

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

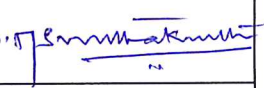
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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

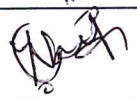
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.02.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.149/2019 in CP(IB) No.341/9/HDB/2019
NAME OF THE COMPANY	Proton Positive Health Care India Pvt Ltd
NAME OF THE PETITIONER(S)	Excel Anesthesia and Pain Management Services Pvt Ltd
NAME OF THE RESPONDENT(S)	Proton Positive Health Care India Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
M. Soukha Keerthi	Adv	keerthi.temple@gmail.com	

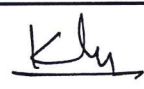
Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Sugith Jain	Advocate	764 7777777	
MD. Nawab	Advocate	9989797188	

DR. K. Lakshmi Narasimha
IRP

IRP

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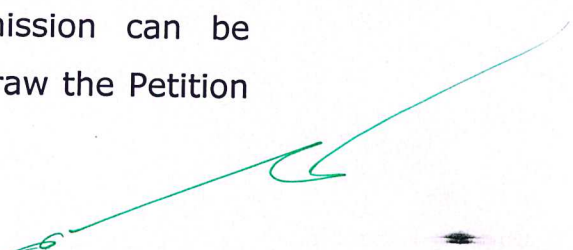
CP (IB) No. 341/9/HDB/2019

In the matter of Excel Anaesthesia and Pain Management Services Private Limited versus Proton Positive Health Care Indian Private Limited

Date of order: 25.02.2019.

ORDER

Matter is listed today for hearing on the withdrawal memo filed jointly by Counsel for Operational Creditor and Counsel for Corporate Debtor along with IA 149/2019 filed to setting aside order dated 28.01.2019. On urgent motion this matter was listed on 22.02.2019. This Tribunal ordered notice to IRP. Today IRP is present. Joint memo for withdrawal is taken up for hearing along with IA 149/2019. Counsel for Operational Creditor as well as Counsel for Corporate Debtor informed the Tribunal that there is a compromise in respect of the claim between the Operational creditor and Corporate Debtor. Both the Counsels contended permission to withdraw the petition can be granted by the Adjudicating Authority under Rule 11 of NCLT Rules even though petition is admitted and CIRP started against Corporate Debtor. In this connection, Counsels relied on the decision of Hon'ble Apex Court reported in 2019 SCC online SC 73 in the matter of Swiss Ribbons Pvt Ltd and Another Vs Union of India & others. I heard the IRP. He has also stated that CoC is not yet constituted and last date of receiving claims is today i.e. 25.02.2019. Therefore, it is clear CoC is not yet constituted. By relying on the decision of Hon'ble Apex Court as well as decision of Hon'ble NCLAT, since parties entered into settlement / compromise, 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. The Counsel for Corporate Debtor agreed to pay an amount of Rs.1 lakh to the IRP towards his fee, a part from the amount already paid to IRP by Operational Creditor. The Corporate Debtor is granted two weeks' time to pay Rs. 1 lakh to the IRP.

Accordingly, permission is granted to Operational Creditor to withdraw the petition by exercising powers under Rule 11 of NCLT Rules and the order dated 28.02.2019 is set aside and CP (IB) No. 341/9/HDB/2018 is dismissed as settled. The appointment of IRP is also set aside including moratorium and Board is directed to function independently with immediate effect.

IA 149/2019 is filed for setting aside the order of admission dated 28.01.2019. In view of the order passed on the joint memo in the main petition, this Application is accordingly allowed vide separate orders.


Member (J)

25/2/19

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

IA No. 149 of 2019 in
CP (IB) No. 341/9/HDB/2018

U/s 60 (5) of IBC, 2016

In the matter of

M/s Excel Anaesthesia and Pain Management services

Versus

M/s Proton Positive Healthcare India Private Limited

M/s Proton Positive Health care India Private Limited
Road No.12, Banjara Hills, Hyderabad
Telangana – 500034

...Applicant /
Corporate Debtor

Versus

M/s Excel Anaesthesia and Pain Management Services
8-2-686/B/1/A, Road No.12, Banjara Hills
Hyderabad – 500034

...Respondent/
Operational Creditor

Date of order: 25.02.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties/Counsels present:

For the Applicant: Shri Rajeev Ratna and Shri Sai Kiran,
on behalf of Shri Sujit Jaiswal,
Advocates

For the Respondent: Shri P. Ravi Prasad and Ms. Srutha
Keerthi, Advocates

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

Heard on: 22.02.2019 & 25.02.2019



ORDER

1. This Application is filed by Applicant who is Corporate Debtor in the main petition, under Section 60 (5) of Insolvency & Bankruptcy Code, 2016, seeking directions to set aside the order of Tribunal dated 28.01.2019.
2. It is the case of Corporate Debtor / Applicant herein that this Tribunal admitted the Petition filed under Section 9 of IBC, 2016 by Operational Creditor / Respondent herein on 28.01.2019 for initiation of CIRP, granting moratorium and appointment of Interim Resolution Professional (IRP).
3. It is further the case of Applicant that the parties have mutually agreed to compromise / settle the claim amicably and accordingly paid an amount of Rs. 14,00,000/- to the Operational Creditor towards full and final payment of the claim, which has been accepted by the Operational Creditor.
4. It is averred in view of above payment, the Applicant agreed to withdraw the civil suit bearing No. OS No. 1776 of 2018 filed by it against the Operational Creditor before Hon'ble VII Junior Civil Judge, City Civil Courts, Hyderabad.
5. It is also averred, IRP fixed 25.02.2019 as last date for submission of claims and 26.02.2019 for forming CoC. In view of amicable settlement between the parties, it is prayed this Tribunal to set aside the order of admission dated 28.01.2019.
6. Joint memo for withdrawal is filed. I have seen the Joint memo of settlement. Counsel for Operational Creditor as well as Counsel for Corporate Debtor



informed the Tribunal that there is a compromise in respect of the claim between the Operational creditor and Corporate Debtor. Both the Counsels contended permission to withdraw the petition can be granted by the Adjudicating Authority under Rule 11 of NCLT Rules even though petition is admitted and CIRP started against Corporate Debtor. In this connection, Counsels relied on the decision of Hon'ble Apex Court reported in 2019 SCC online SC 73 in the matter of Swiss Ribbons Pvt Ltd and Another Vs Union of India & others.

7. The Counsels further contended Hon'ble Apex Court 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. Counsels relied on para 79 of the judgement of Hon'ble Apex Court.
 8. The Counsels also relied on the decision of the Hon'ble NCLAT in the matter of Jogendra Kumar Arora Vs. Dharmender Sharma & Anr in IA 312 & 336 of 2019 in Company Appeal (AT) (Insolvency) No. 94 & 95 of 2019 and contended that Hon'ble NCLAT also relying on the judgement of Hon'ble Apex Court and exercising power conferred under Rule 11 of NCLT Rules, allowed withdrawal of the application in the Appellate stage basing on the compromise as there was no constitution of the CoC by then.
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9. I heard the IRP. He has also stated that CoC is not yet constituted and last date of receiving claims is today i.e. 25.02.2019. Therefore, it is clear CoC is not yet constituted. By relying on the decision of Hon'ble Apex Court as well as decision of Hon'ble NCLAT, since parties entered into settlement / compromise, 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. The Counsel for Corporate Debtor agreed to pay an amount of Rs.1 lakh to the IRP towards his fee, apart from the amount already paid to IRP by Operational Creditor. The Corporate Debtor is granted two weeks' time to pay Rs. 1 lakh to the IRP.
11. Accordingly, permission is granted to Operational Creditor to withdraw the petition by exercising powers under Rule 11 of NCLT Rules and the order dated 28.02.2019 is set aside and CP (IB) No. 341/9/HDB/2018 is dismissed as settled. The appointment of IRP is also set aside including moratorium and Board is directed to function independently with immediate effect.
12. In the result IA 149/2019 is allowed. Order dated 28.01.2019 is set aside. Joint Memo is recorded. Main Petition is dismissed as settled the claim.


(RATAKONDA MURALI)

MEMBER (JUDICIAL)

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