

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

C.P. (I.B) No. 552 /9/NCLT/AHM/2018

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 09.04.2019**

Name of the Company: M/s. Vikas Ecotech Limited

V/s.
Kumar Arch Tech Pvt. Ltd

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER

1. The instant matter is put up on the basis of pursis filed by learned PCS appearing on behalf of the petitioner/ operational creditor with a request to allow the petitioner to withdraw the petition so filed under Section 9 of the IB Code. It is submitted by the learned PCS that CP (IB) No. 552/9/NCLT/AHM/2018 in the matter of M/s. Vikas Ecotech Limited vs. Kumar Arch Tech Pvt. Ltd. was admitted on 29.03.2018. After admission of the petition, the corporate debtor approached the operational creditor and has paid total outstanding amount by way of two demand drafts by entering into settlement agreement executed between the two parties on 5th April, 2019.
2. The operational creditor on receipt of the settlement amount filed the instant application for withdrawal of the petition by serving an advance copy to the IRP.



3. Today, IRP – Mr. Kiran C. Shah, C.A. and the corporate debtor are present. Corporate debtor submitted that he paid the total outstanding amount to the operational creditor by way of two demand drafts dated 03.04.2019. It is submitted by the IRP that he received intimation of his appointment only day before yesterday and has come to know that parties have entered into a settlement and the corporate debtor has made full payment due to operational creditor. It is further submitted by the IRP that in view of the directives of Hon'ble NCLAT, Committee of Creditors has also not been constituted. It is also fairly submitted by the IRP that he has not yet released public announcement and hence the question of constitution of CoC does not arise at all. Learned PCS appearing on behalf of the petitioner submitted that since CoC has not been constituted and no public announcement has been made, they may be allowed to withdraw the petition.
4. Heard both the sides at length. On perusal of the record it is found that the instant petition was allowed on 29.03.2019 and, thereafter, registry had sent intimation to the IRP which has been received by him on day before yesterday only. Further, during the intervening period corporate debtor cleared total outstanding of the operational creditor and entered into a settlement. At this juncture it is desirable to refer the decision by Hon'ble Supreme Court in writ petition (Civil) Nos. 99,100,459,598,775,822,849 & 1221 of 2018 and 37 of 2019, wherein, in para No. 52, it is observed as under: -

"52. It is clear that once the Code gets triggered by admission of a creditor's petition under Section 7 to 9, the

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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 having all the concerned parties and considering all relevant factors on the facts of each case."

5. In view of the above discussions and the judgement of Hon'ble Supreme Court, there is no impediment in allowing the withdrawal pursis so filed by the operational creditor. Hence, pursis filed by the learned PCS in the matter of CP (IB) No. 552/9/NCLT/ AHM/2018 is allowed. Further, the expenditure, if any, incurred by the IRP shall be borne by the operational creditor. In view of withdrawal of the petition, moratorium so granted upon the corporate debtor stands withdrawn.



MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 9th day of April , 2019.