

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

IA No. 75 of 2018 in C.P. (I.B) No. 39/9/NCLT/AHM/2018

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

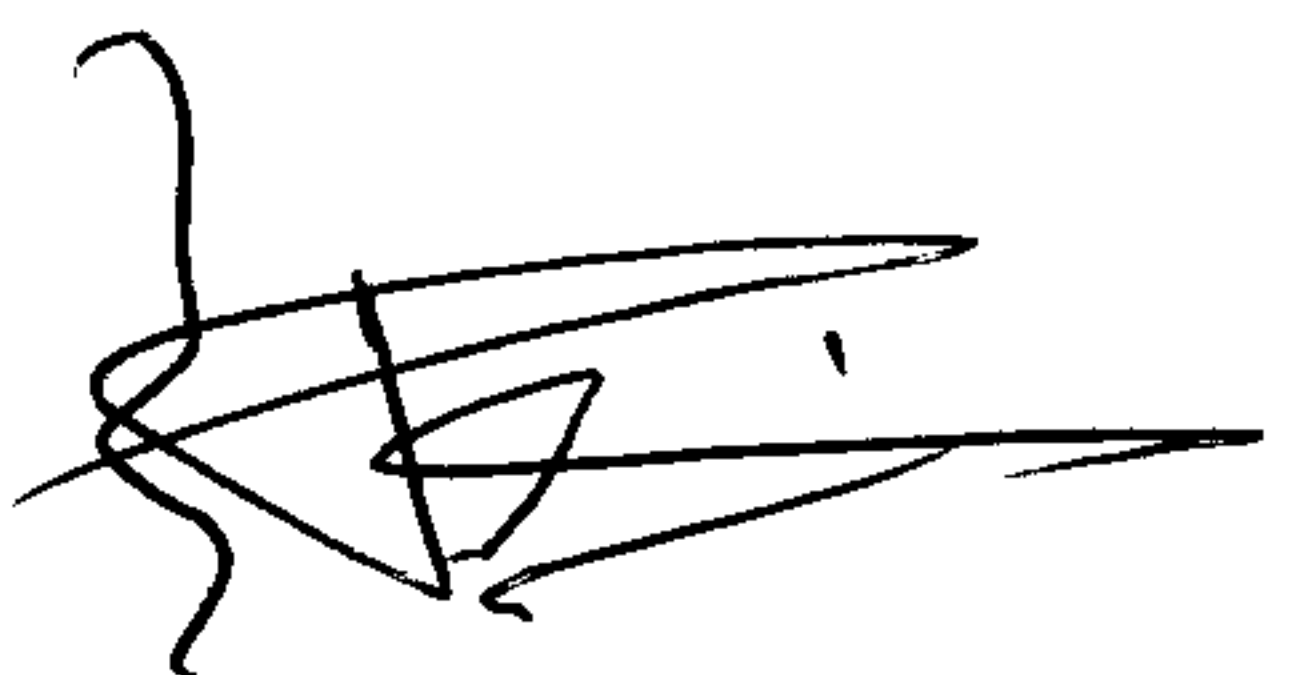
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 28.02.2019**

Name of the Company: Windson Chemicals Pvt Ltd

V/s.

Jason Decor Pvt Ltd.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy Code

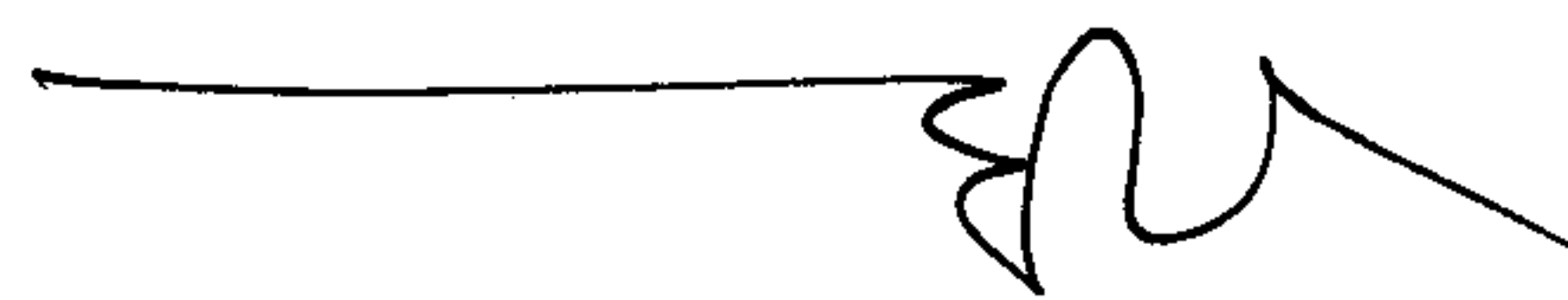
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Tarun R. Dave	ADV.	Petitioner	
2.	Pragat S. Dave	ADV.	Petitioner	

ORDER

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

The Order is pronounced in the open court, vide separate sheet.


**MANORAMA KUMARI
MEMBER (JUDICIAL)**


**HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)**

Dated this the 28th day of February, 2019.

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

Interlocutory Application No.75 of 2019

In

CP (IB) No.39/9/NCLT/AHM/2018

*(Application under Section 60(5) & 12-A of The Insolvency &
Bankruptcy Code, 2016)*

In the matter of:

**M/s. Windson Chemical Private
Limited**

(CIN: U24100GJ2008PTC052851)

"Tej Karam", Gokuldham Society
Opp. Gurudwara Temple,
Gandevi-Bilimora Road, Devsar,
Navsari-396 380

..... Petitioner

Versus

**M/s. Jason Dekor Private
Limited**

(CIN: U74994GJ2003PTC042695)

A Company incorporated under
the provisions of the Companies
Act 1956 and having its
Registered Office at G-9,
Mahaveer Towers, Near
Mahalaxmi Cross Roads, Paldi,
Ahmedabad-380 007.

.....Respondent

Order delivered on 28th February, 2019.

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

And

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

Chaturvedi

Manorama

Appearance:

Mr. Jaimin R. Dave and Mr. Priyank S. Dave, Advocates for the Petitioner.

Mr. Pinakin Shah, PCS (Resolution Professional).

ORDER

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

1. The present application is filed under Section 60(5) & 12-A of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as "the Code") for withdrawal of the IB Petition i.e. CP (IB) No.39 of 2018 and for recalling of the Corporate Insolvency Resolution Process as initiated by this Bench's order dated 16.01.2019, whereby this Bench has admitted the petition by declaring Moratorium, in respect of the Corporate Debtor company, viz. M/s. Jason Décor Pvt. Ltd. and appointed the Interim Resolution Professional (IRP).
2. However, subsequent to appointment of the IRP but prior to constitution of Committee of Creditors (CoC), the present application is moved before this Adjudicating Authority, as it is filed on 04.02.2019, seeking withdrawal of the IB Petition and to recall the Corporate Insolvency Resolution Process (CIRP) before constitution of CoC under the provisions of Section 12-A of the Code.



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 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 such judicial precedent, the petitioner is now contending that this Adjudicating Authority has been conferred with necessary power and jurisdiction to permit the

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petitioner to withdraw this IB Petition at post admission stage even without seeking consent of the CoC and its members.

5. The Petitioner, in support of its case, has further placed reliance on another decision of Hon'ble NCLAT in the matter of **Ashish Garodia vs. Impact Event Management & Anr.** in Company Appeal (AT) (Insolvency) No.67 of 2019, wherein Their Lordships have been pleased to permit withdrawal of a IB Petition at post admission stage by observe as such;

4. *In spite of service of notice, the 'Interim Resolution Professional' has not appeared but it is informed that the 'Committee of Creditors' has been constituted on 5th February, 2019, i.e. after issuance of the notice to the parties.*

5. *Having heard learned counsel for the parties and taking into consideration the fact that there is a 'pre-existence of dispute', we hold that that the application under Section 9 was not maintainable. Further, before the constitution of the 'Committee of Creditors', the parties having settled the matter. It is a fit case to accept the settlement. For the reasons aforesaid, we set aside the order dated 14th January, 2019.*

7. *The Adjudicating Authority will fix the fee of 'Interim Resolution Professional', and the 'Corporate Debtor' will pay the fees of the 'Interim Resolution Professional', for the period he has functioned*

By following above stated decision the Hon'ble NCLAT, the petitioner has contended that the matter has been settled much prior to constitution of the CoC. That apart, they are also willing to pay the cost of the CIRP in accordance with the judgment of the Hon'ble NCLAT.

Chakraborty

[Signature]

6. 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.
7. On a notice being issued on the present application to the IRP, by inviting his comments on proposed settlement and withdrawal of the present IB Petition by recalling the CIRP. The RP appeared in person before this Bench on 18.02.2019. He orally opposed the present application by reporting that meeting of the CoC was already proposed to be convened on 19.02.2019, wherein the Sole Member of the CoC, i.e. Indian Overseas Bank (IOB), would participate as its claim is much higher than the claim of the present applicant, being an Operational Creditor of the present IB Petition.
8. We duly considered the above stated submission of the IRP. It is now undisputed position in the matter that the present application for settlement was filed on 04.02.2019 before this Adjudicating Authority, which is prior to the constitution of the CoC. That apart, it is pertinent to note here that there is sole member in the CoC i.e. IOB, who may or may not give its



consent for such withdrawal of the IB Petition. While the provisions of Section 12-A of the Code stipulate that settlement can be made with 90% voting of the members of the CoC, which is not practically possible in the present case, being sole member who can accept or reject the proposal by 100% voting only.

9. Therefore, we are of the view that the interest of the Financial Creditor, being a sole member of the CoC, can adequately be taken care of ^{while} ~~with~~ making such observation that the present settlement in no manner shall affect the rights and the claim of the sole Financial Creditor or any other creditor to agitate the same before a competent Court of Law including this Adjudicating Authority under the relevant provisions of the Code.
10. By considering the above given facts and circumstances of the present IB Petition and in the light of above discussion, we find that the Operational Creditor has moved the present application, by settling its dues for an amount of Rs.35,00,000/- (Rupees Thirty Five Lacs only) as full and final settlement which happen much prior to the constitution of the CoC. Hence, this Adjudicating Authority can accept it in the interest of justice by following the above referred decisions of Hon'ble Supreme Court in **Swiss Ribbons vs. Union of India**

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read with the decision of Hon'ble NCLAT in ***Ashish Garodia vs. Impact Event Management & Anr.***

11. Thus, we find no impediment for accepting the proposal of settlement at the post-admission of the present IB Petition. Hence, it is hereby accepted. Notwithstanding the above, it is expedient to issue necessary direction to the Petitioner-Operational Creditor as well as to the Corporate Debtor company to bear the expenses and cost of the CIRP, which has been incurred by the present IRP, towards payment of his professional fees and other expenses incurred, which shall be prerequisite for approval of the present settlement. Therefore, the Petitioner as well as Corporate Debtor company is directed to pay fee of Rs.50,000/- (Rupees Fifty Thousand) to the IRP along with actual amount of necessary expenses incurred by the IRP to initiate the CIRP, i.e. public announcement – paper publication, administrative expenses, etc.
12. The amount of the above stated cost will be payable to the IRP within two weeks from the date of receipt of an authentic copy of this order and on furnishing proof of payment through the IRP before this Adjudicating Authority, the present settlement shall be deemed to be accepted.
13. **It is further made clear that in case such payment is not made within the stipulated period nor further extended by this**

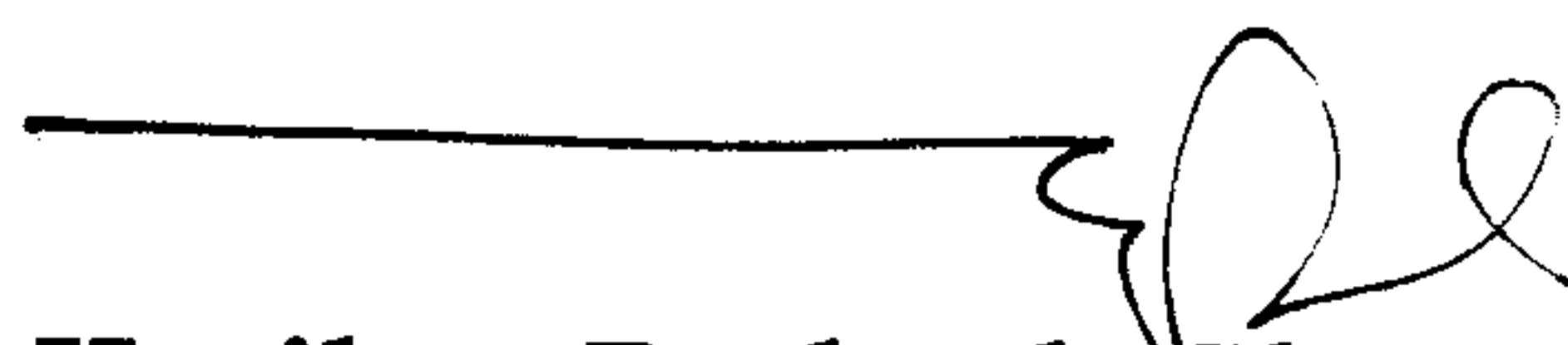




Adjudicating Authority, then the IRP is at liberty to proceed further to complete CIRP in respect of the Corporate Debtor company, as per the provisions of the Code.

14. With the above stated observations/conditions, the present Interlocutory Application No.75 of 2019 in CP(IB) No.39/9/NCLT/AHMD/2018 is allowed and disposed of.
15. No order as to costs.


Manorama Kumari
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi
Adjudicating Authority
Member (Judicial)

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