NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT – IV

17. I.A 1839/2023
IN
C.P. (IB)/764(MB)2020

CORAM:

SHRI PRABHAT KUMAR
MEMBER (Technical)

SHRI KULDIP KUMAR KAREER
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **12.05.2023**

Name of the Parties: Carestream Health India Private Limited
VS
Calvin Associates Private Limited

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016
RULE 11 OF NCLT RULES 2016

ORDER

The Court is convened through Video Conference.

1. Mr. Sean Wasoodew, Ld. Counsel for the Applicant present. Mr. Rakesh Bothra, Interim Resolution Professional (IRP) present in person. Mr. Abhishek Tilak, Ld. Counsel for Operational Creditor present.
2. This is an Application filed on 03.05.2023 by Mr. Kausshal Bagadia, Former Director of the Corporate Debtor u/s 12A of the Code r/w Rule 11 of NCLT Rules 2016 seeking prayer from this Bench to recall the admission order dated 28.04.2023 and withdrawal of Company Petition.
3. Ld. Counsel for the Applicant submits that after the initiation of CIRP against the Corporate Debtor, the Corporate Debtor have paid the entire dues and settled its claim with the Operational Creditor. Ld. Counsel for the Operational Creditor confirms the submission of the Applicant.
4. Ld. IRP present and submits that the Form-A was published, however, the CoC has not been constituted.

5. The Hon'ble Supreme Court in Swiss Ribbons Private Limited & Anr. Versus Union of India & Ors., held that:

> *"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."*

6. In view of the aforesaid, this Bench finds since the conditions for withdrawal for CIRP u/s 12(A) and regulation 30(A) of Insolvency and Bankruptcy Code Board of India (Insolvency Process for Corporate Persons) Regulations 2016 have been complete, this Bench has no objection for withdrawal of CIRP.

7. Accordingly, the Corporate Debtor is brought out from the rigours of CIRP and the IRP is directed to handover the charge of the Assets and Affairs of the Corporate Debtor back to the Suspended Members of the Board of Directors. RP is discharged from his duties.

8. The Operational Creditor is directed to pay the fees of the IRP expenses incurred against publication of Form and legal charges upto 4th May and file affidavit of compliance before this Tribunal.

9. IA-1839/2023 is allowed and disposed of.

10. In view of the above, C.P.(IB)/764(MB)2020 is closed.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

/NP/