

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No(s). 5028 OF 2021
(Arising out of SLP (C) No. 13350 of 2021
@ Diary No.18251 of 2021)**

KAMAL K. SINGH

Appellant(s)

VERSUS

MILAN VASANT SANYASI & ANR.

Respondent(s)

WITH

**CIVIL APPEAL No(s). 5679 OF 2021
(Arising out of SLP (C) No. 14162 of 2021
@ Diary No.18247 of 2021)**

KAMAL K. SINGH

Appellant(s)

VERSUS

NITIN ARORA & ANR.

Respondent(s)

O R D E R

(1) Permission to file the special leave petitions is granted. Leave granted.

(2) These appeals arise out of the judgment and order dated 06.08.2021 passed by the National Company Law Tribunal, Mumbai Bench, in I.A. NO.1197 of 2021 in Company Petition (IB) No.1370 of 2020 & I.A.No.1198 of 2021 in Company Petition (IB) NO.1302

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(s) 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 the application(s) before the NCLT, Mumbai Bench, under Rule 11 of the NCLT Rules for withdrawal of company petition(s) 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(s) 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(s) under Rule 11 of the NCLT Rules for withdrawal of the company petition on the ground that the matter(s) has been settled between the

parties.

(6) The appeals are accordingly allowed. The order of the NCLT dated 06.08.2021 is hereby set aside and the company petitions, for which withdrawal application(s) 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 27, 2021

ITEM NO.29

Court 7 (Video Conferencing)

SECTION XVII

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

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 18251/2021

(Arising out of impugned final judgment and order dated 06-08-2021 in IA No. 1197/2021 in Company Petition (IB) No. 1370 of 2020 passed by the National Company Law Tribunal, Mumbai Bench)

KAMAL K SINGH

Petitioner(s)

VERSUS

MILTAN VASANT SANYASI & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.101289/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.101291/2021-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

WITH

Diary No(s). 18247/2021 (XVII)

(FOR ADMISSION and I.R. and IA No.95766/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.95762/2021-PERMISSION TO FILE PETITION (SLP/TP/WP/..) and IA No.95763/2021-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 27-08-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. ABDUL NAZEER

HON'BLE MR. JUSTICE A.S. BOPANNA

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

For Respondent(s) Mr. Sanjay R Hegde, Sr. Adv.
 Mr. Anshuman Srivastava, AoR
 Mr. Udayasankar Samudrala, Adv.
 Mr. Shahrukh Ali, Adv.

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

Permission to file the special leave petitions is
granted.

Leave granted.

The appeals are allowed in terms of the signed
order.

Pending applications, if any, also stand
disposed of.

(NEELAM GULATI)
ASTT. REGISTRAR-cum-PS

(Signed order is placed on the file)

(KAMLESH RAWAT)
COURT MASTER (NSH)