

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

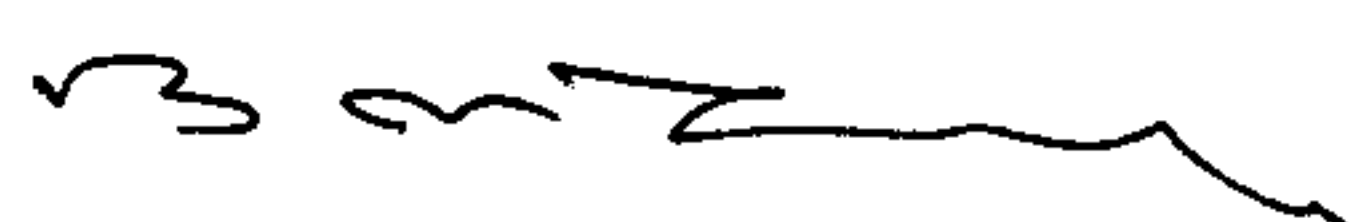
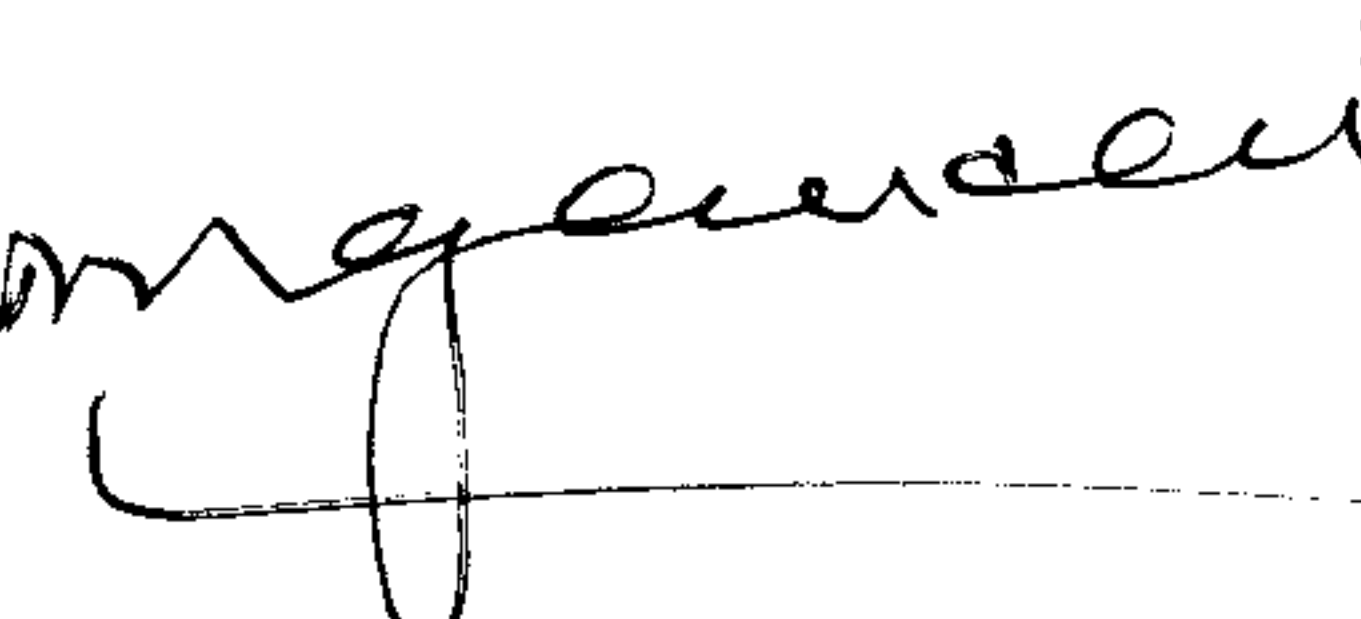

IA 377 of 2019 in C.P. (I.B) No. 367/NCLT/AHM/2018

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 17.07.2019**

Name of the Company: Pranay Dye Chem  
V/s.  
Radhey Foam Pvt. Ltd.

Section of the Companies Act: Section 12A & Regulation 30A of the  
Insolvency & Bankruptcy Code

| S.NO. | NAME (CAPITAL LETTERS) | DESIGNATION                                 | REPRESENTATION     | SIGNATURE   |
|-------|------------------------|---|--------------------|---|
| 1.    | BHAVAN TRIVEDI         | Proposed<br>IRP                             | Self               |  |
| 2.    | AMRISH GANDHI          | PCS<br>For Bhavan Trivedi<br>Toneel. Toneel | For Bhavan Trivedi |  |
| 3.    | Rasesh Parikh          | Advocate                                    | Petitioner         |  |


**ORDER**


The Applicant is represented through their respective Learned Counsel(s).

Mr. Bhavan Trivedi IRP is present.

Mr. Amrish Gandhi PCS is present.

IA 377 of 2019 is allowed, detail order recorded vide separate sheet.

  
MANORAMA KUMARI  
MEMBER (JUDICIAL)

  
HARIHAR PRAKASH CHATURVEDI  
MEMBER (JUDICIAL)

Dated this the 17th day of July, 2019.

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

IA No.377 of 2019 in  
CP (IB) No.367/9/NCLT/AHM/2018

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

**Pranay Dye Chem**

404-405, Ratan Galaxy  
Jawaharlal Nehru Road  
Near Mehul Talkies  
Mulund (West)  
Mumbai-400 080

..... Petitioner  
(Operational Creditor)

***Versus***

**Radhey Foam Pvt. Ltd.  
Through its Insolvency  
Resolution Professional**

Plot No. 143-44, Block No.166/B  
Om Textiles Park-3  
Parab Village  
Taluka-Kamrej  
Surat-394 325  
Guajrat

..... Respondent  
(Corporate Debtor)

Order delivered on 17<sup>th</sup> July, 2019.

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

**And**

**Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Mr. Rasesh Parikh, Advocate, for the Petitioner.

Mr. Amrish Gandhi, PCS, for IRP.

Mr. Bhavan Trivedi, Interim Resolution Professional.

**ORDER**

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

1. The present application is filed by the Operational Creditor under Rule 11 of the NCLT read with relevant provisions of the

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I & B Code for withdrawal of the IB Petition i.e. CP (IB) No.367 of 2018 by recalling of the Corporate Insolvency Resolution Process, in respect of the Corporate Debtor company, viz., M/s. Radhey Foam Pvt. Ltd.

2. It is contended that after the pronouncement of admission order by this Adjudicating Authority on 14.06.2019, this Court has appointed IRP, Mr. Bhavan Trivedi, subject to confirmation from the IBBI. It is stated that during pendency of receiving confirmation from IBBI and willingness of the IRP, the respondent company is reported to have amicably settled the matter with the applicant-operational creditor. It is also stated that the corporate debtor has paid a sum of **Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only)** towards full and final settlement of all its dues outstanding on the terms which, inter alia, are as under;

- “5. The Promoter/Director of the Respondent Company has paid the said sum of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) on behalf of the Respondent in full satisfaction of the Invoice as under;-

| Sr. No. | Date       | RTGs Reference No.                            | Amount (In INR) |
|---------|------------|---|-----------------|
| 1       | 30/05/2019 | SBIN819150833039/KISHORBHAI D SANGHANI/       | 4,00,000        |
| 2       | 18/06/2019 | SBIN519169195696/KISHORBHAI D SANGHANI/       | 2,00,000        |
| 3       | 24/06/2019 | SBINR52019062400069591/KISHORBHAI D SANGHANI/ | 4,00,000        |
| 4       | 25/06/2019 | SBINR52019062500105033/KISHORBHAI D SANGHANI/ | 6,50,000        |
|         |            | Total   | 16,50,000       |

*Chhanna*

6. Upon receipt of payment as stated above in full satisfaction of Applicants claim and subject to the discretion of the Hon'ble NCLT and on the terms set out in this Consent Terms, the Applicant agrees to withdraw the Application and pray for recalling the Order dated 14<sup>th</sup> June 2019 passed by the Hon'ble NCLT.
3. It is further stated that to the best of its knowledge, the IRP did not make any public announcement for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the corporate debtor company nor has called for submission of claims by the creditors and other stakeholders. The CoC also has not yet been constituted formally.
4. It is further contended by the applicant counsel that the applicant duly informed the IRP through his email dated 26.06.2019 stating that the matter has been settled with the respondent-corporate debtor company. Hence, the former is moving necessary application before this Adjudicating Authority for recalling of the CIRP initiated against the corporate debtor (as per order dated 14.06.2019 passed by the Adjudicating Authority) by withdrawing the IB Petition.
5. Hence, the applicant counsel made such request to the IRP to not initiate CIRP process till final disposal of the present withdrawal application.

*Johnson*

6. It is further submitted that the present application is moved before this Bench on 27.06.2019, i.e. before receipt of confirmation from the IRP and the IBBI. It is further stated that in case any cost is incurred by the IRP towards CIRP, this Tribunal may direct to the corporate debtor to make payment of such amount to the IRP as per its Consent Terms.
7. In support of the present withdrawal application, the applicant has placed reliance on a decision of the ***Hon'ble Supreme Court in the case of Swiss Ribbons Pvt. Ltd. & Anr. Versus UOI & Ors. 2019 reported in SCC OnLine SC 73 at para 52 has held that "52.... 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"***.
8. On the strength of such 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 this IB Petition at post-admission stage even without seeking consent of the CoC and its members.
9. It is matter of record that this Adjudicating Authority, by its order dated 14<sup>th</sup> June, 2019, has admitted the I.B. Petition by appointing Mr.Bhavan Trivedi as I.R.P in the present matter,

*J. Kumar*

subject to his willingness as well as confirmation to be received from IBBI. Further, it directed the IRP to submit his willingness in writing and to appear before this Adjudicating Authority on 27.06.2019. On perusal of the record, Mr. Bhavan Trivedi, I.R.P, has submitted his willingness to act as IRP, before this Tribunal on 27.06.2019.

10. As per record, the present application is ~~also~~<sup>is</sup> moved by the applicant-operational creditor in this Court on 27<sup>th</sup> June, 2019 (i.e., before formal constitution of the CoC) whereby the applicant has sought for withdrawal of the present IB Petition and to recall the CIRP (the Corporate Insolvency Resolution Process) under the relevant provisions of the I & B Code read with Rule-11 of the NCLT Rules, 2016.
11. The counsel appearing on behalf of the applicant had sent an email dated 26.06.2019 to the IRP in respect of the amicable settlement of the matter as well as withdrawal of the present IB Petition and for recalling of the CIRP. In response thereto, the IRP appeared in person before this Bench and submitted that although he has already submitted his willingness to this Tribunal on 27.06.2019 to act as IRP, but is still waiting for a confirmation letter to be received from the IBBI.
12. By taking into consideration of the above given facts and circumstances of the present IB Petition and in the light of

*Adhikari*

above discussion, we find that the Petitioner-Operational Creditor has moved the present withdrawal application for settling its entire dues for an amount of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) as full and final settlement which is prior to formal constitution of the CoC. In fact, some of the amount towards settlement, i.e. Rs.4,00,000/- (Rupees Four Lakhs only) was paid on 30.05.2019, which is prior to passing of admission order of this court on 14.06.2019, hence this Adjudicating Authority can accept the settlement by following the above referred decisions of Hon'ble Supreme Court in **Swiss Ribbons vs. Union of India**. The relevant paragraphs of the same reads as under;

*"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".*

13. In the light of the above stated decision, we feel that there can be no impediment for accepting the proposal of settlement even

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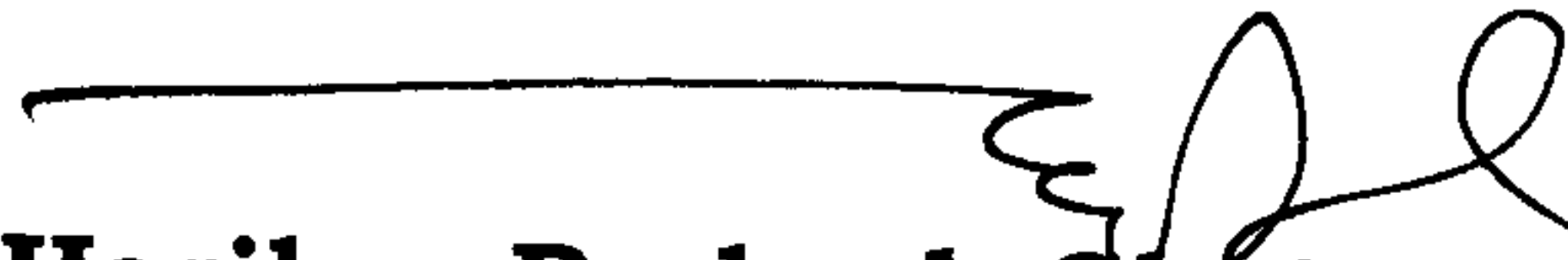
at the post-admission stage of the IB Petition, because the CoC has not been formally constituted so far. Hence, the present withdrawal application deserves to be allowed. Hence, it is allowed.

14. Notwithstanding the above, it is expedient to issue necessary directions to the Petitioner-Operational Creditor as well as Corporate Debtor company to bear professional fees to the IRP. Therefore, the Petitioner and the Corporate Debtor company are jointly directed to pay a lump sum amount of Rs.50,000/- (Rupees Fifty Thousand only) to the I.R.P. towards his fee and necessary expenses born by him towards CIRP.
15. The amount of the above stated cost shall be payable by the corporate debtor company and/or by the petitioner-operational creditor within two weeks from the date of receipt of an authentic copy of this order and to furnish proof of payment through the IRP before the Registry of this Adjudicating Authority. Thereafter, the present settlement shall be taken on record and CIRP deemed to be recalled.
16. **It is further made clear that in case full payment is not made within such stipulated period or if it has not been further extended by this Adjudicating Authority, then the IRP is required to proceed further to initiate the CIRP in respect of the Corporate Debtor company, as per the provisions of the Code.**

*J. Kumar*

17. With the above stated observations/conditions, the present Interlocutory Application No.377 of 2019 in CP(IB) No.367/9/NCLT/AHMD/2018 is allowed and stands disposed of.
18. Accordingly, Company Petition No.367 of 2018 is disposed of as withdrawn.

  
**Manorama Kumari**  
**Adjudicating Authority &**  
**Member (Judicial)**

  
**Harihar Prakash Chaturvedi**  
**Adjudicating Authority &**  
**Member (Judicial)**

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