

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 336 of 2025

[Arising out of Order dated 13.02.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Allahabad Bench, Prayagraj), in IA
No.200/2022 in CP (IB) No.33/ALD/2021]

IN THE MATTER OF:

Himanshu Singh,
Suspended Director of
Kriti Prakashan Private Limited
Address: -
Kriti Prakashan Private Limited
(Under CIRP) R/o B-2019,
B-Block, Indira Nagar,
Lucknow-226016
E-Mail: contact@kritiprakashan.com

...Appellant

Versus

1. HDFC Bank Limited

Address: - Department of Special Operations,
First Floor, HDFC Bank Limited,
Pranay Tower, Drabari Lal Sharma Marg,
Lucknow-226001.

...Respondent No. 1

2. Mr. Anil Kumar Mittal

(Interim Resolution Professional)

Address: - 5/99, Sector- 2,
Rajender Nagar, Sahibabad, Distt. Ghaziabad,
Ghaziabad, Uttar Pradesh, 201005

Email Id: - mittalanil.ubi@gmail.com

...Respondent No. 2

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Harish Taneja, Ms. Srishti Agrawal, Ms. Shenaaz and Mr. Heena Kochar, Advocates.

For Respondents : Ms. Surabhi Sinha, Advocate for R-1.

Mr. Anang Shandalia, IRP.

WITH

Company Appeal (AT) (Insolvency) No. 337 of 2025

[Arising out of Order dated 13.02.2025 passed by the Adjudicating Authority
(National Company Law Tribunal, Allahabad Bench, Prayagraj), in IA
No.182/2022 in CP (IB) No.33/ALD/2021]

IN THE MATTER OF:

Himanshu Singh,
Suspended Director of
Kriti Prakashan Private Limited

Address: -

Kriti Prakashan Private Limited
(Under CIRP) R/o B-2019,
B-Block, Indira Nagar,
Lucknow-226016

E-Mail: contact@kritiprakashan.com

...Appellant

Versus

1. Mr. Anil Kumar Mittal

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Address: - 5/99, Sector- 2,
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...Respondent No. 1

2. HDFC Bank Limited

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First Floor, HDFC Bank Limited,
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Lucknow-226001.

Email Id: - Jasveen.kaur1@hdfcbank.com

...Respondent No. 2

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Harish Taneja, Ms. Srishti Agrawal, Ms. Shenaaz and Mr. Heena Kochar, Advocates.

For Respondents : Ms. Surabhi Sinha, Advocate for R-1.

Mr. Anang Shandalia, IRP.

ORDER

ASHOK BHUSHAN, J.

These two appeals have been filed challenging the same order dated 13.02.2025 passed by the Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) in I.A. No. 200/2022 in CP (IB) No.33/ALD/2021 filed by the HDFC Bank and I.A. No. 182/2022 in CP (IB) No.33/ALD/2021 filed by the Interim Resolution Professional (IRP) under Section 12A of the Insolvency and Bankruptcy Code, 2016, (for short 'the Code' or 'the IBC'). Both the applications have been decided by separate Orders of the same date dated 13.02.2025 passed by the Adjudicating Authority. Aggrieved by the Order dated 13.02.2025 in I.A. No. 200/2022, the Appeal No. 336/2025 has been filed and the aggrieved by the Order dated 13.02.2025 passed in I.A. No. 182/2022, Appeal No. 337/2025 has been filed.

2. Both the appeals arise from the same Corporate Insolvency Resolution Process (CIRP) of the corporate debtor, they have been heard together and are being decided by this common judgment.

3. Brief background facts necessary to be noticed for deciding the appeals are:

- i. Small Industrial Development Bank of India (SIDBI) has filed an application under Section 7 on 20.03.2020 against the Corporate Debtor, Kriti Prakashan Private Limited.

- ii. NCLT Allahabad Bench vide order dated 13.06.2022 admitted Section 7 application and initiated CIRP against the corporate debtor. Mr. Aditya Agarwal was appointed as IRP.
- iii. By order dated 15.06.2022, another IRP Anil Kumar Mittal was appointed.
- iv. On 19.06.2022, IRP made a publication inviting claim from all the creditors by 30.06.2022.
- v. On 21.06.2022, SIDBI sent an email to the IRP about corporate debtor's willingness to repay and settle full and final outstanding amount payable by the corporate debtor.
- vi. On 22.06.2022, corporate debtor paid the amount i.e., Rs.1,58,70,199/- to the SIDBI, who issued a No-Objection Certificate (NoC).
- vii. On 23.06.2022, 'Form-FA' was given to the IRP by the financial creditor.
- viii. On 25.06.2022, IRP on behalf of the financial creditor, SIDBI filed I.A. No. 182/2022 under Section 12A of the Code for withdrawal of the Company Petition.
- ix. The Appellant, Himanshu Singh, Suspended Director of the corporate debtor also filed a Comp. App. (AT) (Ins.) No. 708/2022 challenging the order initiating CIRP against the corporate debtor, which appeal was disposed of on 29.06.2022 accepting the request of the counsel for the appellant for withdrawal of the Company Appeal. This Tribunal also noticed that Section 12-A application has already been filed by the IRP. Appellate Tribunal directed that till the disposal of the I.A. under

Section 12A, the implementation of the impugned order shall remain stayed.

- x. On 30.06.2022, HDFC Bank, another financial creditor of the corporate debtor submitted a claim of Rs.4,30,74,985/- to the IRP. HDFC's claim was not being collated by the IRP, in view of the Order dated 29.06.2022 passed by this Tribunal, HDFC Bank filed an I.A. 200/2022 before the Adjudicating Authority praying for permitting intervention of the applicant.
- xi. It was further prayed that the application filed by the IRP for withdrawal of the CIRP be rejected. Both the applications i.e., I.A. No. 200/2022 & I.A. No. 182/2022 were heard by the Adjudicating Authority and by separate order dated 13.02.2025, I.A. No. 200/2022 was allowed whereas by Order of the same date dated 13.02.2025, I.A. No. 182/2022 filed under Section 12A by the IRP has been rejected.
- xii. The Appellant, Suspended Director of the corporate debtor aggrieved by both the aforesaid orders have filed these appeals.

4. We have heard Learned Sr. Counsel Mr. Abhijeet Sinha appearing for the Appellant. Learned Counsel Ms. Surabhi Sinha appearing for the Respondent No. 1 as well as Learned Counsel Mr. Anang Shandalia appearing for the IRP.

5. Learned Sr. Counsel Mr. Abhijeet Sinha appearing for the appellant submits that I.A. No. 182/2022 was filed by the IRP in accordance with the provisions of Section 12A of the IBC read with Section 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, (for

short 'CIRP Regulations, 2016') on 25.06.2022, on which date, the Committee of Creditors (CoC) was not constituted. SIDBI being a financial creditor whose debt was fully paid, Adjudicating Authority ought to have allowed I.A. No. 182/2024 permitting withdrawal of the CIRP. HDFC Bank who also claims to be a financial creditor has no jurisdiction to oppose application filed under Section 12A of the IBC which was filed prior to constitution of the CoC. The filing of the application for withdrawal under Section 12A of the IBC prior to constitution of the CoC and subsequent to the constitution of the CoC are two different circumstances and when application under Section 12A of the IBC is filed prior to the constitution of the CoC, there is no jurisdiction of the Adjudicating Authority to entertain any objection by another creditor and disallow the application under Section 12A. Financial creditor prior to constitution of the CoC has no right to object settlement of the corporate debtor with another financial creditor. HDFC Bank was free to initiate its own proceedings against the corporate debtor for its dues, however, had no jurisdiction to object the settlement which was entered between the SIDBI, which settlement was entered on 23.06.2022 on which date, 'Form-FA' was also given to the IRP with No-Due Certificate for filing a 12A application. Learned Sr. Counsel for the Appellant relies on the judgment of the Hon'ble Supreme Court in **'Abhishek Singh' Vs. 'Huhtamaki PPL Ltd. & Anr.'** reported in **2023 SCC OnLine SC 349** and also on the recent judgment of the Hon'ble Supreme Court in **'GLAS Trust Company LLC' Vs. 'BYJU Raveendran & Ors.'** decided on 23.10.2024. Mr. Abhijeet Sinha submits that Hon'ble Supreme Court in **'Glass Trust Company Limited'** has referred

to the judgment of the '**Abhishek Singh**' (*Supra*) with approval. Although, it was held that facts of the '**Glass Trust Company Limited**' (*Supra*) are different from facts of the '**Abhishek Singh**' (*Supra*).

6. Learned counsel appearing for the respondent refuting the submissions of the counsel for the appellant contends that the Adjudicating Authority has rightly allowed the I.A. No. 200/2022 filed by the HDFC Bank. HDFC Bank is also a financial creditor of the corporate debtor who had filed its claim on 30.06.2022 i.e., within the time allowed by publication by the IRP dated 19.06.2022. After the CIRP was admitted under Section 7, the proceeding becomes "in rem" and HDFC Bank is also a stakeholder and creditor of the corporate debtor whose objection/claim was entitled to be considered before taking a decision under Section 12A application filed by the IRP on basis of settlement with another creditor SIDBI. It is submitted that permitting withdrawal of the CIRP after settlement with one creditor is nothing but preferential payment to one creditor which is not in accordance with the scheme of the IBC. It is submitted that HDFC Bank had locus to file I.A. No. 200/2022. Learned counsel for the respondent relying on the judgment of the Hon'ble Supreme Court in '**Swiss Ribbons Ltd. & Anr.**' Vs. '**Union of India & Ors.**' reported in (2019) 4 SCC 17, submits that in view of the judgment of the Hon'ble Supreme Court while considering the application under Section 12A, the Adjudicating Authority has to consider all relevant facts and the fact that the claim of other creditors have been filed in the CIRP are relevant factors and Adjudicating Authority has rightly allowed the I.A. No. 200/2022. Adjudicating Authority has also by considering all relevant

factors have rejected the 12A application. Orders passed by Adjudicating Authority need no interference in these appeals.

7. We have considered the submissions of counsel for the parties and perused the record.

8. Section 12A has been inserted in IBC by Act 26/2018. Hon'ble Supreme Court in '**Swiss Ribbons Ltd. & Anr.**' (**Supra**) has occasion to consider the challenge to the provisions of Section 12A of the Code. Hon'ble Supreme Court in the said judgment has noticed the Report of Insolvency Law Committee (ILC), Report of March 2018 which lead to insertion of Section 12A. In, Paragraph 80 of the judgment, the Hon'ble Supreme Court noticing the ILC Report made following observations:

"80. The ILC Report of March 2018, which led to the insertion of Section 12-A, stated as follows:

"29.1. Under Rule 8 of the CIRP Rules, NCLT may permit withdrawal of the application on a request by the applicant before its admission. However, there is no provision in the Code or the CIRP Rules in relation to permissibility of withdrawal post admission of a CIRP application. It was observed by the Committee that there have been instances where on account of settlement between the applicant creditor and the corporate debtor, judicial permission for withdrawal of CIRP was granted [Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP [Lokhandwala Kataria Construction (P) Ltd. v. Nisus Finance and Investment Managers LLP, (2018) 15 SCC 589] ; Mothers Pride Dairy India (P) Ltd. v. Portrait Advertising and Marketing (P) Ltd. [Mothers Pride Dairy India (P) Ltd. v. Portrait Advertising and Marketing (P) Ltd., 2017 SCC OnLine SC 1789] ; Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem [Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem, (2018) 15 SCC 587]]. This practice was deliberated in light of the objective of the Code as encapsulated in the BLRC Report, that the design of

the Code is based on ensuring that “all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution.” Thus, it was agreed that once CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.

*29.2. On a review of the multiple NCLT and Nclat judgments in this regard, the consistent pattern that emerged was that a settlement may be reached amongst all creditors and the debtor, for the purpose of a withdrawal to be granted, and not only the applicant creditor and the debtor. On this basis read with the intent of the Code, the Committee unanimously agreed that the relevant rules may be amended to provide for withdrawal post admission if the CoC approves of such action by a voting share of ninety per cent. It was specifically discussed that Rule 11 of the National Company Law Tribunal Rules, 2016 may not be adopted for this aspect of CIRP at this stage [as observed by the Hon'ble Supreme Court in *Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem* [Uttara Foods and Feeds (P) Ltd. v. Mona Pharmachem, (2018) 15 SCC 587]] and even otherwise, as the issue can be specifically addressed by amending Rule 8 of the CIRP Rules.”*

(emphasis in original)

Before this section was inserted, this Court, under Article 142, was passing orders allowing withdrawal of applications after creditors' applications had been admitted by NCLT or Nclat.”

- 9.** Hon'ble Supreme Court has also noticed Regulation 30A of the CIRP Regulations, 2016 in Paragraph 81 of the judgment and after noticing the scheme, observed that at any stage where CoC is not yet constituted, party can approach the NCLT directly which may allow or disallow application for

withdrawal or settlement. Hon'ble Supreme Court held that ***"this will be decided after hearing all the parties concerned and considering all relevant factors on the fact of each case"***. Paragraph 82 of the judgment is as follows:

"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."

10. From the facts as noticed above, it is clear that IRP issued publication on 19.06.2022 and after issuance of the publication, settlement was made with the SIDBI and payments of dues of Rs.1,58,70,199/- was made to the SIDBI on 23.06.2022 and thereafter an application under Section 12A was filed on 25.06.2022 by IRP. HDFC Bank has also filed its claim on 30.06.2022 i.e., which was the last date for submitting the claim for creditors as per publication dated 19.06.2022. The above facts have been noted by the Adjudicating Authority in Paragraph 3 of the order dated 13.02.2025 passed in I.A. No. 182/2022. Para 3 of the impugned order is as follows:

“3. It is stated that as per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, IRP made the public announcement in Form A on the following platform:-

a. Financial Express - English and Jansatta - Hindi Newspaper on 19.06.2022 with the last date of submission of claims being 30.06.2022.

b. On the website of the Corporate Debtor as well as the designated website of the Insolvency and Bankruptcy Board of India.

A copy of the Public Announcement has been annexed as Annexure B with the present Application.”

11. HDFC Bank had filed its claim on 30.06.2022. Claim of the HDFC was filed i.e., Rs.4,30,74,985/-. The IRP in its reply filed in I.A. No. 200/2022 has noticed the facts and the details of the claim in Paragraph 11(a) & (b), which is as follows:

“11. Respondent No. 3/IRP filed a reply on 03.05.2023, recorded under Diary No. 1499 dated 24.05.2023, raising objections against the averments made in the present application, which are as follows:

a. The Respondent No. 3 submits that pursuant to the order dated 29.06.2022 issued by the Hon’ble NCLAT, which imposed a stay on the CIRP proceedings initiated against the Corporate Debtor, the IRP released all assets under his control and refrained from taking any further steps to conduct the CIRP process against the Corporate Debtor, in compliance with the provisions of the Code.

b. It is further submitted that the total claims received by the IRP to date amount to Rs. 4,58,82,649/-, comprising Rs. 4,30,74,985/- from the intervening applicant HDFC Bank and Rs. 28,07,664/- from four Operational Creditors. However, due to the stay imposed on the CIRP proceedings against the Corporate Debtor, the IRP was unable to examine the claims for their admission or rejection, and as a result, the CoC could not be constituted.”

12. Form the reply filed by the IRP, it is clear that total claim which was received by the IRP was Rs.4,58,82,649/- whereas, claim which was settled with the SIDBI was Rs.1,58,70,199/-. The present is the case where 12A application was filed before the constitution of the CoC and the procedure for filing such application is contemplated under Regulation 30A of the CIRP Regulations, 2016. Regulation 30A of the CIRP Regulations, 2016, is as follows:

“30-A. Withdrawal of application.—(1) *An application for withdrawal under Section 12-A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under Regulation 36-A.*

(2) *The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application.*

(3) *The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.*

(4) *Where the application is approved by the committee with ninety per cent voting share, the resolution professional shall submit the application under sub-regulation (1) to the adjudicating authority on behalf of the applicant, within three days of such approval.*

(5) *The adjudicating authority may, by order, approve the application submitted under sub-regulation (4).”*

13. The argument which has been much pressed by the Appellant is that no objection could have been permitted to be raised by the HDFC Bank with regard to application for withdrawal i.e., I.A. No. 182/2022. It is submitted that when CoC is not constituted, other creditors are not stakeholders and

cannot be allowed to scuttle the withdrawal process initiated by the IRP in accordance with the Regulation 30A of the CIRP Regulations, 2016.

14. Learned counsel for the appellant has relied on the judgment of the Hon'ble Supreme Court '**Abhishek Singh**' (*Supra*). In the above case, application under Section 12A for withdrawal of the CIRP was rejected by the NCLT which order was challenged before the NCLT. In the above case, operational creditor filed an application under Section 9 of the IBC against the corporate debtor on which the CIRP commenced on 01.03.2021, within two days corporate debtor entered into settlement with the operational creditor which was arrived even before the CoC could be constituted. Operational creditor received the amount and an application under Section 12A of the IBC read with Section 30 of the CIRP Regulations, 2016, was filed on 10.03.2021 before the Adjudicating Authority. An appeal was filed challenging the admission order dated 01.03.2021 which appeal was decided on 26.03.2021 by this Tribunal permitting appeal to be withdrawn with a liberty to the appellant for revival of the appeal in case the settlement failed. NCLT stayed the formation of the CoC by the same order. NCLT by subsequent order dated 13.04.2021 rejected the settlement proposal and fixed the matter for disposal of application after hearing all creditors. CoC was constituted on 15.04.2021. Appellant thereafter filed the appeal on 19.04.2021, where this Tribunal passed an interim order directing party to maintain a status quo. In Paragraph 10 of the judgment of the Hon'ble Supreme Court, primary objections made by the IRP by way of an intervention application was noticed. Other creditors who had raised their claim has also

filed intervention/impleadment. Hon'ble Supreme Court in the above background noticed the scheme of the IBC. Hon'ble Supreme Court held that Regulation 30A of the CIRP Regulations, 2016, clearly provides that withdrawal application being entertained before constitution of the CoC. In Paragraphs 36, 42 & 45 of the judgment, following was observed:

“36. Section 12A of IBC permits withdrawal of applications admitted under sections 7, 9 and 10 of IBC. It permits withdrawal of such applications with approval of 90 percent voting share of CoC in such manner as may be specified. The role of CoC and 90 percent of its voting share approving the said withdrawal would come into play only when CoC has been constituted. Section 12A did not specifically mention withdrawal of such applications where CoC had not been constituted but at the same time it does not debar entertaining applications for withdrawal even before constitution of CoC. Therefore, the application under section 12A for withdrawal cannot be said to be kept pending for constitution of CoC, even where such application was filed before constitution of CoC. The IBBI which had the power to frame Regulations wherever required and in particular section 240 of IBC for the subjects covered therein had accordingly substituted Regulation 30A dealing with the procedure for disposal of application for withdrawal filed under section 12A of IBC. The substituted Regulation 30A of IBBI Regulations as it stands today clearly provided for withdrawal applications being entertained before constitution of CoC. It does not in any way conflicts or is in violation of section 12A of IBC. There is no inconsistency in the two provisions. It only furthers the cause introduced vide section 12A of IBC. Thus, NCLT fell in error in taking a contrary view.

42. Regulation 30A of IBBI Regulations provide a complete mechanism for dealing with the applications filed under such provision. The issue raised by the IRP regarding its claim for expenses is well taken care of under the said provision. Various safeguards have been provided in Regulation 30A of IBBI Regulations to be fulfilled by the OC which apparently have been fulfilled as there is no complaint in that regard either

by the IRP nor it is apparent from the impugned order of the NCLT. Thus, the objection raised by the IRP does not merit any consideration in this appeal.

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.”

15. When we look into the observations made in Paragraph 42, Hon’ble Supreme Court observed that objection raised by the IRP does not merit any consideration in this appeal.

16. The next judgment which has been relied by the Appellant is judgment of the Hon’ble Supreme Court in **‘GLAS Trust Company LLC’ (Supra)**, which is 3 Member Bench judgment which had occasion to consider the entire scheme of the IBC regarding withdrawal as well as the earlier judgments including the judgment of the Hon’ble Supreme Court in **‘Abhishek Singh’ (Supra)**. In the above case, the CIRP commenced against the corporate debtor. Vide order dated 16.07.2024, public announcement was made, on 17.07.2024. Appellant, GLAS Trust Company LLC has filed its claim in the prescribed proforma before the IRP in response to the publication. Section 7 application which was filed by GLAS Trust Company LLC was disposed of noticing the admission of the CIRP under Section 9 on 16.07.2024 itself. The admission order under Section 9 was challenged before this Appellate Tribunal by the Riju Raveendran, the Suspended Director of the corporate debtor and appeal was also filed by the GLAS Trust Company LLC against the order rejecting the Section 7 application. Before this Appellate Tribunal, the Suspended Director informed that amounts have been paid to the Operational

Creditor, Board of Control for Cricket in India (BCCI) and balance amount of Rs.83 crore have to be paid on or before 09.09.2024. Payment was made in pursuance of settlement. The second Respondent, Operational Creditor has undertaken to withdraw Section 9 proceeding. On 31.07.2024, parties sought to place the settlement on record before this Appellate Tribunal. Court was informed that CoC has not been constituted. Appellant GLAS Trust Company LLC raised objections to the settlement including the source of fund. Affidavit was filed on 01.08.2024 by Riju Raveenderan and this Appellate Tribunal (Chennai Bench) passed an interim order staying the constitution of the CoC and by Order dated 02.08.2024 accepted the settlement and close the CIRP exercising its inherent jurisdiction under Rule 11 of the NCLAT Rules, 2016. Order of the NCLT admitting Section 9 application was set aside against which order, the appeal was filed by GLAS Trust Company LLC, which appeal has been allowed by the judgment dated 23.10.2024. Hon'ble Supreme Court in the above case had occasion to consider the entire scheme of withdrawal of CIRP. Hon'ble Supreme Court in the above judgment has held that admission of an application (under Section 9/7 of the IBC) is significant event that alters the nature of the proceedings from **"in personam"** to **"in rem"** proceeding. In Paragraph 42 of the judgment, following was laid down:

***"42.** From this scheme of Chapter II of the IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant*

changes take place, including the transfer of the management of the affairs of the corporate debtor to the IRP, the declaration of the moratorium, and the collation of the claims against the corporate debtor. Therefore, the proceedings now change character – they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders.”

17. Hon’ble Supreme Court also in Paragraph 44 noticed two significant principles in following words:

“44. *In summary, the scheme of the IBC under Chapter II gives rise to two significant principles:*

a. Once the petition is admitted, the proceedings are no longer the preserve of the applicant creditor and the debtor. They now become in rem and all creditors of the corporate debtor become stakeholders in the process; and

b. Once the petition is admitted, the management of the affairs of the corporate debtor is vested in the IRP and eventually, in the RP. Thus, the corporate debtor no longer exists in the form that it did, before the admission of the petition. Once CIRP is initiated, the interests of the erstwhile management of the corporate debtor must be distinguished from the interests of the corporate debtor.”

18. In Paragraph 49 of the judgment, ILC Report (March, 2018) was noticed and Paragraph 29.1 of the Report was captured. In Paragraph 49 following was observed:

“49. *Against this backdrop, the Ministry of Corporate Affairs of the Government of India set up the Insolvency Law Committee,³⁹ to address the early teething challenges arising from the implementation of the IBC.⁴⁰ The ILC Report, submitted on 26 March 2018, also dealt with the issue of withdrawal of CIRP proceedings and discussed the existing practice of this Court of granting “judicial permission” for withdrawal of CIRP after the admission of the application of the creditor. In this context, the report discussed the objectives of the IBC, drawing from the report of the*

Bankruptcy Law Reforms Committee which preceded the enactment of the IBC, and concluded that:

*“29.1 ...it was agreed that once the CIRP is initiated, it is no longer a proceeding only between the applicant creditor and the corporate debtor but is envisaged to be a proceeding involving all creditors of the debtor. **The intent of the Code is to discourage individual actions for enforcement and settlement to the exclusion of the general benefit of all creditors.**”*

(emphasis supplied)

19. Hon’ble Supreme Court relied on the judgment in **‘Swiss Ribbons Ltd. & Anr.’ (Supra)** and the ratio of **‘Swiss Ribbons Ltd. & Anr.’ (Supra)** captured in Paragraph 58 in following manner:

“58. From the above observations of this Court in Swiss Ribbons (supra), the following positions of law may be deduced:

a. Once the petition instituted by a creditor is admitted, the proceedings before the NCLT become a ‘collective proceeding’ or a proceeding in rem. Thus, the body which oversees the resolution process, i.e. CoC must be consulted before allowing the claim to be settled;

b. This Court recognized that there was a lacuna in relation to cases where the CoC had not been formed. Accordingly, it was held that, in such cases, the party can approach the NCLT directly, and the NCLT may exercise its inherent powers under Rule 11 to allow or disallow the application for settlement/ withdrawal. However, given the in rem nature of the proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case;

c. This high threshold of a ninety-percent voting share of the CoC is not arbitrary. The idea is that the financial creditors have to put their heads together to allow such withdrawal; and

d. Under Section 60 of the IBC, the decision of the CoC to reject or accept the settlement claim can be

challenged before the NCLT and then, the NCLAT.”

20. In Paragraph 58(b), Hon’ble Supreme Court had made following significant observation **“however, given the in rem nature of the proceedings, such an application must be decided only after hearing all the parties concerned and considering the relevant factors in the case”**. The above observations have been made with regard to situation when 12A application have been filed before the constitution of the CoC. It is further relevant to notice that argument was raised before the Hon’ble Supreme Court that at the stage when CoC is not constituted, Adjudicating Authority is not required to hear any other parties but only approve the application. In Paragraph 65, the above argument has been noticed, which is as follows:

“65. Mr. Tushar Mehta, Senior Counsel for the second respondent, has sought to contend that the requirement under Regulation 30A (1) to move an application before the NCLT through the IRP, in cases where the CoC is not constituted, is a mere technicality which can be dispensed with. The logic he advances is that the regulation does not require adjudication by the NCLT about the factum of the settlement, the mode of settlement or adjudication on any other ground. His submission is that Regulation 30A (1) only requires that the withdrawal application be submitted to the IRP in the prescribed Form FA, which is then forwarded to the NCLT to mechanically approve the settlement. At this stage, according to him, the NCLT is not required to hear any other parties, but only approve the application and thus, whether the application is submitted through the IRP or whether it is before the NCLT or the NCLAT, is a mere technicality.”

21. In Paragraph 66 of the judgment, Hon’ble Supreme Court clearly held that the above argument cannot be accepted due to two reasons. Paragraph 66 of the judgment is as follows:

“66. *We do not concur with the above understanding for two broad reasons.*

a. Firstly, that the application is to be submitted by the IRP rather than the parties themselves is not a distinction without difference. As noted above, once the application is admitted and CIRP is initiated, it is the IRP who takes charge of the affairs of the corporate debtor. The proceedings become collective proceedings and the interests of the former management of the corporate debtor, become disjunct from the interest of the corporate debtor. Therefore, the parties (such as the former management of the corporate debtor) must submit their application for withdrawal through the IRP who is now the person in control of the insolvency proceedings. To subvert this requirement would run contrary to the scheme of the IBC and the underlying principles discussed in this judgment; and

b. Secondly, the NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP. The ILC Report, in response to which, the parent provision, i.e. Section 12A was introduced in the IBC specifically discussed the possibility of the creditors, apart from the applicant creditor agreeing to a settlement as the underlying reason to permit withdrawal even after initiation of the CIRP. It was never fathomed by the ILC that withdrawal of claims would remain a unilateral process, even though the application is admitted and CIRP has been initiated. Similarly, this Court in Swiss Ribbons (supra), in response to which Regulation 30A was amended, specifically observed that in cases where withdrawal is sought after initiation of CIRP, but before the CoC is constituted, the NCLT must decide on the application after “hearing all the parties concerned and considering all relevant factors on the facts of each case.” Therefore, the NCLT does conduct an adjudicatory exercise when the application for withdrawal is placed before it, and the procedure is not a mere technicality.”

22. When we look into what has been held in Paragraph 66(b), it is clear that before the CoC is constituted, NCLT must decide on the application after hearing all the parties concerned and considering all relevant factors on the facts of each case. It was held that NCLT does conduct an adjudicatory exercise when the application for withdrawal is placed before it, and the procedure is not a mere technicality. It was further held that NCLT cannot be considered a post office that merely puts a stamp on the withdrawal application submitted by the parties through the IRP. Ratio of the judgment categorically laid down that the Adjudicating Authority while considering the application under 12A filed before the constitution of the CoC has also to **hear all the parties concerned and considering all relevant factors on the fact of each case.** Ratio of the judgment clearly empowers the Adjudicating Authority to look into all relevant factors by taking a decision under 12A application filed by the IRP before the constitution of the CoC.

23. It is further relevant to notice that in the judgment of GLAS Trust Company LLP it was held that creditors who were not an original applicant being necessary stakeholders when proceedings admitted and it being in rem proceedings. Said was laid down in Paragraph 42 as extracted above. The above judgment thus clearly makes other stakeholders in the present case, the HDFC Bank has filed its claim within the time as stipulated in the publication made by the IRP thus in the CIRP process of the corporate debtor the claim was filed by the HDFC Bank which claim as pleaded by the IRP was for an amount of Rs.4,30,74,985/- and that claim admitted was Rs.4,58,82,649/- i.e., the claim which was settled with by the SIDBI was

Rs.1,58,70,199/- . Adjudicating Authority by deciding the I.A. 200/2022 has rightly held that HDFC has locus standi to file the application and post the settlement and the application under Section 12A filed by the IRP had direct bearing on the interest of the HDFC Bank in relation to corporate debtor. Adjudicating Authority has rightly relied on the judgment of the Hon'ble Supreme Court in '**Swiss Ribbons Ltd. & Anr.**' (**Supra**) while deciding the settlement and withdrawal all parties have to be heard and relevant factors to be taken into consideration. The amount of claim admitted of HDFC and entire claim has been captured in Paragraph 26 of the judgment, which is as follows:

“26. As for the present matter, it can be observed that the settlement exclusively between Respondent No. 1 and Respondent No. 2 only resolves the claims of Respondent No. 1. However, as per the submissions of Respondent No. 3, the total claims received by the IRP amount to Rs. 4,58,82,649/-, which includes Rs. 4,30,74,985/- from the intervening applicant and Rs. 28,07,664/- from four Operational Creditors. The initiation of the CIR Process has established the legitimate interests of these creditors, who have duly submitted their claims within the prescribed timeframe, thus, disregarding their interests would cause unjust. Therefore, a unilateral settlement between Respondent No. 1 and Respondent No. 2 would violate the rights of other creditors, particularly when all claims have been filed in compliance with the prescribed timelines under the Code. Such an approach would contradict the collective resolution framework mandated by the Code and undermine the interests of other stakeholders in the insolvency process.”

24. We are of the view that Adjudicating Authority has rightly allowed the I.A. No. 200/2022 filed by the HDFC Bank opposing the 12A application for withdrawal. The claim was filed by HDFC within the time given by the IRP is

a relevant factor and any objection raised by the HDFC Bank to the 12A application cannot be said to be meritless. The Adjudicating Authority has taken into consideration all relevant factors including the quantum of the claim admitted and the quantum of the claim settled with the SIDBI. Adjudicating Authority is not mere post office who has to allow the withdrawal filed under 12A which is filed before the constitution of the CoC which is the ratio of the judgment of the Hon'ble Supreme Court in '**GLAS Trust Company LLC**' (*Supra*).

25. We, however, hasten to add that mere fact that a stakeholder of the corporate debtor before constitution of the CoC has filed an objection, itself may not be a reason to reject 12A application. Adjudicating Authority has to advert to the relevant factors which may include the nature and quantum of claim of the stakeholders. In a case where Adjudicating Authority finds that substantial and majority of claim has already settled with the corporate debtor that may be a factor which may weigh to the Adjudicating Authority in allowing 12A application. No straight jacket formula can be laid down for adjudication by the Adjudicating Authority of a 12A application and the objections filed therein. Facts of each application under 12A and objection therein need to be looked into before taking a decision as to whether the application under 12A be allowed or rejected.

26. We thus are of the view that the Adjudicating Authority has also rightly taken into consideration overall facts and circumstances of the case and relevant factors and has rightly rejected I.A. No. 182/2022 filed by the IRP for withdrawal of the CIRP.

27. We do not find any error is committed by the Adjudicating Authority in passing order on I.A. No. 200/2022 & I.A. No. 182/2022.

There is no merit in the appeals. Both the appeals are dismissed.

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

NEW DELHI

05th March, 2025

himanshu