

**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

IA 359/2019 in/with C.P. (I.B) No. 564/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.06.2019**

Name of the Company: Witmans Industries Pvt. Ltd.
V/s.
Rashmi Yarns Ltd.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy
Code r.w. Rule 11 of NCLT Rules, 2016

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

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|----|-------------------------------|-----------------------------------|------------------|
| 1. | ANUJ KUMAR SALANKE, PLS | Operations Auditor
(Applicant) | Arjun K. Salanke |
| 2. | LAKHABHAI VACHA
(Director) | Corporate Debtor
(Respondent) | Y.B. Vachha |
| 3. | Manish Kumar Bhegat | IRP | Y. Bhegat |

ORDER

The parties are represented through their respective learned counsels.

Heard both sides at length.

The IA 359/2019 is allowed and the detailed order is passed separately.

Accordingly, the IA 359/2019 stands disposed of.

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MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 26th day of June, 2019

H.P.

HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

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

Interlocutory Application No.359 of 2019

In

CP (IB) No.564/9/NCLT/AHM/2018

In the matter of:

M/s. Witmans Industries Pvt. Ltd.

(CIN: U24100MH2011PTC215664)

“205-206 Kalpataru Plaza,

Chincholi Bunder,

Off. S.V. Road,

Malad(West),

Mumbai 400064(Maharashtra)

..... Petitioner/
Operational Creditor

Versus

M/s. Rashmi Yarns Ltd.

(CIN: U17110GJ1997PLC033075)

405, Metro Tower,

Ring Road,

Surat 395002(Gujarat)

.....Respondent/
Corporate Debtor

Order delivered on 26th June, 2019.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)**

Appearance:

PCS Mr. Anuj Kumar Solanki is present for the Applicant. Director Mr. Lakhabhai Vagh is present in person. IRP Mr. Manish Kumar Bhagat is present in person.

ORDER

[Per: Harihar Prakash Chaturvedi, Member (J)]

1. The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred

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to as “the Code”) r.w. Rule 11 of NCLT Rules, 2016 for withdrawal of the IB Petition i.e. CP (IB) No.564 of 2018 and for recalling of the Corporate Insolvency Resolution Process as initiated pursuant to this Bench’s order dated 31.05.2019, whereby this Adjudicating Authority has admitted the petition by declaring Moratorium, in respect of the Corporate Debtor company, viz. M/s. Rashmi Yarns Ltd. and appointed the Interim Resolution Professional (IRP).

2. However, as subsequent development took place after the appointment of the IRP but prior to constitution of Committee of Creditors (CoC), the applicant has moved the present IA before this Adjudicating Authority, as the is filed on 25.06.2019, and thus has sought for withdrawal of the IB Petition and for recall of the CIRP.
3. The applicant, in support of this application, has placed reliance on a judgment of the **Hon’ble Supreme Court in the matter of Swiss Ribbons vs. Union of India** (Writ Petition (Civil) No.99 of 2018 decided on 25.01.2019) For the sake of convenience, the relevant paragraph of the same Judgment is being reproduced herein below;

“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

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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”.

4. On the strength of above stated judicial precedent, the petitioner is now contending that this Adjudicating Authority has been conferred with necessary power and jurisdiction to permit the petitioner to withdraw the present IB Petition at post admission stage even without seeking consent of the CoC and its members.
5. During the course of hearing, the Ld. Counsel for the petitioner further made clear that such settlement for withdrawal of the IB Petition will in no manner affect the right of other Financial Creditor in as much as they are still entitled to move fresh IB Petition, if they so desire. Hence, in the interest of justice, it is expedient that this Adjudicating Authority should permit post admission withdrawal of the present IB Petition.
6. The IRP Mr. Manish Kumar Bhagat appeared and filed his reply. The relevant portion thereof is reproduced as under:


“With reference to above, would like to mention that I (IRP) have received IRP Fees Rs. 1.65 Lacs inclusive of Public Announcement Cost and out of Pocket Expenses via Bank Transfer from M/s Rashmi Yarns Ltd.”


7. We duly considered the above stated submission made by the IRP. It is now undisputed position in the matter that the present application for settlement was filed on 25.06.2019 before this Adjudicating Authority, which is prior to the constitution of the CoC.

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8. By considering the facts and circumstances of the present IB Petition and in the light of above discussion, we find that the Operational Creditor has moved this application, for settling its dues for an amount of Rs.18,55,427/- (Rupees Eighteen Lacs Fifty-Five Thousands Four Hundred and Twenty-Seven only) as full and final settlement through Demand Draft vide DD No. 514025 on dated 19.06.2019. Hence, this Adjudicating Authority can accept the same in the interest of justice by following the above referred decisions of Hon'ble Supreme Court in ***Swiss Ribbons vs. Union of India***.
9. Thus, we find there is no impediment for allowing the proposal of settlement at the post-admission of the present IB Petition Hence, the settlement is hereby accepted.
10. With the above stated observations/conditions, the present Interlocutory Application No.359 of 2019 in CP(IB) No.564/9/NCLT/AHMD/2018 succeeds and is allowed.
11. Consequently, the CIRP in respect of the Corporate Debtor of the CP(IB) No.564/9/NCLT/AHMD/2018 is hereby recalled and the main IB Petition stands disposed of as withdrawn.
12. No order as to costs.


Manorama Kumari
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi
Adjudicating Authority
Member (Judicial)