

**THE NATIONAL COMPANYLAW TRIBUNAL**  
**SPECIAL BENCH**  
**NEW DELHI**

**CA-2115 (PB)/2019**  
**in**  
**(IB)-1724(PB)/2018**

**IN THE MATTER OF:**

M/s Khanna Jewllers Private Limited

.... Applicant/ Financial Creditor

Vs.

M/s Lifetime Infotech Private Limited

.... Respondent/ Corporate Debtor

*Withdrawal Application Under Regulation 30-A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016*

**Order delivered on: 16.10.2019**

**Coram:**

**DR. DEEPTI MUKESH**  
**HON'BLE PRESIDENT (JUDICIAL)**

**S. K. MOHAPATRA**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENTS:**

For the IRP:

Mr. Akshay Makhija, Sr. Advocate

Mr. Saakaar & Ms. Bhumika Kapoor, Advocates

For the Financial Creditor: Mr. Manik Dogra, Mr. Kapil Rustagi,

Mr. Rohan Jaitely & Mr. Dhruv Pandey, Advs.

For the ex-Directors:

Mr. Harsh Sethi, Advocate



**ORDER****S. K. Mohapatra, Member**

1. This is an application filed by the Interim Resolution Professional to permit the Petitioner to withdraw the Company Petition No. (IB)-1724 (PB) /2019 under Regulation 30-A of the Insolvency and Bankruptcy Board of India ( Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in view of the settlement with the management of the Corporate debtor before the Constitution of Committee of Creditors.
2. An application for initiation of corporate insolvency resolution process or on admission continuance of insolvency resolution process under the provisions of the Code can be withdrawn, on settlement arrived at between the parties at any of the following three stages.
  - a) On settlement before the admission of the application under Section 7, 9 or 10 of the Code in terms of Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



- b) On settlement with the petitioner after admission but before constitution of CoC under inherent power under rule 11 of NCLT Rules (in view of the decision in Swiss Ribbons Case).
  - c) Withdrawal in terms of Section 12 A of the Code.
3. The brief facts of the present matter are that an application under Section 7 of the Code filed by the financial creditor namely, M/s Khanna Jewellers Private Limited was admitted against the corporate debtor M/s Lifetime Infotech Private Limited and IRP was appointed therein vide order dated 25.09.2019.
4. It is however submitted that the petitioner financial creditor and the corporate debtor have entered into a share purchase agreement dated 23.09.2019 and also executed a MOU dated 23.09.2019 and settled the claim of the petitioner financial creditor.
5. The petitioner financial creditor has also filed an application in Form-FA under regulation 30 A (2), for withdrawal of the present Corporate Insolvency Resolution Process against the Corporate Debtor. The petitioner has



additionally attached a bank guarantee as per sub-regulation (2) of Regulation 30 A.

6. The IRP has confirmed that neither he has received any claim nor the Committee of Creditors has yet been constituted. He has further submitted in the application that as per the financial statements of the corporate debtor as at 25.09.2019 there is no other financial creditor of the corporate debtor other than the petitioner and that he has obtained an affidavit in this regard from the Director of the Corporate Debtor.
7. It is accordingly prayed that IB-1724 (PB) /2019 may be permitted to be withdrawn in terms of the settlement dated 23.09.2019 arrived at between the parties.
8. In the case of 'Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. - Writ Petition (Civil) No. 99 of 2018 (2019 SCC OnLine SC 73)', the Hon'ble Supreme Court has observed as follows"

*"79. 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." (emphasis given)*


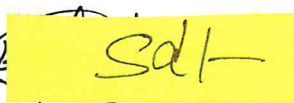
9. In the factual background and in view of the settlement between the petitioner financial creditor and the corporate debtor and since there is no other financial creditor of the corporate debtor and as the CoC has not yet been constituted; the present prayer of IRP is allowed.



10. The Corporate debtor is directed to pay all the outstanding CIR Process Costs including the fees of the IRP as per law.
11. As a sequel to the aforesaid discussion CP No. IB – 1724 (PB)/2018 is permitted to be withdrawn.
12. Accordingly, admission order dated 25.09.2019 passed in IB – 1724 (PB)/2018 is recalled and the proceedings are closed. Order of moratorium and all orders passed consequent thereto are recalled. The corporate debtor stands released from all rigors of the Code. It is made clear that corporate debtor shall act independently through its Board of Directors.
13. C.A. 2115(PB) /2019, C.A. 2116 (PB) 2019 and C.A. 1871 (PB)/ 2019 filed in IB 1724 (PB)/2018 are also disposed of in the aforesaid terms.

Let copy of the order be served to the parties.

  
  
**(S. K. MOHAPATRA)**  
**MEMBER (T)**

  
  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**

Deepak Kumar