

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 08 of 2023**

(Arising out of Order dated 23<sup>rd</sup> December, 2022 passed by National Company Law Tribunal, Mumbai Bench, Court I in CP (IB) – 646(MB)/2022)

**IN THE MATTER OF:**

**VISHWAJEET SUBHASH JHAVAR**

(Erstwhile Director Marvel Realtors & Developers Limited)

Address:- Jewel Tower, Lane No. 5,  
Koregaon Park, Pune - 411001

**...Appellant**

**Versus**

**1. IDFC FIRST BANK LIMITED**

Having Registered Office at KRM Tower, 7<sup>th</sup> Floor,  
No. 1

Harrington Road, Chetpet,  
Chennai – 600031

**2. MANOJ KUMAR MISHRA**

Insolvency Resolution Professional,  
Having Address at Room No. 1406,  
Building 4B, New Hindi Mill,  
Mhada, Sankul, Ram Bhau Bhole Marg,  
Ghodapdev, Mumbai - 400033

**...Respondents**

**Appellant:** Mr. Abhijeet Sinha and Mr. Aayush Agarwala, Advocates.

**Respondent:** Ms. Shilpa Thakur and Mr. Vijay Dutt, Advocates  
for R-1.  
Mr. Shakti Kanta Pattanaik, Advocate for RP.  
Mr. Gaurav Mitra and Mr. Himanshu Vij, Advocates for  
Intervenor.

**J U D G E M E N T**

**ASHOK BHUSHAN, J:**

1. This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the Order dated 23<sup>rd</sup> December, 2022 passed by

National Company Law Tribunal, Mumbai Bench-I admitting Section 7 Application filed by the IDFC First Bank Limited (Respondent No. 1 herein).

**2.** This Appeal was heard by this Tribunal on 04<sup>th</sup> January, 2023 on which date following order was passed:

*“04.01.2023: Learned Counsel for the appellant submits that appellant has already given a settlement proposal on 30.12.2022 to the bank.*

*Learned Counsel for the Bank submits that the said settlement proposal is under active consideration of the management.*

*Learned Counsel for the Bank submits that the appeal be listed in the second week of February to enable the counsel to communicate the decision of the bank.*

*List the appeal on **6th February, 2023.***

*In view of the fact that settlement proposal has been forwarded which is under consideration we are of the view that CoC may not be constituted till the next date.*

*In the meantime, IRP shall endeavor to run the Corporate Debtor as a going concern and carry all such business which is the normal business of the Corporate Debtor.”*

**3.** An I.A. No. 1905 of 2023 has been filed by the ‘Catalyst Trusteeship Limited’ praying for intervention in the Appeal.

**4.** An Affidavit has been filed by the Appellant dated 09<sup>th</sup> May, 2023 stating that Settlement Letter has been executed on 08.05.2023 by the IDFC First Bank Limited addressed to the Corporate Debtor and Appellant. Affidavit states that parties having settled the dispute, this Tribunal in exercise of power under Rule 11 of NCLAT Rules, 2016 may set aside the admission order and close the Corporate Insolvency Resolution Process

(CIRP in short) against the Corporate Debtor. Affidavit further states that Appellant undertakes to pay CIRP Cost which may be found to be unpaid or outstanding including the Fee of IRP.

**5.** We have heard Learned Counsel Mr. Abhijeet Sinha for the Appellant, Learned Counsel for Financial Creditor as well as Learned Counsel for IRP. We have also heard Mr. Gaurav Mitra, Advocate appearing for Intervener in I.A. No. 1905 of 2023.

**6.** Learned Counsel for the Appellant-Mr. Abhijeet Sinha submits that in view of the fact that Financial Creditor has already settled the dispute with the Appellant and 'Terms and Conditions' of the Settlement have been brought on record vide Settlement Letter dated 08<sup>th</sup> May, 2023, the CIRP deserves to be closed.

**7.** Learned Counsel for the Financial Creditor also supports the above submission of Learned Counsel for the Appellant.

**8.** Learned Counsel for the IRP has raised his concern about his fee and expenses.

**9.** Mr. Gaurav Mitra, Learned Counsel appearing for intervener submits that intervener has already filed his claim in prescribed Form-C on 04<sup>th</sup> January, 2023. It is submitted that Intervener has huge financial claim against the Corporate Debtor and the Financial Creditor IDFC First Bank Ltd. may not be permitted to settle the matter with the Corporate Debtor. It is submitted that allowing the Parties to settle the matter will lead to filing another proceeding by the intervener which shall be nothing but duplication of proceeding. It is submitted that claim of the intervener having been

already filed, CIRP process against the Corporate Debtor be allowed to continue rejecting prayer of the Appellant to close the CIRP.

**10.** Learned Counsel for the parties in support of their submissions have placed reliance on Judgements of Hon'ble Supreme Court which we shall refer to while considering the submissions.

**11.** From the facts of the present case, it is clear that CIRP was initiated against the Corporate Debtor vide Order dated 23<sup>rd</sup> December, 2022 admitting Section 7 Application filed by the IDFC First Bank Limited Respondent No. 1 herein. On 04<sup>th</sup> January, 2023, Interim Order was passed in this Appeal directing that Committee of Creditors (CoC in short) may not be constituted. Interim Order passed in this Appeal still continues as on date. In the I&B Code as enacted in 2016, there was no statutory provision permitting withdrawal of an Application under Section 7 and 9 of the Code. Hon'ble Supreme Court in **(2019) 4 SCC 17 – Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.** in paragraph 82 held that before a Committee of Creditors is constituted, a party can approach the NCLT directly under inherent powers of Rule 11 for withdrawal of Section 7 or 9 Application. In paragraph 82, following observations have been made:

*82. 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 NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.”*

- 12.** Section 12-A was inserted in I&B Code by Act No. 26 of 2018. Section 12-A is as follows:

**“12-A. Withdrawal of application admitted under section 7, 9 or 10.—***The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.”*

- 13.** Regulation 30A of CIRP Regulations, 2016 deals with withdrawal of Application. Regulation 30A is as follows:

**Regulation 30-A: Withdrawal of application.**

*30A. (1) An application for withdrawal under section 12-A may be made to the Adjudicating Authority –*

- (a) before the constitution of the committee, by the applicant through the interim resolution professional;*
- (b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:*

*Provided that where the application is made under clause (b) after the issue of invitation for expression of interest*

*under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.*

*(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule accompanied by a bank guarantee-*

*(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of sub-regulation (1); or*

*(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).*

*(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.*

*(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.*

*(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.*

*(6) The Adjudicating Authority may, by order, approve the application submitted under sub-regulation (3) or (5).*

*(7) Where the application is approved under sub-regulation (6), the applicant shall deposit an amount, towards the actual expenses incurred for the purposes referred to in clause (a) or clause (b) of sub-regulation (2) till the date of approval by the Adjudicating Authority, as determined by*

*the interim resolution professional or resolution professional, as the case may be, within three days of such approval, in the bank account of the corporate debtor, failing which the bank guarantee received under sub-regulation (2) shall be invoked, without prejudice to any other action permissible against the applicant under the Code.”*

**14.** The procedure as prescribed in Regulation 30A makes it clear that there are two separate process for filing withdrawal application: one before constitution of Committee of Creditors and another after constitution of Committee of Creditors.

**15.** We need to consider the objection raised by Mr. Gaurav Mitra, Learned Counsel for Intervener that since Intervener has also a financial claim against the Corporate Debtor, the Corporate Debtor should not be allowed to settle with the Financial Creditor who filed the Section 7 Application.

**16.** The present is a case where Committee of Creditors has not yet been constituted and the Appellant after filing settlement agreement by the Financial Creditor dated 08<sup>th</sup> May, 2023, prays for withdrawal of the CIRP in exercise of inherent power of this Tribunal under Rule 11 of NCLAT Rules, 2016.

**17.** Hon'ble Supreme Court in **2022 SCC OnLine SC 1275 – Ashok G. Rajani v. Beacon Trusteeship Ltd. & Ors.** had occasion to consider the case in which case the NCLT reserved Order on 13<sup>th</sup> May, 2021 on Section 7 Application. The Corporate Debtor and Financial Creditor filed a joint application on 1<sup>st</sup> July, 2021 requesting to differ the Order as the parties are in process of arriving at a Settlement. On 03<sup>rd</sup> August, 2021, NCLT rejected the request of the parties and admitted Section 7 Application against which

Order, an Appeal was filed in this Appellate Tribunal. On 08<sup>th</sup> August, 2021, parties amicably settled their disputes. NCLAT considered the settlement and granted interim stay and gave liberty to the parties to adopt procedure under Section 12A. Parties filed an Application under Section 12A before NCLT which however was pending. An Appeal was filed against the Order dated 18<sup>th</sup> August, 2021 passed by this Tribunal staying the formation of CoC but declining to exercise the power under Rule 11. In the above context, the Hon'ble Supreme Court had occasion to examine the proceedings of IBC. In paragraph 30-31, following has been held by the Hon'ble Supreme Court:

*“30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement.*

*31. Mr. Mukul Rohtagi, learned Senior Counsel appearing on behalf of the Appellant drew our attention to an order dated 25th August 2021, passed by a Bench of coordinate strength comprising S. Abdul Nazeer and Krishna Murari, J.J. in Civil Appeal No. 4993 of 2021, the relevant part whereof is extracted hereinbelow:*

*“(3) We have heard learned counsel for the parties. It is not in dispute that CoC has not been constituted so far. This Court in Swiss Ribbons Private Limited and Anr. v. Union of India and others- (2019) 4 SCC 17 has held that at any stage, before a Committee of Creditors is constituted, a party can approach National Company Law Tribunal (NCLT) directly and that the Tribunal may, in exercise of its*



*inherent powers under Rule 11 of NCLT Rules, allow or disallow an application for withdrawal or settlement. It was held thus:*

**82.** *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 NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.*"

*(emphasis supplied)*

*(4) In the instant case, as noticed earlier, the applicant-respondent no.1 had made an application before the NCLT, Mumbai Bench, under Rule 11 of the NCLT Rules for withdrawal of company petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) on the ground that the matter has been settled between the Corporate debtor and the applicant-respondent no.1.*

*(5) Having heard learned counsel for the parties and having regard to the facts and circumstances of the case,*

*we are of the view that the applicant-respondent no.1 was justified in filing the application under Rule 11 of the NCLT Rules for withdrawal of the company petition on the ground that the matter has been settled between the parties.”*

**18.** A categorical observation made by the Hon’ble Supreme Court in the above case is that Settlement cannot be stifled before the Constitution of Creditors in anticipation of the claims against the Corporate Debtor from 3<sup>rd</sup> Persons.

**19.** In another recent Judgment of the Hon’ble Supreme Court in **2023 SCC OnLine SC 349 – Abhishek Singh v. Huhtamaki PPL Ltd. & Anr.**, Hon’ble Supreme Court again referring to the Judgment of **Ashok G. Rajani** again reiterated the same preposition. In the above case, Appeal was filed against the Order of NCLT by which an Application under Section 12A filed for withdrawal of the CIRP was rejected by the NCLT. The Application filed under Section 12A was opposed by intervener who claimed to have raised their claim before the IRP. In paragraph 37 to 39, following has been observed:

*“37. In Kamal K. Singh (supra), relying upon paragraph 82 of the report in the case of Swiss Ribbons (supra), the Supreme Court, which was dealing with a similar situation where the settlement had been arrived before constitution of CoC allowed the proceedings to be withdrawn and held that the applications filed under Rule 11 of the NCLT Rules would be maintainable and the OCs therein was justified in moving such application.*

*38. In the case of Ashok G. Rajani (supra), the settlement had been arrived at between the parties on 08.08.2021, after the NCLT had admitted the application under section*

7 of IBC vide order dated 03.08.2021. On appeal, the NCLAT vide order dated 18.08.2021 stayed the formation of CoC but declined to exercise its powers under Rule 11 of the NCLAT Rules. The said order was challenged before this Court. This Court in its order in paragraphs 29 and 30 gave reasons as to why the applications for withdrawal cannot be stifled before the constitution of CoC by third parties. The said paragraphs are reproduced below:

“29. Considering the investments made by the Corporate Debtor and considering the number of people dependant on the Corporate Debtor for their 30 survival and livelihood, there is no reason why the applicant for the CIRP, should not be allowed to withdraw its application once its disputes have been settled.

30. The settlement cannot be stifled before the constitution of the Committee of Creditors in anticipation of claims against the Corporate Debtor from third persons. The withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under IBC. The urgency to abide by the timelines for completion of the resolution process is not a reason to stifle the settlement.”

39. This Court relying upon the order in the case of Kamal K. Singh (*supra*) issued directions in paragraph 32 to the NCLT to take up the settlement application and decide the same in the light of observations made therein. The said paragraph is reproduced hereunder:

“32. The application for settlement under Section 12A of the IBC is pending before the Adjudicating Authority (NCLT). The NCLAT has stayed the constitution of the Committee of Creditors. The order impugned is only an

*interim order which does not call for interference. In an appeal under Section 62 of the IBC, there is no question of law which requires determination by this Court. The appeal is, accordingly, dismissed. The NCLT is directed to take up the settlement application and decide the same in the light of the observations made above.”*

**20.** Appeal was allowed by Hon’ble Supreme Court and Application under Section 12-A was allowed observing that other creditors may raise their independent claims in appropriate proceedings. In paragraph 43-45, following has been observed:

*“43. For all the reasons recorded above, the impugned order of the NCLT cannot be sustained. The application filed under Regulation 30A of IBBI Regulations deserves to be allowed.*

*44. Accordingly, the appeal is allowed and the impugned order of NCLT is set aside. Further, the Application No. 196 of 2021 also deserves to be allowed along with the application under Regulation 30A of IBBI Regulations. The Application under section 9 of IBC filed by the OCs shall stand withdrawn. It is further provided that any claim for expenses incurred may be dealt with by the NCLT in accordance with law.*

*45. We make it clear that any observations made in this judgment will not, in any manner, affect the claim of other creditors of whatever category and they would be free to raise their own independent claims in appropriate proceedings which would be dealt with in accordance with law.”*

**21.** The above judgement of the Hon’ble Supreme Court in **Ashok G Rajani** and **Abhishek Singh (supra)** where the cases were Application for withdrawal was filed before the Committee of Creditors was constituted.

Present is also a case where Settlement has been entered between the parties and prayer is being made to withdraw the CIRP in exercise of jurisdiction under Rule 11 of NCLAT Rule, 2016. The Financial Creditor having settled the matter with the Corporate Debtor and Settlement letter dated 08<sup>th</sup> May, 2023 having been brought on record, we find it a fit case to exercise jurisdiction under Rule 11 of NCLAT Rules, 2016 to close the CIRP. We are of the view that on account of objection raised by the intervener of his filing claim before the IRP, the CIRP can not be allowed to proceed since the debt for which CIRP has been initiated, has been settled with the Financial Creditor. The Intervener is free to take such legal proceedings as may be advised to protect his interest.

**22.** In view of the foregoing discussions, we take the settlement letter dated 08<sup>th</sup> May, 2023 on record, close the CIRP against the Corporate Debtor setting aside the Order dated 23.12.2022. Intervener is at liberty to take its own proceeding in accordance with law to protect its interest. The Appeal is disposed of, accordingly.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**New Delhi  
15<sup>th</sup> May, 2023**

Basant B.