

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

IA 456 of 2020 in CP(IB) 178/NCLT/AHM/2018

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 31.08.2020**

Name of the Company: Sunil Kumar Agrawal RP of Shilpraj
Developers Pvt Ltd

Section : 12A & 60(5) IBC,2016 with Rule 154 of NCLT
rules,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

**ORDER
(through video conferencing)**

Advocate, Mr. Pratik Thakkar appeared on behalf of Applicant.

Mr. Dhiren Dave, learned PCS, appeared.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 31st day of August, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

IA No. 456 of 2020 in
C.P. No.(IB) 178 of 2018

In the matter of:

Suni Kumar Agrawal RP of
Shilpraj Developers Pvt. Ltd.
Having office at Sakar 3, Ashram Road,
Ahmedabad.

...Applicant

Order delivered on 31st August 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance: Advocate, Mr. Pratik Thakkar for the Applicant.

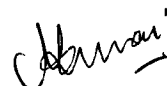
PCS, Mr. Dhiren Dave for the Suspended management.

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. The instant application is filed under Section 12A of the IB Code, 2016 read with regulation 30(1) (a) of the CIRP Regulations, 2016 along with Rule 11 of National Company Law Tribunal Ruled, 2016 and Section 60(5) of the Insolvency and Bankruptcy Code 2016 with Rule 154 of NCLT Rules 2016 with the following prayer:
 - (a) Exercise its inherent powers under rule 11 of the National Company Law Tribunal Rules, 2016, read with Section 12A of the IBC and regulation 30A of the CIRP Regulations, and dismiss the CP(IB) No. 178/9/NCLT/AHM/2018 as having been withdrawn;
 - (b) Discharge the Applicant as the Resolution Professional;
 - (c) To review para-19 of the order dated 10.07.2020 with respect to claims being received from the Income Tax Department and from a consultant as stated in para f, in the interest of justice;
 - (d) To review and omit remarked against the applicant s in Para -20 of the order dated 10.07.2020, in the interest of justice;





(e) Any other relief as this Hon'ble Adjudicating Authority may deem fit.

2. It is a matter of record that CP(IB) 178/2018 was admitted by the Adjudicating Authority on 24.07.2019 and IRP Mr. Sunil Kumar Agrawal was appointed.
3. IRP constituted the CoC consisting of Mr. Mukeshbhai Desai as Financial Creditor. The said constitution of CoC was challenged by the Suspended Management vide IA 752/19, which said IA was allowed on 10.07.2020, whereby, the constitution of the CoC with sole member namely Mukeshbhai Desai has been declared as void ab initio since there are no other claimants, and the Corporate Debtor is a going concern, hence the liberty was granted to the Operational Creditor to file the withdrawal application.
4. It is stated that RP thereafter filed the instant application on 27.07.2020 with a prayer for withdrawal of the IB application filed Under Section 9 of the IB Code along with form FA dated 16.03.2020, i.e. application for the withdrawal of Corporate Insolvency Process(Under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Process) Regulation 2016 (Annexure C page No.37 in the said form FA)
5. It is very surprising that the said form FA is dated 16.03.2020/20.03.2020, duly signed by the authorized signatory of the operational Creditor of CP(IB) 178/18, but the same has been filed along with the instant application after about four months without assigning any reason for such delay.
6. It is pertinent to mention that IA 752/2019 was pending for adjudication but the RP never mentioned and/or apprised the Adjudicating Authority about the filing of the Form FA by Operational Creditor, subsequently filed withdrawal of CP(IB) 118/2018, meanwhile was contesting the said IA 752/19 by filing a reply and advancing argument, thereby not only wasted his own time and money but has also wasted the time of the Adjudicating Authority and its resources, such action of the RP is not accepted.
7. Under the facts and circumstances narrated herein above, the application so filed by the applicant RP is partially allowed only to the effect of prayer (a) and (b) and other prayers are rejected.
8. Accordingly, the instant application is disposed of with the above observation.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Manorama Kumari
Adjudicating Authority
Member (Judicial)