

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

9.

IA-3570/2023 IN
C.P. (IB)/1138(MB)2021

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **16.08.2023**

NAME OF THE PARTIES:

K. Consultants

Vs

Lokhandwala Kataria Constructions Pvt. Ltd

SECTION: 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

1. Ms. Meena Shah, Ld. Counsel for the Petitioner present. Ms. Naseem Patravala, Ld. Counsel for the Respondent present.
2. **IA-3570/2023:** This is an application filed seeking to withdraw the C.P. (IB)/1138(MB)2021 on account of settlement of debt claimed in default in the petition.
3. The Corporate Debtor was admitted into CIRP by this Tribunal on 10.08.2023. This bench appointed Mr. Ashish Saoji as an Insolvency Professional, though , the applicant had filed consent taken from Mr. Jayesh Sanghrajka in Form 2 and had requested this Tribunal to allow modification in the name of IRP accordingly. However, in the meanwhile,

the parties arrived at the settlement and executed the settlement agreement dated 11.08.2023.

4. The Hon'ble Supreme Court in *Swiss Ribbons Private Limited & Anr. Versus Union of India & Ors.*, held that:

"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 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. In view of the aforesaid, this Bench is of the considered view that the conditions for withdrawal for CIRP u/s 12(A) and regulation 30(A) of Insolvency and Bankruptcy Code Board of India (Insolvency Process for Corporate Persons) Regulations 2016 are met, hence, the application seeking withdrawal of CP may be allowed and the Corporate Debtor be taken out of rigors of CIRP.
6. IA-3570/2023 is allowed. Accordingly, the Corporate Debtor is taken out from the rigors of CIRP. The IRP is directed to handover the charge of the Assets and Affairs of the Corporate Debtor back to the Suspended Members of the Board of Directors, if any taken in control so far. IRP is discharged from his duties. The Petitioner shall settle and pay all costs claimed by IRP after verification it is found due and payable, if not done yet paid.
7. File be consigned to the records.
8. Accordingly, IA-3570/2023 is allowed and disposed of and C.P.(IB)/1138(MB)2021 dismissed as withdrawn.

Sd/-
PRABHAT KUMAR
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)