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29/03/19

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

IA 118 of 2019 in C.P. (I.B) No. 132/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 15.03.2019

Name of the Company: Shree Agencies
V/s.
Kataria Packaging Pvt. Ltd. & Anr.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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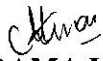
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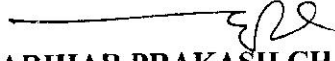
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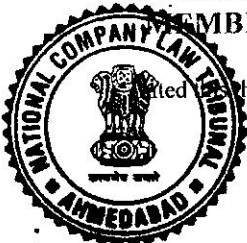
ORDER

The Petitioner is represented through their respective Learned Counsel(s).

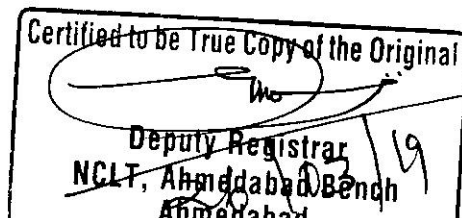
The Order is pronounced in the open court, vide separate sheet


MANORAMA KUMARI
MEMBER (JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)



The 15th day of March, 2019.



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

Interlocutory Application No.118 of 2019

In

CP (IB) No.132/9/NCLT/AHM/2018

In the matter of:

Shree Agencies

117, Laxmi Plaza
Laxmi Industrial Estate
New Link Road
Andheri (West)
Mumbai-400 053

....Applicant/Operational
Creditor

Versus

**1. Kataria Packaging Pvt.
Ltd.**
68-A, Industrial Area
Ratlam
Madhya Pradesh-457 001

....Corporate Debtor

2. Mr. Arvind Gaudana
No.307, Ashirwad Paras
Near Prahladnagar
Garden
Corporate Road
Prahladnagar
Satellite
Ahmedabad-380 015

... Interim Insolvency
Resolution Professional

Order delivered on 15th March, 2019.

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

And

Hon'ble Ms. Manorama Kumari, Member (J)



Appearance:

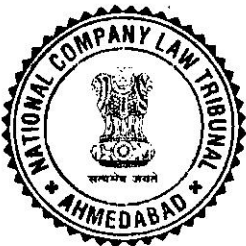
Mr. Rohan LavKumar, Advocate for the Petitioner.

Mr. C.S. Rushabh Shah on behalf of Mr.Arvind Gaudana, Interim Resolution Professional.

ORDER

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

1. The present joint application is filed by the Operational Creditor and Corporate Debtor under Rule 11 of the NCLT read with relevant provisions of the I & B Code for withdrawal of the IB Petition i.e. CP (IB) No.132 of 2018 by recalling of the Corporate Insolvency Resolution Process, in respect of the Corporate Debtor company, viz., M/s. Kataria Packaging Pvt. Ltd.
2. It is matter of record that this Adjudicating Authority, by its order dated 06.02.2019, has earlier admitted the I.B. Petition by appointing Mr.Arvind Gaudana as I.R.P in the present matter.
3. The above said order was communicated to the IRP on 25th February, 2019. It is further contended that as on the date of filing the present application, the IRP had not made a public announcement for initiation of Corporate Insolvency Resolution Process (CIRP), hence, has not yet called for



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submission of claims and the Committee of Creditors (CoC) is yet to be constituted formally.

4. It is further submitted that on 26th February, 2019, the Respondent - Corporate Debtor, approached the Applicant - Operational Creditor, to settle the present matter, as it received an intimation via e-mail from the IRP to initiate CIRP in respect of the Corporate Debtor.
5. It is further stated that on 27th February, 2019, the respondent - corporate debtor deposited an amount of **Rs.10,43,716/-** to the account of the applicant-operational creditor as part payment, a balance outstanding amount of **Rs.9,59,042/-**. However, on 28th February, 2019, the applicant - operational creditor received the balance amount. Thus, a total sum of **Rs.20,02,758/-** has been received by the applicant-operational creditor as full and final settlement.
6. It is further stated that the cost of the IRP, if any, shall be borne by the Respondent-Corporate Debtor, which the Respondent duly undertakes to make.
7. As per record, the present application is moved jointly by both parties, in this Court (as filed on 28th February, 2019) before the constitution of the CoC, whereby both are seeking withdrawal of the IB Petition and to recall the CIRP (the Corporate Insolvency Resolution Process) under the relevant



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provisions of the I & B Code read with Rule-11 of the NCLT Rules, 2016.

8. A notice was issued to the IRP in respect of the present application, by inviting his comments on the proposed settlement, by seeking withdrawal of the present IB Petition and further recalling of the CIRP. In response there to, the IRP appeared in person before this Bench on 01.03.2019 and sought time to file his comments. On 04.03.2019, the IRP duly submitted his letter dated 04.03.2019 which is taken on record, wherein he stated as under;

IRP has received the certified copy of order on 25th February, 2019. Newspaper Advertisement in Form A as per Regulation 6 Insolvency and Bankruptcy Board of India (Insolvency Regulation Process of Corporate Person) Regulations, 2016 has been published on 28th February 2019 in Free Press Journal Indore edition (Covering Ratlam) and Raj Express Ujjain (Covering Ratlam).

IRP has also taken symbolic possession of Registered office/Factory Unit of Corporate Debtor "Kataria Packaging Pvt. Ltd". on 28th February 2019.

The undersigned has no objection in withdrawal application u/s 12A filed by the Applicant/Operational Creditor/Shree Agencies subject to receipt of following CIRP expenses:

The applicant/Shree Agencies/Operational Creditor has paid the following expenses:

1	Newspaper Publication Bill	Rs.45,360/-
2	Professional Fees as IRP	Rs.25,000/-
3	Travelling Expenses to Ratlam	Rs.3,500/-
Total		Rs.73,860/-



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- q. We duly considered the above stated contents of the present petition in the light of reply given by the IRP. We have heard the submission of learned Counsel for the applicant. He 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) wherein Their Lordships, in para-22 of the judgment, have been pleased to observe and held 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".

10.

By placing reliance on the above stated judicial precedent, this Adjudicating Authority possess necessary power and jurisdiction to permit a petitioner to withdraw an IB Petition at



Adjudicator

post admission stage. It is not required to seek consent from the members of the CoC, if such has not been formally constituted.

11. Therefore, we find no impediment for accepting the proposal of settlement even at the post-admission stage of the IB Petition, because the CoC has not been formally constituted so far. Hence, the present application deserves to be allowed. Hence, it is allowed.

12. Notwithstanding the above, it is expedient to issue necessary directions to the Petitioner-Operational Creditor as well as Corporate Debtor company to bear professional fees and necessary expenses incurred by the IRP in addition to the cost of CIRP, which shall be a prerequisite for approval of the present settlement. Therefore, the Petitioner and the Corporate Debtor company are jointly directed to pay a lump sum amount of Rs.75,000/- (Rupees Seventy Five Thousand only) to the I.R.P. towards his fee and necessary expenses incurred by him to initiate C.I.R.P., i.e., public announcement – paper publication, administration expenses, etc., as described in the reply/letter of the I.R.P.

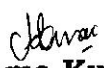
13. The amount of the above stated cost shall be payable to the IRP within two weeks from the date of receipt of an authentic copy of this order and on furnishing proof of payment through

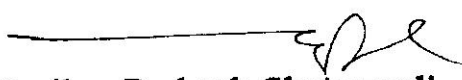


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the IRP before the Registry of this Adjudicating Authority, the present settlement shall be deemed to be accepted and C.I.R.P. to be recalled.

14. It is further made clear that in case full payment is not made within such stipulated period nor it is further extended by this Adjudicating Authority, then the IRP shall proceed further so as to complete the CIRP in respect of the Corporate Debtor company, as per the provisions of the Code.
15. With the above stated observations/conditions, the present Interlocutory Application No.118 of 2019 in CP(IB) No.132/9/NCLT/AHMD/2018 is allowed and stands disposed of.
16. No order as to costs.


Manorama Kumari
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi
Adjudicating Authority
Member (Judicial)

