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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : Shri Madan B. Gosavi,
Hon'ble Member (J)
&
Shri Virendra Kumar Gupta
Hon'ble Member (T)**

**Misc.IA(IB)No.319/KB/2020
in
CP (IB) No.1366/KB/2018**

In the Matter of:

An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the Matter of:

An application under section 12A of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

-And-

In the Matter of:

Credence Logistics Ltd., a Company registered under the Provisions of Companies Act, 1956 having its registered office at P-11, Khairu Place, Kolkata- 700072.

....Operational Creditor

-Versus-

Sd

Sd

In the Matter of:

Marina Projects Pvt. Ltd., a company incorporated under Companies Act, 1956 and having its registered office at 16A, Chowringhee Mansion, 30 Jawaharlal Nehru Road, 2nd Floor, Lift No.3, Kolkata-70016.

...**Corporate Debtor**

Counsels appeared:

For the Operational Creditor

1. Mr. Jayanta Sengupta, Advocate
2. MD Dilawar Khan, Advocate
3. Sagnik Basu, Advocate

For Liquidator

1. Ms. Sonu Jain, Liquidator

For the Corporate Debtor

1. Ms. Manju Bhuteria, Advocate
2. Mr. Antarup Banerjee, Advocate

Date of pronouncement of order: 27th February, 2020

ORDER

Per Shri M.B Gosavi, Member (J):

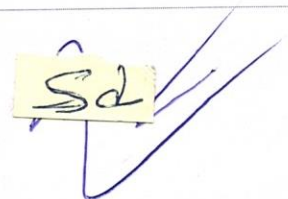
1. **M/s Marina Projects Pvt. Ltd.**, the Corporate Debtor is in the process of liquidation as per order passed by this Adjudicating Authority on 17.12.2019. This application is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules for disposal of this proceeding on the ground that the Corporate





Debtor has paid entire debt to its only creditor i.e. M/s. Credence Logistics Ltd.

2. The CIRP of the Corporate Debtor was initiated at the instance of applicant i.e. M/s. Credence Logistics Ltd. – the Operational Creditor. It is not in dispute that the above Operational Creditor is the only creditor of the Corporate Debtor. It appears to us that the Corporate Debtor could not pay the debt before its admission in CIRP or before order of liquidation is being passed against the Corporate Debtor. However, during liquidation process and on 28.01.2020, the Corporate Debtor paid entire debt amount to its only creditor i.e. M/s. Credence Logistics Ltd. Both of them entered into deed of settlement. The copy of deed of settlement produced on record as Exhibit F (page no. 69).
3. The Corporate Debtor filed this application for disposal of the proceeding on the ground of settlement has arrived in between it and the only creditor.
4. We heard Ld. Counsel for the Corporate Debtor and Ld. Counsel for the Operational Creditor who is the only stakeholder and was the member of Committee of Creditors (in short "CoC"). We heard Ld. Liquidator in person. All of them admitted that the parties have arrived at settlement. We are also informed that the Corporate Debtor paid the Liquidator's fee. Be that as it may, if the Ld. Liquidator has some claim as far as fees is concerned, she may file separate application.
5. We are now faced with the procedural hurdle that whether we can permit the withdrawal and pass order of disposal of the proceeding on



the ground that stakeholder and the Corporate Debtor entered into settlement during the process of liquidation? We do not find any provision enabling us to permit such withdrawal under Insolvency and Bankruptcy Code, 2016 or IBBI (Liquidation Process, Regulations) 2016 or Rules framed under I & B Code etc. Hence, we have no option but to invoke our inherent powers under Rule 11 of NCLT Rules, 2016 to do complete justice in the proceeding. We cannot invoke provisions of Section 60(5) IBC because that can be used in a case if provision of law is contrary to any other law than the provisions of I & B Code. However, Rule 11 of NCLT Rules states that, **"nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal."**

6. As per Section 60(1) of IBC, 2016, this National Company Law Tribunal shall be the Adjudicating Authority when acts under the I & B Code.
7. In this case, we find that although the Corporate Debtor is in process of liquidation, has paid entire debt payable to only creditor i.e. M/s. Credence Logistics Ltd. (Operational Creditor). The said creditor has settled the dispute with the Corporate Debtor. In such situation, there remains no reason for which the assets of the Corporate Debtor are to be liquidated because no creditor is left unpaid. Hence, in such peculiar circumstances, we invoke our inherent jurisdiction under Rule 11 of NCLT Rules. In our considered opinion, this is the fit case where we have to use our inherent power flowing from Rule 11 of NCLT Rules to do the complete justice. So, we hold that liquidation process of the

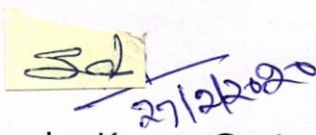
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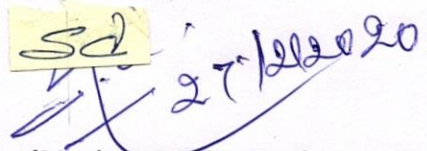
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Corporate Debtor requires to be withdrawn and cancelled. It is accordingly withdrawn and cancelled. The Corporate Debtor is set free of rigors of liquidation process. Proceeding is disposed of.

ORDER

- i. The Order of Liquidation of the Corporate Debtor is set aside.
- ii. Misc. IA. (IB)No.319/KB/2020 stands allowed and disposed of.
- iii. Let the certified copy of the order be issued upon compliance with requisite formalities.


(Virendra Kumar Gupta
Member(T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 26th February, 2020.

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