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**Special Bench
Court-II**

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**I.A. No. 226/KB/2017
C.P.(IB) No.
150/KB/2017**

Present: Hon'ble Member (J) Shri Vijai Pratap Singh

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 25th May, 2017, 10.30 A.M

Name of the Company		Parker Hannifin India Pvt.Ltd.	
Under Section		9	I.B.C
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1. AKHILESH KU. SHRIVASTAVA, ADV.	} Cosporale Debtor	Akash Sharma 25.5.17
2. AKASH SHARMA, PrCS		

1) Avishek Guha	} operational creditor	Buldas 25.05.17
2) Priti Barua		
3) Abhishek Sekdar		

1. Arun Gupta, FCA	IRP	Arun Gupta 25/5/17
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V. P. Singh, Member (J)

O R D E R

Insolvency Resolution Professional (IRP) Shri Arun Kumar Gupta, has filed progress report in the case wherein it is mentioned that ~~in~~ the first meeting of Committee of Creditors (CoC) took place on 06/05/2017 wherein all members were present. The CoC decided to abstain from voting in the meeting and necessary decisions would be taken in the next meeting of the CoC. He however informed that the next meeting of the CoC would be convened after the information memorandum was ready for circulation.

2. Report of the IRP be kept on record.

3. IA No.226/KB/2017 has been filed by the Corporate Debtor for withdrawing the Petition on the ground that after admission of the Petition under Section 9 of the Insolvency and Bankruptcy Code 2016 (IBC-2016) and issuance a public announcement in newspapers, the representative of the Applicant and Corporate Debtor held discussions with a view to resolve the disputes between them in an amicable manner and arrived at an amicable resolution. The Petitioner has stated that in view thereof he does not incline to pursue the present Company Petition and desirous to withdraw the same. On that basis, the Petitioner/Applicant has filed the Application for withdrawing the Petition.

4. It appears from the record that the Petition was filed under Section 9 of the IBC, 2016 and after receipt of Application being CP No. 150 of 2017, order

of admission was passed by this Tribunal on 20/04/2017 and Shri Arun Kumar Gupta was appointed as IRP. In compliance with the said order dated 20/04/2017 public announcement was made in the newspapers and thereafter Operational Debtor contacted with the Operational Creditor/Applicant and entered into an amicable settlement.

5. As per provision of Section 9 (5)(ii) of the IBC 2016 the adjudicating has the power to reject the application of Corporate Resolution Process, if the Operation Debtor repay the unpaid operational debt. Section 9(6) of IBC 2016 provides that a Corporate Insolvency Resolution Process shall commence from the date of admission of the Application under sub-Section (5) of this Section.

6. In this case, it is undisputed fact that the Application filed under Section 9 of the IBC 2016, for initiating Corporate Insolvency Resolution Process, has been admitted on 20/04/2017 and in compliance of the order dated 20/04/2017 publication of notice was made in Newspapers for inviting claim from other creditors and for declaration of Moratorium. It also appears from the provisions of Section 9(5)(ii)(b) that if repayment of the debt amount is made by the Operational Debtor, then adjudicating authority has power to reject the Petition, before admission of the Petition. After the admission, the Petition acquires the character of Representative suit and through publication of Notice in Newspapers, applications have been invited from all the creditors of the company to file their claim before IRP. After admission of the Petition under IBC 2016, the Petition cannot be dismissed on the basis of compromise



between Operational Creditor and Operational Debtor, because other creditors of the company have also right to file their claim.

7. After admission of Petition under IBC 2016, the nature of petition changes to representative suit and the lis does not remain only between Operational Creditor and Operational Debtor. Therefore, Operational Creditor and Operational Debtor alone have no right to withdraw the Petition after admission.

8. On the above basis it is clear that the Application being IA No.226/KB/2017 regarding permission to withdraw the Petition is not maintainable at this stage and therefore, the IA deserves to be dismissed.

9. IA No.226/KB/2017 is dismissed as non-maintainable.

10. IRP is directed to proceed in the matter according to the provision of the IBC 2016.

11. List on 03/07/2017.



[Vijai Pratap Singh]
Member (Judicial)

This^{29th} day of May, 2017.

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2. AKASH SHARMA, PrCS } Corporate Debtor

Akash Sharma
25.5.17

1) Avishek Gupta
2) Preeti Basia
3) Abhishek Sukdar } operational creditor

Mukuldas
25.05.17

1. Arun Gupta, FCA IRP

Arun Gupta
25/5/17

V. P. Singh, Member (J)

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