

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

**IA 387 of 2019 in C.P. (I.B) No. 325 /NCLT/AHM/2018**

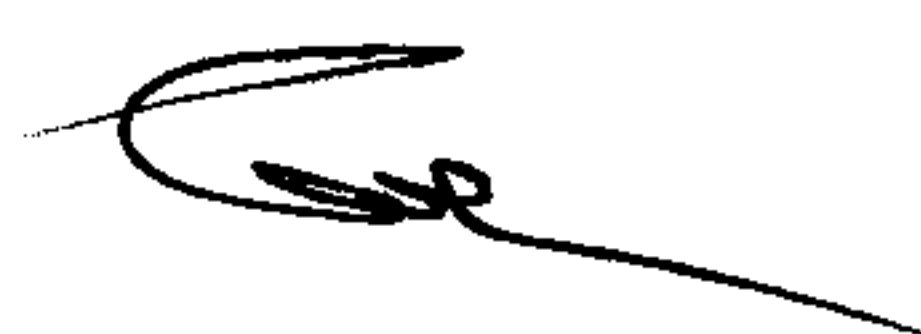
Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 05.07.2019**

Name of the Company: Reliance Commercial Finance Ltd.  
V/s.  
Ambica Concrete Company (India) Ltd.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.	<i>Dalit M. Patel</i>	Advocate	Applicant	
2.	Bhavi Shah	IRP		<i>BShah</i>

**ORDER**


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


Interim Resolution Professional Ms. Bhavi Shah present in person.

Heard the argument of the Applicant.

IA No. 387 of 2019 is allowed, accordingly.

The detailed Order is recorded, vide separate sheet.

  
**MANORAMA KUMARI  
MEMBER (JUDICIAL)**

  
**HARIHAR PRAKASH CHATURVEDI  
MEMBER (JUDICIAL)**

Dated this the 5th day of July, 2019.

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

Interlocutory Application No.387 of 2019 in  
CP (IB) No.325/7/NCLT/AHM/2018

**In the matter of:**

**Reliance Commercial Finance  
Limited**

A Company within the meaning of Companies Act, 1956 and having its Registered Office at Reliance Centre, 6<sup>th</sup> Floor, South Wing, Off. Western Express Highway, Santacruz (East), Mumbai, Mumbai City, Maharashtra-400 055 and having one of its Branches at: Ground Floor, Reliance House, Opp. HDFC Bank Limited, Mithakhali Six Roads, Navrangpura, Ahmedabad-380 009

Through its Authorized Representative  
Mr. Jayraj Amrishkumar Upadhyay

....Applicant

***Versus***

**Ambica Concrete Company (India)  
Limited**

A Company incorporated under the Companies Act, 1956 and having its registered office at: 19, Narayan Complex, Opp. Mental Hospital, Karelibaug, Vadodara-390 018

Now represented by and through;  
CA Bhavi Shreyans Shah  
(Interim Resolution Professional)  
Having her office at; C-201, Embassy  
Appt., Nr. Ketav Petrol Pump  
Dr. V.S. Road, Ahmedabad-380 015.

.... Respondent

Order delivered on 5<sup>th</sup> July, 2019.

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

**And**

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

*Harihar*

*[Signature]*

Appearance:

Mr. Lalit M. Patel, Advocate, for the Petitioner.

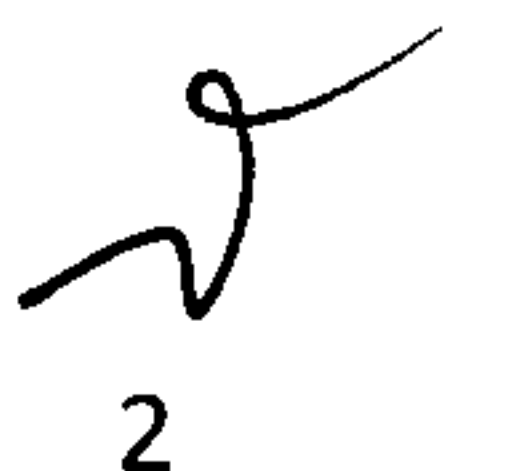
Ms. Bhavi Shreyans Shah (CA), Interim Resolution Professional.

**ORDER**

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

1. The present application is filed by Mr. Jayraj Amrishkumar Upadhyay, Branch Collection Manager of the Applicant/Financial Creditor, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I & B Code") for withdrawal of the IB Petition i.e. CP (IB) No.325 of 2018 by recalling of the Corporate Insolvency Resolution Process, in respect of the Corporate Debtor company, viz., M/s. Ambica Concrete Company (India) Limited.
2. It is matter of record that this Adjudicating Authority, vide its order dated 19.06.2019, has earlier admitted the I.B. Petition by appointing Ms. Bhavi Shreyans Shah (CA) as interim Resolution Professional (I.R.P) to conduct CIRP in respect of the Corporate Debtor company as per the IB Code.
3. The above said order was communicated to the IRP. It is further contended that the IRP made a public announcement on 27.06.2019 for initiation of Corporate Insolvency Resolution Process (CIRP).



  
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4. It is stated that after making public announcement by the IRP for commencement of the Corporate Insolvency Resolution Process in respect of the Respondent - Corporate Debtor company it approached the Applicant - Financial Creditor and discussed the issue for settling the present matter by offering payment of **Rs.13,27,534/-** towards full and final settlement of the outstanding debts of the Financial Creditor, thus, it made payment of the above stated settlement amount to the financial creditor through RTGS on 01.07.2019. It is reported that such payment has been duly received by the Financial Creditor, who is the applicant in the present application.
5. The Interim Resolution Professional, who also appeared in the person inform that the last date fixed for lodgment of the claims by the creditors of the Corporate Debtor is on 10.07.2019, thereafter only the Committee of Creditors (CoC) can be constituted. Hence, the Committee of Creditors (CoC) has not yet been constituted.
6. The applicant at para-6 of its application has following submission;
  - "6 It is submitted that Adjudicating Authority has inherent powers to pass appropriate order under Section 60(5) read with Rule 11 of the NCLT Rules, 2016 if the parties have settled the claim prior to constitution of Committee of Creditors and therefore the order dated 19.06.2019 passed may be set aside and Application under Section 7 of the Code be disposed off as withdrawn and the Interim Resolution Professional be discharged from his duties upon payment of the cost incurred

*Chavari*

*by her by the Corporate Debtor or the Applicant and therefore present Interlocutory Application is required to be allowed by this Tribunal”.*

7. On the basis of the above given facts and circumstances of the present case, we heard submission of the applicant's counsel as well as Ms. Bhavi Shreyans Shah (CA), the Interim Resolution Professional, and further also gone through the contents of the present application along with its enclosures.
8. As per record, the present application is moved by the applicant/financial creditor before formal Constitution of the under Section 60(5) read with Rule-11 of the NCLT Rules, 2016 for seeking appropriate order for withdrawal of the IB Petition and for recalling the CIRP (Corporate Insolvency Resolution Process), as the matter has been settled between the parties and the corporate debtor has paid entire amount of settlement to the applicant on 01.07.2019.
9. The applicant, in support of its claim, has also placed reliance on the Judgment passed by the Hon'ble NCLAT, New Delhi in ***Company Appeal (AT) (Insolvency) No.794 of 2018 in case of Avishek Roy, Shareholder of M/s. Reacon Engineers (India) Pvt. Ltd. vs. Diamond Steel Enterprise & Ors.*** A copy of such decision is annexed with the present application as Annexure-C.

*Chavara*

10. He further 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".*

11. By following the above referred Judicial precedent, it is now legally settled that this Adjudicating Authority possess necessary power and jurisdiction to permit a petitioner to withdraw its IB Petition at post admission stage and to recall the CIRP, for this the consent from the members of the CoC, is

*Adarsh*


not required because the COC has not been formally constituted.


12. Therefore, there remains no legal 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.
13. Notwithstanding the above, it is expedient to issue necessary directions to the Petitioner-Financial 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.50,000/- (Rupees Fifty Thousand only) to the I.R.P. towards her fee and necessary expenses incurred by she to initiate C.I.R.P., i.e., public announcement – paper publication, administration expenses, etc.
14. The amount of the above stated cost and fee shall be payable by the present applicant and/or the corporate debtor to the IRP within four weeks from the date of receipt of an authentic copy of this order and on furnishing proof of payment through the IRP before the Registry of this Adjudicating Authority, the

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present settlement shall be deemed to be accepted and C.I.R.P. to be recalled.

15. **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.**
16. With the above stated observations/conditions, the present Interlocutory Application No.387 of 2019 in CP(IB) No.325/7/NCLT/AHMD/2018 is allowed and stands disposed of.
17. Accordingly, main CP (IB) No. 325 of 2018 is disposed of.
18. No order as to costs.

  
**Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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