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**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1**



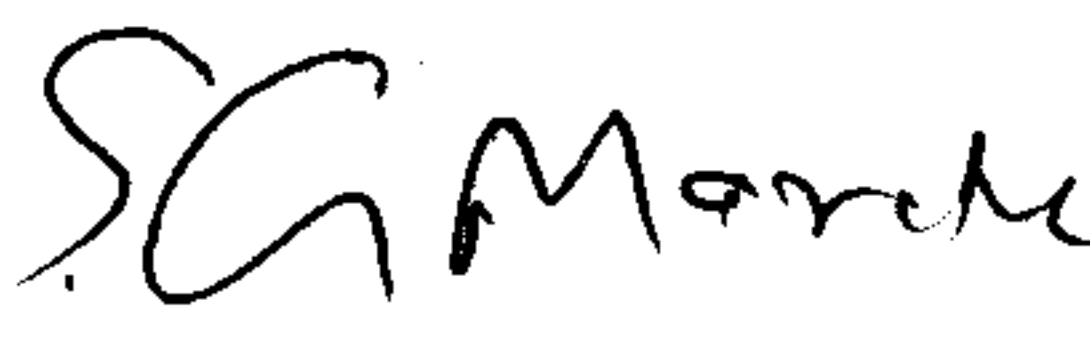
IA 216 of 2020 in CP(IB) 92 of 2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL,  
AHMEDABAD BENCH ON 18.03.2020**

Name of the Company: Shri Samir Ganeshbhai Marathe IRP of C Doctor &  
Co.Pvt Ptd  
V/s  
A.T.O.(I) Ltd

Section: Section 60(5) IBC,2016 r.w 11 of NCLT

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	SAKSHI RAHEJA	ADVOCATE	Corporate Debtor	
2.	NAYASHA DHIRUMAN SHAM	ADV.	APPLICANT	
3	Samir Marathe	IRP CA	IRP CA	

**ORDER**


The Parties are represented through their respective Counsel(s)/PCA.

The present application is filed as a fresh case under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 r,w, Rule 11 of NCLT, Rules.

Both sides arguments are heard.

The IA No. 216 of 2020 in CP(IB) No. 92 of 2018 is allowed and stands disposed of accordingly.

The detailed order is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 18th day of March, 2020.

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

IA No.216 of 2020 in  
CP (IB) No.92/9/NCLT/AHM/2018

**In the matter between:-**

**Shri Samir Ganeshbhai Marathe**

Interim Resolution Professional of  
M/s. C. Doctor & Co. Private Limited  
Having office at-1<sup>st</sup> Floor, Sumati Avenue  
Opp. Rajkamal Bakery  
Bhairavnath Road  
Maninagar  
Ahmedabad-380 008

.... Applicant

*Versus*

M/s. A.T.O. (I) Limited  
Having office at: 60C  
Collotolla Street  
Kolkata-700 073

...Respondent  
(Operational Creditor)

Order delivered on 18<sup>th</sup> March, 2020.

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

**And**

**Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Advocate, Ms. Natasha D. Shah, for the Applicant-IRP.  
Mr. Samir Marathe, IRP, present in person.  
Advocate, Ms.Sakshi Raheja, for the Corporate Debtor.

**ORDER**

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

1. The present Interlocutory Application is filed on 9<sup>th</sup> March 2020, under Section 60 (5) of the Insolvency and Bankruptcy

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Code, 2016, read with Rule-11 of National Company Law Tribunal Rules, for withdrawal of the IB Petition i.e. CP (IB) No.92/9/NCLT/AHM/2018 and for recalling of the Corporate Insolvency Resolution Process as initiated by this Bench's order dated 17<sup>th</sup> February 2020, whereby this Bench has admitted the petition by declaring Moratorium, in respect of the Corporate Debtor company, viz. M/s. C. Doctor & Co. Pvt. Ltd. and appointed Shri Samir Ganeshbhai Marathe as Interim Resolution Professional (IRP).

2. However, subsequent to appointment of the IRP but prior to constitution of Committee of Creditors (CoC), the present applicant has moved before this Adjudicating Authority by filing the present IA, seeking for withdrawal of the IB Petition and to recall the Corporate Insolvency Resolution Process (CIRP). The IRP has also filed application in prescribed form FA dated 04.03.2020.
3. The applicant IRP submits that till date, i.e. on 09.03.2020, the Committee of Creditors was not constituted and in fact the corporate debtor has settled the matter with the petitioner-operational creditor by way of Memorandum of Understanding dated 04.03.2020 to pay the outstanding amount of **Rs.17,66,586/- (Rupees Seventeen Lakh Sixty Six Thousand Five Hundred Eighty Six only)**, in support of such

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undertaking, the corporate debtor has handed over a Demand Draft No. 860908 of the Oriental Bank of Commerce, dated 03.03.2020 drawn in favour of the Operational Creditor-A.T.O (I) Limited, for an amount of Rs.17,66,586/-. The same has been received and duly acknowledged by the Operational Creditor.

4. The applicant-IRP, by this application, pertaining to settlement and withdrawal of the present IB Petition and, thus, to recall the CIRP of the Corporate Debtor, has submitted necessary facts of the case and explained the reasons, which are narrated as under:

1. The Applicant submits that the Corporate Debtor was incorporated on 09.02.1944 with CIN: U74999GJ1944PTC077348. The authorized capital of the company is INR 2,75,00,000 (Rupees Two Crores Seventy-Five Lakh only) and the paid-up capital is INR 2,75,00,000 (Rupees Two Crores Seventy-Five Lakh only).
2. The Applicant submits that, one of the Operational Creditors, namely ATO (I) Ltd. preferred an Insolvency Application, being CP (IB) No.92/9/NCLT/AHM/2018 seeking initiation of Corporate Insolvency Resolution Process of Corporate Debtor. The Applicant submits that this Hon'ble Tribunal by way of Order dated 17.02.2020 was pleased to allow the said Application and appointed the applicant as the Interim Resolution Professional to conduct the CIRP of the corporate debtor. The applicant annexed a copy of order dated 17.02.2020 passed in CP (IB) 92/9 of 2018 as Annexure-A to the present application.
3. The Applicant states and submits that this Hon'ble Tribunal after admission of the application under Section 9 in CP (IB) No. 92/9 of

2018 passed an order to declare moratorium, cause public announcement for initiation of Corporate Insolvency Resolution Process and call for submission of claims and appoint an Interim Resolution Professional.

4. The Applicant states and submits that till date Committee of Creditors is not constituted. The Applicant further states and submits that Corporate Debtor has entered into a Memorandum of Understanding dated 04.03.2020 whereby the Corporate Debtor has undertaken to pay the outstanding amount of Rs.17,66,586 (Rupees Seventeen Lakh Sixty Six Thousand Five Hundred Eighty Six only) and has handed over a demand draft 03.03.2020 drawn in favour of ATO to the Respondent. The applicant has annexed a copy of memorandum of understanding to the present application as Annexure-B.
5. The applicant submits that since the settlement between Corporate Debtor and Operational Creditor has been made, the Operational Creditor has also signed Form FA. The applicant has annexed a copy of Form FA to the present application as Annexure-C.
6. The Hon'ble Supreme Court in the case of **Swiss Ribbons Pvt. Ltd. & Anr. Versus UOI & Ors.** has held that "*... We make it clear that at any stage the Committee of Creditors is not yet constituted, a party can approach the NCLT directly, which the Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules 2016, allow or disallow an application for withdrawal of settlement*".
7. The Applicant submits that the Corporate Debtor undertakes to pay IRP fees and CIRP cost incurred to IRP as appointed by the Hon'ble NCLT Bench.
8. In the light of the payment being made in favour of the Operational Creditor and the Committee of Creditors having not yet been constituted, in accordance with the judgment of the Hon'ble Supreme Court, the Applicant is making the present Application seeking a recall of the order dated 17.02.2020 passed by this Hon'ble Tribunal and to set aside the insolvency process.

IV. Relief(s) Sought

The applicant humbly prays as under:

- a) The Hon'ble Tribunal be pleased to recall the order dated 17.02.2020 and set aside the insolvency process and free the company from vigours of law; and
- b) Any other such orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present matter.

5. We have gone through the contents of the present petition and also heard the submission of learned Counsel for the applicant-IRP. She has placed reliance on a decision 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).
6. We duly considered the above stated ruling, wherein Their Lordships (in para-22 of the judgement) have pleased to held by observing as such

*"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".*

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7. Thus, by placing reliance on the above stated judicial precedent, this Adjudicating Authority possess necessary jurisdiction and is competent to permit a petitioner to withdraw the IB Petition even at post admission stage. It is now not required to seek for consent of the members of the CoC, if it is not formally constituted.
8. Therefore, in our view, there can be no impediment for accepting the present proposal of settlement in the post-admission stage, because the CoC, in the present matter, has not yet been formally constituted. For the aforesaid reasons, the present application deserves to be allowed. Hence, it is allowed in terms of its prayer clause and with following directions: -
- i) The CIRP initiated, in respect of the Corporate Debtor, vide our order dated 17.02.2020 passed in CP (IB) No.92/9/NCLT/AHM/2018, i.e. **M/s. ATO (India) Limited Vs. M/s. C. Doctor & Co. Pvt. Ltd., is hereby recalled.**
  - ii) The IRP is directed to handover the charge of the Corporate Debtor to its erstwhile management, at the earliest.
  - iii) The Corporate Debtor or main petitioner-operational creditor is required to pay the professional fees and

necessary expenses incurred by the IRP, for initiating the CIR Process and towards CIRP cost, such shall be a prerequisite for approval of the present settlement/withdrawal of the present IB Petition.

- iv) Such professional fees and necessary expenses as incurred by the IRP are to be reimbursed by the Corporate Debtor or by the main Petitioner-Operational Creditor within four weeks from the date of receipt of an authentic copy of this order and to furnish a proof of payment, through the IRP, before the Registry of this Bench.
- v) It is further made clear that our this order shall not be purported to debar other creditors/stakeholders of the Corporate Debtor company, those have not consented or not a party to the present settlement to agitate their rights in accordance with law before an appropriate forum.

9. With such observation, the present Interlocutory Application, i.e. IA No.216 of 2020 in CP (IB) 92/9/NCLT/AHM/2018, is allowed and stands disposed of.


10. Consequently, the admission order dated 17.02.2020 passed in the main IB Petition, i.e., **CP (IB) No.92/9/NCLT/AHM/2018, M/s. ATO (India) Limited Vs.**

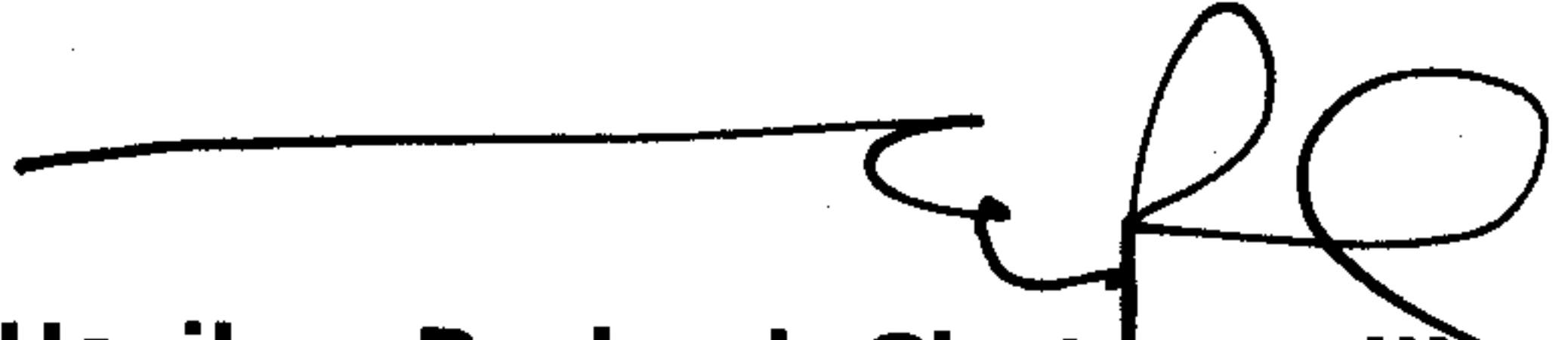
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**M/s. C. Doctor & Co. Pvt. Ltd.**, is hereby recalled and proceedings stands closed.

11. No order as to costs.

  
**(Prasanta Kumar Mohanty)**  
**Adjudicating Authority &**  
**Member (Technical)**

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

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