon'ble Member (Technical) has not agreed with the order so passed by the Hon'ble Member (Judicial) and has given his different opinion/order.

- 9) On perusal of the order so passed by the Hon'ble Member (Technical), it is found that instead of giving any order on the application so filed under section 12(A) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016, Regulation 30A of the Insolvency Resolution Process for Corporate Persons Regulation, 2016 r.w. Rule 11 of the National Company Law Tribunal Rules, 2016, has raised question on the admission so made by the Hon'ble Member (Judicial) in an application filed under section 9 of the IB Code and thereby passed an order directing the Operational Creditor to deposit the amount so paid by the Corporate Debtor amounting to Rs. 30,40,602/- on settlement before the registry of the NCLT, with a direction to issue notice to the Operational Creditor under section 65 of the IB Code for further proceeding, however, no observation and/or order or opinion is given on the instant application i.e. IA 20/2020, which is filed under section 12(A) of the IB Code.
- 10) Under the facts and circumstances as narrated above, when the aggrieved party has not made any appeal before the Hon'ble NCLAT for initiation of CIRP rather has compromised with the Operational Creditor by paying the due amount, in that event, there is no alternative than to allow the application filed for withdrawal of the application filed under section 9 of the IB Code,

that too when the Committee of Creditors is not yet constituted. Further, the Hon'ble Supreme Court has already observed in this issue (supra).

- 11) Therefore, I am of the opinion that the application so filed by the IRP under section 12(A) r.w. 60(5) of the Insolvency and Bankruptcy Code, 2016, Regulation 30A of the Insolvency Resolution Process for Corporate Persons Regulation, 2016 r.w. Rule 11 of the National Company Law Tribunal Rules, 2016 deserves to be allowed and the Corporate Debtor is required to be freed from the rigour of the CIRP when the matter is settled.

Accordingly, I am agreed with the order so passed by the Hon'ble Member (Judicial), Mr. Harihar Prakash Chaturvedi and the instant application is allowed. Hence, stands disposed of.



**Ms. Manorama Kumari,
Member (Judicial)**

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