

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4993 OF 2021
(Arising out of S.L.P.(Civil)No.12386 of 2021)

KAMAL K.SINGH

...Appellant(s)

Vs.

DINESH GUPTA & ANR.

...Respondent(s)

O R D E R

Leave granted.

(2) This appeal arises out of a judgment and order dated 06.08.2021 passed by the National Company Law Tribunal, Mumbai Bench, in I.A. NO.1196 of 2021 in Company Petition (IB) No.1069 of 2020, rejecting the application filed by the respondent no.1 under Rule 11 of the National Company Law Tribunal Rules, 2016 (for short, "the NCLT Rules") praying *inter alia* for withdrawal of company petition and to set aside the initiation of Corporate Insolvency Resolution Process (CIRP) based on the settlement between the parties arrived before the constitution of Committee of Creditors (CoC).

(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.

(6) The appeal is accordingly allowed. The order of the NCLT dated 06.08.2021 is hereby set aside and the company petition, for which withdrawal application was filed under Rule 11 of the NCLT Rules, is ordered to be withdrawn. No costs.

.....J.
(S. ABDUL NAZEER)

.....J.
(KRISHNA MURARI)

NEW DELHI
August 25, 2021

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 12386/2021
(Arising out of impugned final judgment and order dated 06-08-2021 in IA No. 1196/2021 in CP (IB)No.1069/2020 passed by the National Company Law Tribunal, Mumbai Bench)

KAMAL K. SINGH

Petitioner(s)

VERSUS

DINESH GUPTA & ANR.

Respondent(s)

(FOR ADMISSION and I.R.

IA No.95719/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS

IA No.99177/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/

FACTS/ANNEXURES

IA No.104951/2021 - INTERVENTION

IA No.104955/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No.105766/2021 - INTERVENTION

[TO BE TAKEN UP TOP OF THE BOARD.])

Date : 25-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Huzefa Ahmadi, Sr. Adv.
Mr. Abhijeet Sinha, Adv.
Mr. Himanshu Satija, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Divyang Chandiramani, Adv.
Ms. Komal Khushalani, Adv.
Mr. Shadab S. Jan., Adv.
Ms. Prerana Wagh, Adv.
Mr. Yash Tembe, Adv.
Mr. Aditya Shukla, Adv.
Mr. Rohan Sharma, Adv.
Mr. E. C. Agrawala, AOR

For Intervenor - Mr. Anupam Lal Das, Sr. Adv.
Union Bank of India Mr. Ishtiaq Ali, Adv.
Ms. Vinita Hombalkar, Adv.
Mr. Hasan Murtaza, AOR

For Respondent(s) Mr. Sanjay R. Hegde, Sr. Adv.
No.1 Mr. Udayasankar Samudrala, Adv.
Mr. Shahrukh Ali, Adv.
Mr. Anshuman Srivastava, AOR

For Res.No.2 Ms. Ranjana Roy Gawai,Adv.
 Ms. Divya Roy,AOR
 Mr. Pervinder,Adv.
 Mr. Vineet Kumar,Adv.

For Intervenor(s) Mr. Siddharth Rajkumar Murarka, AOR
 Ms. Payal Murarka Chauhan,Adv.
 Mr. Niraj Shah,Adv.
 Mr. Angad Singh,Adv.
 i/b Law Chamber of Siddharth Murarka, AOR

 Mr. Tanmaya Agarwal,Adv.
 Mr. Shubham Agarwal,Adv.
 Mr. Arpit Rawat,Adv.
 Mr. Anshuman Srivastava,AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications also stand disposed of.

(ANITA MALHOTRA)
COURT MASTER

(KAMLESH RAWAT)
COURT MASTER

(Signed order is placed on the file.)