4)

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

IA 298 of 2018 In C.P. (I.B) No. 48/NCLT/AHM/2017

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 01.11.2018

Name of the Company:	Dena Bank V/s. Ajay Joshi & Anr.
Section of the Companies Act:	Section 60(5) of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1. NAVIN PAHWA	SR ADV	COC	
2. PRATEEK KUMAR	ADV		
SNEHA JANAKIRAMAN	ADV		
RAVI PAHWA	ADV		
Sandeep Singhi Trisha Baxi for Singhi & Co.	Advocate	Applicant	Trisha
3. Mr. Mihir Thakore with Mr. Nirag Pathak	Senior Advocate Advocate	Respondent No. 1/RP	Pathak

ORDER

Learned Senior Counsel Mr. Navin Pahwa, Advocate Mr. Prateek Kumar, Advocate Ms. Sneha Jankiraman and Advocate Mr. Ravi Pahwa are present for the Committee of Creditors. Learned Senior Advocate Mr. Mihir Thakore, Advocate Mr. NIrag Pathak is present for the RP. Learned Senior Advocate Mr. Sandeep Singhi with Advocate Ms. Trisha Baxi is present for the Applicant.

Ld. Lawyer appearing on behalf of Dena Bank filed a pursis for withdrawal of the IA No. 298/2018 as well as Inv. 66 /2018, in view of the order passed by the Hon'ble National Company Law Appellate Tribunal dated 12.09.2018, wherein, the Hon'ble National Company Law Appellate Tribunal has categorically observed in para no. 9 , which is as under :

"(9) ***Clause (b) and (c) of Regulation 38(1) being inconsistent with the provision of I& B Code, and the legislators having not made any discrimination between the same set of group such as 'financial Creditor' or 'Operational Creditor' Board by its Regulation cannot mandate that the Resolution Plan should provide liquidation value to the 'Operational Creditors' (clause (b) of the regulation 38(1) or liquidation value to the dissenting Financial Creditors (clause (c) of regulation 38(1). Such regulation being against Section 240(1) cannot be taken into consideration and any Resolution Plan which provides liquidation value to the 'Operational Creditors(s)' or liquidation value to the dissenting 'Financial Creditor(s)' in view of clause (b) and (c) of Regulation 38(1), without any other reason to discriminate between two set of creditors similarly situated such as 'Financial Creditors' or the 'Operational Creditors' cannot be approved being illegal"***

In view of the such observation made by the Hon'ble National Company Law Appellate Tribunal, and subsequent amendment in Regulation ***38 of IBBI (Insolvency Resolution Process for Corporate Person) Regulation, 2016,*** the prayer for withdrawal of IA 298/2018 is allowed.

Accordingly, in the light of the above judgement passed by the Hon'ble National Company Law Appellate Tribunal and amendment in the regulation, all the dissenting financial creditor shall be paid in proportion to their respective value of the outstanding debts, in the same manner as the assenting member (financial creditor).

Accordingly, IA 298/2018 is disposed of with the above observation.

MANORAMA KUMARI
(MEMBER JUDICIAL)

Dated this the 1st November, 2018.