

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

MA 596/2019 in
CP No.1712/IBC/NCLT/MB/MAH/2017

Under Rule 11 of NCLT Rules, 2016

Harish F. Sawlani
....Applicant

In the matter of
Vijay Rochlani
...Financial Creditor

v.

Shantai Exim Limited
....Corporate Debtor

Pronounced on: 03.04.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Applicant :

None Present.

For the Respondent :

Advocate Meghna Talwar.

Per: M. K. Shrawat, Member (J)

ORDER

1. This is an application filed by a Promoter, Director & Shareholder of the Corporate Debtor Shantai Exim Ltd. for withdrawal of application admitted U/s 7 of the Insolvency & Bankruptcy Code, 2016 ("Code") vide order dated 14.01.2019. This application was filed on 13.02.2019 pursuant to a full and final settlement of the claim admitted in S.7 petition.
2. The Applicant has agreed to pay to the Financial Creditor an amount of ₹58,78,794/-, which includes the principle and interest amount via Demand Draft dated 12.02.2019, No. 028538, issued on Kotak Mahindra Bank. Also, a Cheque dated 02.03.2019 bearing No. 778226 drawn on IDBI Bank for a sum of ₹38,019/- has been paid to Mr. Ajay Kumar, the Insolvency Resolution Professional (IRP) towards Tax Invoice No. 2018-19/3A dated 21.02.2019, and a Cheque dated 02.03.2019 bearing No.778225 drawn on IDBI bank for a sum of ₹86,400/- towards Performa Invoice No. 2019/GST-03 dated 21.02.2019 has already been paid to the IRP.

3. It is to be noticed that the present application is filed prior to Constitution of Committee of Creditors, hence, the requirement of S.12A of the Code with regard to approval of ninety percent voting by the CoC can be dispensed with in view the judgement of the Hon'ble Supreme Court, Order dated 25.01.2019 in the matter of *Swiss Ribbons & Ors V. Union Of India & Ors. [Writ Petition (Civil) No. 99 of 2018]*, wherein the apex court empowered the NCLT to invoke Rule 11 of NCLT Rules so as to allow withdrawal of applications admitted U/s 7, 9 or 10 without the approval of CoC in a case where CoC has not been constituted. The relevant portion of the said judgement has been reproduced below:

“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.”

4. Moreover, on 26.02.2019, the Petitioner was also present & made a request for withdrawal of the petition on receiving the settled amount. Further, in this situation, when the Petitioner & the Corporate Debtor both have expressed to withdraw the petition on account of settlement of debt. Hence, under the circumstances, the petition does not survive, especially when the IRP has also been paid his dues.
5. Hence, in view of above, and the settlement arrived at between the parties, MA 790 of 2019 is allowed.
6. Ordered Accordingly.

Dated : 03.04.2019

js

SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)