

**NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT-I)
CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON **13.07.2021 at 10.30 A.M**
THROUGH VIDEO CONFERENCING

**PRESENT: SMT. R.SUCHARITHA, MEMBER (JUDICIAL)
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)**

IA/MA/IBA/TCP/TCA/CP/CA No : IBA/845/IB/2019
NAME OF PETITIONER : PMI Engineering Exports Pvt Ltd
NAME OF RESPONDENT : KGS Developers Ltd
SECTION : Sec 7 Of IBC 2016

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IA/MA/IBA/TCP/TCA/CP/CA No : IA/377/CHE/2021 IN IBA/845/IB/2019
NAME OF PETITIONER : PMI Engineering Exports Pvt Ltd
NAME OF RESPONDENT : KGS Developers Ltd
SECTION : Sec 60(5)(c) of IBC 2016 R/w Rule 11 of NCLT Rules 2016

ORDER

The Applicant is represented on behalf of M/s. A.K. Mysamy & Associates and the Respondent is represented by Mr. Satish Parasaran, Senior Advocate through video conferencing platform.

This Application was filed on 28.06.2019 and numbered as IBA/845/IB/2019. Thereafter, the matter was taken up for hearing on 12.09.2019 and both the parties were represented for hearing. In the hearing, the Corporate Debtor was given two weeks time to file reply and the matter was adjourned for hearing on 23.10.2019. It is seen that no counter had been filed by the Respondent; hence vide order dated 23.10.2019 this Adjudicating Authority was constrained to close the right of filing counter by the Corporate Debtor, however, an opportunity was given to the Corporate Debtor to participate in the proceedings. Thereafter, the matter was again listed for hearing on 18.11.2019. On 18.11.2019, there was no representation for the Corporate Debtor; hence the matter was heard and order reserved.

Then the matter came up for hearing on 07.04.2021 and Mr. Vishnu Mohan, Advocate undertakes to file vakalath on behalf of the Corporate Debtor and the matter was posted for hearing on 28.04.2019. In view of the NCLT, Headquarters order dated 19.04.2021 the matter stands reposted today i.e., 13.07.2021 for filing counter and hearing.



Learned Counsel for Applicant represents that the CIRP of the Corporate Debtor was already ordered in this matter and the same also passed by this Adjudicating Authority vide order dated 18.12.2019.

An appeal has been preferred before the Hon'ble NCLAT vide Company Appeal (AT) (Insolvency) No.45 of 2020. In the order of the Hon'ble NCLAT considering the fact that 'Memorandum of Understanding' dated 7th February 2020 was arrived at between the parties, the said Appeal was disposed of. Based on the settlement, the Applicant has filed an Application under section 12-A of the IBC, 2016 for withdrawal of the CIR process.

However, the Respondent has failed to comply with the terms and conditions of the settlement and based on which 12-A proposal was filed. There is no necessity for filing counter on merits by the Respondent.

Learned Counsel for Respondent challenges on the maintainability of the Application under Section 7 of IBC, 2016.

Both the parties are permitted to file two pages written submissions on the question of the maintainability of this Application under Section 7 of the IBC, 2016 in the Registry within five working days from today.

Heard. **Order reserved.**

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-

(R. SUCHARITHA)
MEMBER (JUDICIAL)