

**THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

IA No. 411 of 2022  
IN  
IB No. 3013/ND/2019

**IN THE MATTER OF:**

**M/s Reach International  
Office No.702, 7<sup>th</sup> Floor  
27, Barakhamba Road  
New Delhi - 110001.**

**...APPLICANT/ OPERATIONAL CREDITOR**

**VERSUS**

**M/s Altech Infrastructure Private Limited  
CIN: U70109DL2006PTC155875  
Plot No.293, Kehar Singh Estate  
West End Marg, Saidulajaib  
New Delhi -110030**

**...RESPONDENT/ CORPORATE DEBTOR**

**AND IN THE MATTER OF:**

**1. Mr. Amit Kumra  
C-96 First Floor,  
Suncity, Sector 54 Gurgaon,  
Haryana-122003**

**...Applicant No.1**

**2. M/s Reach Office No.702, 7<sup>th</sup> Floor  
27, Barakhamba Road  
New Delhi – 110001**

**...Applicant No.2**

**Order Delivered on: 01.02.2022**

**Section: Rule 11 of NCLT Rules, 2016**

**CORAM:**

**SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)  
SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant : Mr. Vaibhav Mahajan & Mr. Amit Kumar, Advt.  
For the IRP : Adv. Ishwar Mohapatra, Vinod Chaurasia**

## **ORDER**

**PER SHRI L. N. GUPTA, MEMBER (T)**

The present I.A. No. 411 of 2022 is preferred under Rule 11 of NCLT Rules, 2016 jointly by Mr. Amit Kumra (**hereinafter referred to as ‘Applicant No.1’**), the Suspended Director of the Corporate Debtor and M/s Reach International (**hereinafter referred to as ‘Applicant No.2’**), the Operational Creditor, which had filed the Company Petition No. (IB)-3013 (ND) 2019.

2. That the Applicants have made the following prayers in the IA under consideration :

- “a) Company Petition bearing no. CP (IB) 3013 (ND) 2019 be allowed to be withdrawn in terms of the settlement arrived at between the Operational Creditor and Corporate Debtor recorded vide Memorandum of Settlement dated 21.01.2022;
- (b) pass such other or further order(s) as this Ld. Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. To put succinctly, facts of the case are that the Operational Creditor, M/s Reach International had filed an application bearing no IB-3013(ND)/2019 under Section 9 of IBC 2016 for initiation of CIR Process against the Corporate Debtor M/s Altech Infrastructure Pvt. Ltd. That vide Order dated 21.01.2022, this Adjudicating Authority had initiated the CIR Process against the Corporate Debtor and appointed Mr. Vinod Kumar Chaurasia as the Interim Resolution Professional (**“hereinafter referred to as the IRP”**).

4. Through the present IA, the Applicants are seeking withdrawal of the Company Petition No. (IB)-3013 (ND) 2019 on the ground of settlement between the parties. In support of their contention, the Applicants have placed on record the Memorandum of Settlement dated 21.01.2022 duly notarized on 25.01.2022.

5. That during the course of hearing on 27.01.2022, a query was raised by this Bench that as to why the present Application has not been filed by the applicants under Regulation 30A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**hereinafter referred to as CIRP Regulations**) read with Section 12A of IBC, 2016.

6. That in response to the same, it was submitted by the Ld. Counsels Appearing for the Applicants that there is no bar in filing an Application under Rule 11 of the NCLT Rules 2016. In support of their contentions, the Ld. Counsels appearing for the Applicants placed reliance on the Judgment of the Hon'ble Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. & Anr Vs Union of India dated 25.01.2019 passed in Writ Petition no. 99 of 2018**. The relevant portion of the judgement quoted by the Counsel is reproduced below :

*“52..... We make it clear that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.”*

7. In addition, reliance has also been placed on the Judgment of Hon'ble Supreme Court in the matter of **Arun Kumar Jagtramka Vs Jindal Steel and Power Ltd. dated 15.03.2021** reported as **(2021) 7 SCC 474**, wherein the following was observed :

*“78. There is a fundamental fallacy in the submission. An application for withdrawal under Section 12-A is not intended to be a culmination of the resolution process. This, as the statutory scheme would indicate, is at the inception of the process. Rule 8 of the Adjudicating Authority Rules, as we have seen earlier, contemplates a withdrawal before admission. Section 12-A subjects a withdrawal of an application, which has been admitted under Sections 7, 9 and 10, to the requirement of an approval of ninety per cent voting shares of the CoC. The decision of this Court in Swiss Ribbons (para 82 extracted above) stipulates that where the CoC has not yet been constituted, the NCLT, functioning as the Adjudicating Authority, may be moved directly for withdrawal which, in the exercise of its inherent powers under Rule 11 of the Adjudicating Authority Rules, may allow or disallow the application for withdrawal or settlement after hearing the parties and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor....”*

8. During the course of hearing, the Ld. Counsel appearing for the Applicants stated that Section 12A of IBC, 2016 cannot be applied in the instant case as the CoC has not yet been constituted. He further submitted that although Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 prescribes a procedure for withdrawal of petition in a situation, where CoC is not constituted, by applying under

Section 12A of IBC 2016; however, on reading of Section 12A of IBC, there is no scope to apply in a situation when the CoC is not constituted. Therefore, they have filed this IA under Rule 11 of the NCLT Rules, 2016.

9. Furthermore, the Ld. Counsel for the Applicants submitted that the provision of Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 is inconsistent with Section 12A of IBC, 2016. Therefore, the appropriate course is to approach this Adjudicating authority for withdrawal of the IB petition under Rule 11 of the NCLT Rules, 2016. In order to support its submission, the Applicants have placed reliance on the Judgment of **NCLT Ahmedabad dated 29.06.2019 passed in the matter of Sintex Plastics Technology Ltd. Vs Zielem industries Pvt. Ltd. & Anr dated 29.06.2021 passed in IA 18(AHM) 2021 in CP (IB) 759 (AHM) 2021**, wherein the following is held :

*“20. From the perusal of the above comments of Standing Committee, it is evident that a conscious decision has been taken by parliament to give wider powers to the Central Government under Section 469(2) of Companies Act, 2013 which has not been so in the case of Section 239 and Section 240 of IBC, 2016 and, **in our view, rightly so considering the fact that IBC, 2016 is a new legislation. Following this, we have looked into the validity of Regulation 30A of IBBI (CIRP) Regulations, 2016 made in terms of Section 240(1) of IBC, 2016 to a limited extent that such provision, being inconsistent to the provisions of the Code, cannot be applied in the facts and circumstances of the case in view of provisions of Section 240 of IBC, 2016.***

*21. Admittedly, NCLT is the Adjudicating Authority in terms of provisions of Section 5(1) of IBC, 2016. The Hon'ble Supreme Court, in the case of B.K. Educational Society, has also held that*

provisions of NCLT Rules, 2016 would be applicable while discharging of the functions by NCLT as Adjudicating Authority under IBC, 2016. Thus, having regard to provisions of Section 469(2) of Companies Act, 2013, NCLT can exercise its inherent jurisdiction under Rule 11 of NCLT Rules, 2016 for a situation not specifically covered under any provisions of IBC, 2016. It is needless to mention that NCLT Rules, 2016 are also applicable to IBC proceedings where no specific Rules/Regulations have been prescribed under IBC, 2016 for that situation. **It has also been held that Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 cannot be applied to this situation since this Regulation is inconsistent with the provisions of Section 12A of IBC, 2016.** Further, this Regulation is interwoven with the Section 12A of IBC, 2016 as its source is Section 12A of IBC, 2016 only, hence, a situation which is not covered under Section 12A cannot be covered by Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as well. Now, we have to look into the scheme, structure and object of provision of IBC, 2016 to find out whether inherent jurisdiction under Rule 11 of NCLT Rules, 2016 can be invoked in the facts of the case. It is also relevant to mention that neither under Section 12A of IBC, 2016, Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 there is no specific bar for application against invocation of Rule 11 of NCLT Rules, 2016 nor any other provisions exists under IBC, 2016 which covers a situation that prior to constitution of Committee of Creditors, if there happens a settlement and application for withdrawal of CIRP is filed, what can be done. Thus, considering all legal aspects, exercise of jurisdiction under Rule 11 of NCLT Rules, 2016 to the fact situation cannot be doubted in any manner.”

(Emphasis supplied)

10. That the IRP has also appeared during the course of hearing on 27.01.2022 and opposed the Application on the ground that the applicants need to file the application of withdrawal through IRP under Regulation 30A read with Section 12A of IBC, 2016. It was also informed by the IRP that the public announcement has been made. It is added that the Rule 11 of NCLT Rules, 2016 can only be exercised, when there is no specific provision in law.

11. That the IRP has filed its written submissions and stated that the NCLT cannot exercise its jurisdiction to determine whether a provision is inconsistent or not. To support its contention, the IRP has placed reliance on the Judgment of Hon'ble Supreme Court in the matter of **PTC India Ltd v. Central Electricity Regulation Commission, (2010) 4 SCC 603, Civil Appeal No. 3902 OF 2006 dated 15.03.2010** in the context of a challenge to regulations pertaining to the Electricity Act 2003, wherein the following is held:

***“59. Summary of Our Finding***

*i).....*

*ii)....*

*iii) A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts and not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act...”*

(Emphasis supplied)

12. That the IRP has further placed reliance on the Judgment of Hon'ble Supreme Court in the matter of **BSNL vs. Telecom Regulatory Authority of India, (2014) 3 SCC 222**, wherein it is held that:

*“In exercise of the power vested in it under Section 14(b) of the Act, **TDSAT does not have the jurisdiction to entertain the challenge to the regulations framed by the Authority under Section 36 of the Act...**”*

(Emphasis supplied)

13. That the IRP has also relied upon the Judgment of NCLT Delhi Court-V in the matter of **POWER2SME Private Limited vs. Vandeu International Private Limited CA-98/C-V /ND/2019 in (IB)-1695 (ND) 2019 dated 17.12.2019**, wherein an application filed under Rule 11 of NCLT Rules, 2016 was held to be not maintainable in the light of the Regulation 30A read with Section 12A of IBC, 2016.

14. After hearing submissions, perusing the application, documents and decisions relied upon by the Applicants and IRP, the issue which emerges for adjudication is - **“Whether Rule 11 of NCLT Rules 2016 can be invoked in the instant case for withdrawal of CP (IB)-3013 (ND) 2019 ?”**

15. That the Applicants have mainly raised three contentions for invoking the Rule 11 of NCLT Rules 2016, which can be summarized as under:

- i) That the Hon’ble Supreme Court in the matter of Swiss Ribbons (supra) has allowed to invoke Rule 11 of NCLT Rules, 2016 for withdrawal of CIRP proceedings, where CoC has not been constituted.
- ii) That Section 12A of IBC, 2016 to be added, is applicable only where CoC is constituted.
- iii) The provisions of Regulation 30A are inconsistent with Section 12A of IBC, 2016 as held by the NCLT Ahmedabad Bench in the matter of Sintex Plastics Technology Ltd (supra).



16. That in order to adjudicate the issue, it is necessary to test the contentions raised by the Applicants.

17. That if we see the chronology, Judgment of the Hon'ble Supreme Court in the matter of Swiss Ribbons (supra) was pronounced on 25.01.2019 whereas, the amendment in Regulation 30A of CIRP Regulations came into effect from 25.07.2019. It is a matter of fact, that prior to 25.07.2019, there was no specific provision either under IBC 2016 or any Rules or Regulations, as per which an admitted IB application could have been withdrawn before the constitution of CoC. Therefore, the only remedy available during that time was under Rule 11 of the NCLT Rules, 2016.

18. That here we consider it worthwhile to re-visit the Judgment of Hon'ble Supreme Court passed in **Writ Petition (C) No. 269 of 2020 and with Civil appeal No.2719 of 2020 in the matter of Arun Kumar Jagtramka Vs Jindal Steel and Power Ltd. & Anr. dated 15.03.2021**, which, inter alia, has discussed both the issues of "Withdrawal of application" (para72) as well as the "Distinction between a withdrawal simpliciter and scheme of arrangement" (para 73 & 74). The relevant paragraphs of the aforesaid judgement are reproduced below :

***"Withdrawal of application***

*72. Section 12A of the IBC was inserted with effect from 6 June 2018 by Amending Act 26 of 2018. Under Section 12A, the Adjudicating Authority may allow the withdrawal of an application which is admitted under Sections 7, 9 and 10, on an application made by the applicant with the approval of a 90 per cent voting share of the CoC in such manner as may be specified. Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)*

Rules, 2016, on the other hand, contemplates that the NCLT, functioning as the Adjudicating Authority, may permit a withdrawal of an application made under Rule 4 (by the financial creditor), Rule 6 (by the operational creditor) or Rule 7 (by the corporate applicant) on the request made by the applicant before its admission.

**Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 contains provisions for the withdrawal of an application. Under Regulation 30-A, as it originally stood, an application for withdrawal under Section 12-A was required to be submitted before the issuance of an invitation for the expression of interest under Regulation 36-A. In the decision of this Court in *Swiss Ribbons* (supra), which was rendered on 25 January 2019, it was contemplated that an application for withdrawal may be presented between the period commencing from the admission of the application and the date of the constitution of the CoC. This led to the substitution of the Regulation 30-A on 25 July 2019. As substituted, Regulation 30-A stipulates that an application for withdrawal under Section 12-A may be made to the adjudicating authority:**

- (a) before the constitution of the CoC, by the applicant through the IRP; and**
- (b) after the constitution of the CoC, by the applicant through the IRP or the RP as the case may be.**

However, where the application under clause (b) is made after the issuance of the invitation for expression of interest, the applicant has to state the reasons justifying withdrawal after the issuance of the invitation. In the decision of this Court in *Brilliant Alloys* (supra), it has been held that a withdrawal may be contemplated even after the issuance of invitation of expression of interest. In *Swiss Ribbons* (supra), the provisions of Section 12-A were upheld against the challenge that they violated Article 14 of the Constitution. Justice

*Rohinton F Nariman, while adverting to the decision in Brilliant Alloys (supra), noted that Regulation 30-A(1) has been held not to be mandatory but directory because in a given case an application for withdrawal may be allowed for exceptional reasons even after issuance of an invitation for expression of interest under Section 36-A. Dealing with the provisions of Section 12-A, this Court observed:*

*“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.*

*83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains*

*why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster.”*

### ***Distinction between a withdrawal simpliciter and scheme of arrangement***

73 The submission is that on the withdrawal of the application under Sections 7, 9 and 10, as the case may be, the company goes back to the same promoter in spite of such a promoter being ineligible under Section 29A for submitting a resolution plan. As such, it was urged that there is no reason or justification then to preclude a promoter from presenting a scheme of compromise or arrangement under Section 230.

74 There is a fundamental fallacy in the submission. An application for withdrawal under Section 12-A is not intended to be a culmination of the resolution process. This, as the statutory scheme would indicate, is at the inception of the process. Rule 8 of the Adjudicating Authority Rules, as we have seen earlier, contemplates a withdrawal before admission. Section 12-A subjects a withdrawal of an application, which has been admitted under Sections 7, 9 and 10, to the requirement of an approval of ninety per cent voting shares of the CoC. **The decision of this Court in Swiss Ribbons (para 82 extracted above) stipulates that where the CoC has not yet been constituted, the NCLT, functioning as the Adjudicating Authority, may be moved directly for withdrawal which, in the exercise of its inherent powers under Rule 11 of the Adjudicating Authority Rules, may allow or disallow the application for withdrawal or settlement**

***after hearing the parties and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor. A withdrawal under Section 12-A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the Act of 2013.*** A resolution plan upon approval under Section 31(1) of the IBC is binding on the corporate debtor, its employees, members, creditors (including the central and state governments), local authorities, guarantors and other stakeholders. The approval of a resolution plan under Section 31 results in a “clean slate,” as held in the judgment of this Court in *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*. Justice Rohinton F Nariman, speaking for the three judge Bench of this Court, observed.....,”

(Emphasis Supplied)

19. That we observe that the Applicants have selectively relied upon a portion of Para 74 of the aforesaid Judgement in order to invoke the Rule 11 of NCLT Rules, 2016. However, from the bare reading of para 73 and 74 of the Judgement, it is clear that these paragraphs deal with the “distinction between a withdrawal simpliciter and the Scheme of Arrangement under Section 230 of Companies Act”. The Hon’ble Apex Court has observed that an application for withdrawal under Section 12-A is not intended to be a culmination of the resolution process. It is in this context the Hon’ble Apex Court referred to para 82 of its judgement in *Swiss Ribbons* (Supra) on withdrawal of application, and observed that... “*The decision of this Court in Swiss Ribbons (para 82 extracted above) stipulates that where the CoC has not yet been constituted, the NCLT, functioning as the Adjudicating Authority, may be moved directly for withdrawal which, in the exercise of its inherent powers under Rule 11 of the Adjudicating Authority Rules, may allow or disallow the application for withdrawal or settlement after hearing the parties*

*and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor. A withdrawal under Section 12-A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the Act of 2013.”*

20. Whereas, we notice that the paragraph relating to discussion on “withdrawal of application” in the aforesaid judgement is para 72, in which, at the cost of repetition, the Hon’ble Apex Court has clearly observed that **“Regulation 30-A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 contains provisions for the withdrawal of an application .....In the decision of this Court in Swiss Ribbons (supra), which was rendered on 25 January 2019, it was contemplated that an application for withdrawal may be presented between the period commencing from the admission of the application and the date of the constitution of the CoC. This led to the substitution of the Regulation 30-A on 25 July 2019. As substituted, Regulation 30-A stipulates that an application for withdrawal under Section 12-A may be made to the adjudicating authority : (a) before the constitution of the CoC, by the applicant through the IRP; and (b) after the constitution of the CoC, by the applicant through the IRP or the RP as the case may be.”**

Thus, the Hon’ble Supreme Court has observed that the decision in the Swiss Ribbons (supra), which was rendered on 25 January 2019, led to the substitution of the Regulation 30-A on 25 July 2019, which stipulates that

an application for withdrawal under Section 12-A may be made to the adjudicating authority: (a) before the constitution of the CoC, by the applicant through the IRP; and (b) after the constitution of the CoC, by the applicant through the IRP or the RP as the case may be. Hence, it is clear that the only way for withdrawal of an application admitted under section 7, 9 and 10 of IBC is under section 12-A of IBC through the process stipulated in the Regulation 30A of the CIRP Regulations.

21. At this juncture, we also refer to the recent Judgment of Hon'ble NCLAT passed in the matter of **Mr. Harish Raghavji Patel Vs. Shapoorji Pallonji Finance Pvt. Ltd. and Anr. in Company Appeal (AT) (Ins) No. 391 of 2021 dated 06.10.2021**, wherein the following is held:

*“10. It is well settled that inherent power can be exercised only when no other remedy is available to the litigant and nowhere a specific remedy is provided by the statute. If an effective alternative remedy is available, inherent power will not be exercised, especially when the applicant may not have availed of that remedy. It is also settled law that inherent power cannot be invoked which intends to by-pass the procedure prescribed. The procedure prescribed under the law is to be followed strictly.*

*11. Rule 11 of NCLAT Rules, 2016 provides that the inherent power the Appellate Tribunal can be exercised to make any orders as may be necessary for meeting the ends of the justice or to prevent abuse of process of the Appellate Tribunal. This provisions suggest that such power can be exercised in the absence of express provisions of the Code or Regulation.*

*12. The procedure prescribed for withdrawal of the petition under Section 7, 9 or 10 of the IBC before the constitution of CoC and after constitution of CoC is provided in Section 12-A and*

*Regulation 30-A of the Regulation. **When the settlement has taken place at an appellate stage the Applicant who has filed the petition under Section 7 or 9 of the IBC may file the Application (Form- FA) under Section 12A of the IBC, r/w Regulation 30A of the Regulations for withdrawal of the Petition before the Ld. Adjudicating Authority.***

13. *In this Application and the arguments of Ld. Counsel for the parties have not specified as to why they do not want to file the Applications as per prescribed procedure.*

14. *We are of the view that there is a prescribed procedure for withdrawal of Petition under Section 7 of the IBC. Therefore, there is no justification to invoke inherent power of this Appellate Tribunal and take on record the terms of the settlement and pass the order for withdrawal of Petition under Section 7 of the IBC. **On the contrary, in the facts of the present case exercising the inherent power under Rule 11 of NCLAT Rules amounts to abuse of process of this Appellate Tribunal...***

(Emphasis Supplied)

22. That in the light of the aforesaid Judgements, it can be inferred that for withdrawing the application before the constitution of COC, the appropriate course is to apply as per Regulation 30A of CIRP Regulations 2016. Further, the Hon'ble Supreme Court in Arun Kumar Jagtramka case (supra) has observed the reasons of substitution/amendment in Regulation 30A. Therefore, in our considered view, no reliance can be placed on the order of NCLT Ahmedabad, as placed by the applicants, to demonstrate that there is an impediment in approaching the competent authority for withdrawal under Regulation 30A of CIRP Regulations 2016.



23. Further, we find that the applicants have not placed any decision of Hon'ble Supreme Court or Hon'ble High Court, which had repealed Regulation 30A of CIRP Regulations or any of its part, therefore, there is no ground for the Applicants for not adopting the procedure prescribed under Regulation 30A of CIRP Regulations 2016.

24. In sequel to the aforesaid discussion, we conclude that since there is a specific provision and procedure prescribed for withdrawal of an application admitted under section 7,9 and 10 of IBC, before as well as after the constitution of CoC, in terms of Regulation 30A of CIRP Regulations 2016, which has been taken note of by the Hon'ble Supreme Court in the matter of Arun Kumar Jagtramka Vs Jindal Steel and Power Ltd. & Anr. (Supra) and the Hon'ble NCLAT has also held recently in the matter of Mr. Harish Raghavji Patel Vs. Shapoorji Pallonji Finance Pvt. Ltd. and Anr. (Supra) that the inherent power cannot be invoked to by-pass the procedure prescribed under the law, we are of the considered view that Rule 11 of NCLT Rules, 2016 shall not be invoked to in the instant case for withdrawal of CP (IB)-3013 (ND) 2019.

25. **The Application is accordingly dismissed.** However, liberty is granted to the Applicants to file an appropriate application in accordance with law.

**Sd/-**  
**(L. N. GUPTA)**  
**MEMBER (T)**

**Sd/-**  
**(ABNI RANJAN KUMAR SINHA)**  
**MEMBER (J)**