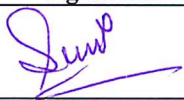


**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 07.03.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.160/2019 in CP(IB) No.231/9/HDB/2018
NAME OF THE COMPANY	Photon Energy Systems Ltd
NAME OF THE PETITIONER(S)	Artha Energy Resources LLP
NAME OF THE RESPONDENT(S)	Photon Energy Systems Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
SUMAN Bejaria	PCS	cs.uman.bejaria@gmail.com 970 335 8320	

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed in IA 160/2019 vide separate orders.

Binnu



Member (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

I.A.No. 160 of 2019

In

CP (IB) No.231/9/HDB/2018

In the Matter of

Artha Energy Resources LLP

(Operational Creditor)

Versus

Photon Energy Systems Limited

(Corporate Debtor)

M/s. Photon Energy Systems Limited,

Registered Office:

Plot No: 775-K, Road No: 45,

Jubilee Hills, Hyderabad- 500033.

.....Applicant/ Corporate Debtor

Versus

M/s. Artha Energy Resources LLP

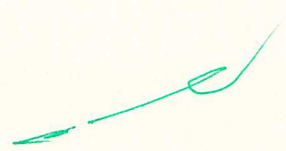
Registered Office:

5, 5th floor, Surya Mahal Building,

Burjorji, Bharucha Marg, Fort,

Mumbai- 400 001.

.....Respondent/Operational Creditor



Date of order: 07.03.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / counsels present:

For Applicant: Suman Bijarnia, PCS.

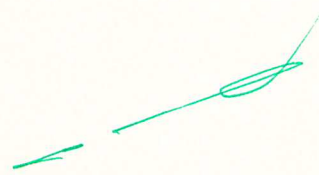
For the Respondent: Harsh Raval, Advocate.

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

Heard on: 26.02.2019, 05.03.2019.

ORDER

1. The Application is filed by Applicant who is Corporate Debtor in Main Petition, under Rule 11 of NCLT Rules, 2016, seeking relief to set aside the order of this Tribunal dated 21.02.2019.
2. It is the case of the Corporate Debtor/ Applicant herein that this Tribunal admitted the petition filed under Section 9 of IBC, 2016 by Operational Creditor/ Respondent herein on 21.02.2019 for initiation of CIRP, granting moratorium and appointment of IRP.
3. It is further the case of the Applicant that both the parties have agreed to settle all disputes and claims between them following memorandum of understanding and joint settlement deed.
4. I have seen the Joint Deed of Settlement filed along with the Application. Both the Parties confirm that the total due amount to be settled at Rs. 87,80,569/-.
5. It is agreed in Settlement Deed that the Corporate Debtor issued Demand Draft of Rs 46,00,000/- and balance amount of Rs. 41,80,569/- will be released through post dated cheque in favour of Operational Creditor and same was handed over to the Operational Creditor.
6. On 26.02.2019 Counsel for Operational Creditor and PCS for Corporate Debtor informed the Tribunal that there is a compromise in respect of claim between the Operational Creditor and Corporate Debtor. They informed to the Tribunal that permission to withdraw the petition can

- be granted by the Adjudicating Authority even though petition is admitted and CIRP started against Corporate Debtor.
7. The Counsel for Applicant relied on the Judgment of NCLT, Mumbai Bench in lift and Shift India Private Limited V. DBM Geotechnics and Construction Limited wherein it was held the Petition can be withdrawn after admission also.
 8. Recently, Hon'ble Apex Court in Swiss Ribbons Private Limited and Another Vs. Union of India observed that at any stage where CoC is not yet constituted, a party can approach NCLT directly, which tribunal may in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016 allow or disallow the petition for withdrawal or settlement. This will be decided after hearing all concerned parties and considering all relevant factors on the facts of each case.
 9. I heard the Counsel for IRP. He also stated that CoC is not yet constituted. By relying on the decision of Hon'ble NCLAT in Jogendra Kumar Arora Vs. Dharmender Sharma & another in IA 312 & 316 of 2019 in Company Appeal (AT) (Insolvency) No. 94 & 95 of 2019 the Hon'ble NCLAT also relied on the Judgment of Hon'ble Apex Court cited above and exercising Inherent power conferred under NCLAT Rules, allowed withdrawal of the application in the Appellate stage basing on the compromise as there was no constitution of CoC by them, since parties entered in to settlement, therefore permission can be granted to the Operational Creditor to withdraw the petition by exercising power under Rule 11 of NCLT Rules, 2016. However, withdrawal of this petition does not affect the rights of other creditors if any.
 10. It is brought to my notice that already an amount of Rs. 50,000/- was paid to IRP towards part of his fees. Considering the period during which IRP discharged his functions, which is very short period and also considering the amount involved in the claim, the Corporate Debtor is further directed to Pay a sum of Rs. 50,000/- to the IRP. Corporate Debtor is granted 2 weeks time to pay Rs. 50,000/- to IRP and obtain receipt.
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11. Accordingly, Permission is granted to the Operational Creditor to withdraw the petition by exercising powers under Rule 11 of NCLT, Rules and the order dated 21.02.2019 is set aside and CP (IB) No. 231/9/HDB/2018 is dismissed as settled. The appointment of IRP is set aside including moratorium and Board is directed to function independently with immediate effect.

12. In the Result IA 160/2019 is allowed. Order dated 21.02.2019 is set aside. Joint Settlement Deed is recorded. Main petition is dismissed as claim is settled.

7.3.19
RATAKONDA MURALI
MEMBER (JUDICIAL)

(VISWARAJ)