IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No.(IB)1365(MB)/2018

CORAM: SHRI V. P. SINGH
MEMBER (J)
SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 2.4.2019.

NAME OF THE PARTIES: Haresh Dharmani

Vs

AP Coated Drums & Barrels Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

39. **CP.(IB)1365(MB)/2018**

MA 982/2019 has been filed by the Resolution Professional under Section 12A of IBC, 2016, seeking withdrawal of CP(IB) 1365(MB)/2018, filed under Section 9 of IBC, 2016 and discharge the applicant from his duties.

It is stated in the application that this Petition was admitted by this Tribunal by order dated 16.10.2018. After the admission of the Petition, on 22.2.2019, it was informed to the RP that the original applicant ~~and~~ the Corporate Debtor had settled the matter mutually and the settlement deed dated 22.2.2019 was executed between the parties. A copy of the settlement deed dated 22.2.2019 is annexed with the application as Annexure B.

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

It is further stated that the original applicant namely Haresh Dharmani, proprietor of Haresh Trading Company has also signed Form FA authorising the applicant to file the present application and giving its assent to the withdrawal of the application being CP(IB) 1365(MB)/2018. Copy of Form FA is annexed as Annexure C.

It is further stated that after receiving Form FA from Mr Haresh Dharmani, i.e. Operational Creditor, it was placed before the CoC after issuing a notice to the members of CoC. A copy of the notice dated 22.2.2019 of the 2ndCoC meeting is annexed as Annexure D.

The applicant has contended that Settlement Deed dated 22.2.2019 entered between the Operational creditor and the suspected Board of Directors of the Corporate Debtor duly executed along with Form FA was placed before CoC for its approval. The suspended Board of Directors further informed the committee that they had a discussion with the Standard Chartered Bank as well as HDFC Bank Ltd and requested them to forward their formal NOC even though they were not members of the CoC.

The applicant contended that he had received the consent from the Standard Chartered Bank through email. It is however stated that the Settlement Deed between the parties which were accepted by 100% vote share of CoC and the Resolution Professional, i.e. Hemanshu Kapadia was authorised to file the present application before this Tribunal for withdrawal of the petition. The relevant part of the resolution is as under:

"RESOLVED THAT under the consent received from more than ninety per cent of the voting share and consent received from the other operational creditors not forming part of the Committee, the Committee at this moment approves the application received from Mr Haresh Dharmani for withdrawal of Corporate Insolvency Resolution Process (CIRP).

RESOLVED FURTHER THAT pursuant to the provisions of Section 12A of Insolvency and Bankruptcy Code, 2016 read with Regulation 30A of the

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the application received from Mr. Haresh Dharmani, Proprietor of Haresh Trading Company (Operational Creditor), in the form FA, be and is hereby approved and the same be submitted to the Hon'ble NCLT, Mumbai Bench through the Resolution Professional namely Mr. Hemanshu Kapadia.

RESOLVED FURTHER THAT the Resolution Professional is at this moment authorised to take all the necessary steps including the appointment of Advocate Counsel to implement this resolution."

It is also contended that he has received entire CIRP costs and fees and no amount is pending towards CIRP cost and expenses as on the date of filing this application.

Given the above, the applicant has filed this application under Section 12A for withdrawal of the CP (IB) 1365(MB)/2018 after the admission of the petition.

Additional Affidavit has also been filed by the applicant which contains the list of CoC who has supported the resolution which shows that CoC with 100% vote share has approved the above-mentioned resolution. Since CoC unanimously has given the consent for filing withdrawal application and resolution was approved with 100% vote share, CoC with 90% is authorised for permitting the withdrawal even after admission under Section 12A of IBC, 2016.

In the circumstances, we at this moment allow MA 982/2019 subject to payment of Rs.3,00,000/- as costs, which shall be paid by the Corporate Debtor in the account of 'Prime Minister's National Relief Fund' within seven days from today, the receipt of which shall be produced in this office. After payment of the costs and after production of the receipt with this office, then only this order will be effective. List on DT.9th April for F.O.

Certified True Copy
Copy Issued "free of cost"
On 4-4-2019

Sd/-	Sd/-
RAVIKUMAR DURAISAMY	V. P. SINGH
Member (Technical)	Member (Judicial)

S. A. Patel
Deputy Registrar
National Company Law Tribunal Mumbai Bench

NATIONAL COMPANY LAW TRIBUNAL
राष्ट्रीय कंपनी विधि अधिकरण
मुंबई न्यायपीठ
MUMBAI BENCH