

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - 5

I.A. No. 1198/2021

IN

C.P. No. 1302/I&BP/NCLT/MAH/2020

In the matter of

Nitin Arora

.....Applicant/Petitioner

Vs

Rolta Defence Technology Systems

Pvt. Ltd.

..... Corporate Debtor

Order delivered on: 06.08.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Applicant: Mr. Prateek Seksaria, Advocate

For the IRP: Ms. Ranjana Roy Gawai, Mr. Pervinder, Mr. Vineet Kumar,
Advocates a/w Ms. Vandana Garg, IRP

For the Financial Creditor : Mr. Rohit Gupta, Mr. Nausher Kohli, Advocates.

For the Operational Creditor: Mr. Udaya Sankar Samudrala, Ms. Sandhya
Shukla, Advocates i/b Rajdeep Samudrala.

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This is an application filed by the Applicant / Operational Creditor under section 12 A of the code r/w rule 11 of the NCLT rules, 2016 seeking withdrawal of the Company Petition. The order of admission of the Corporate Debtor was passed on 13.05.2021. The applicant / Operational Creditor being employee and was an employee of the Corporate Debtor from 21.09.2017 to 23.01.2019. The applicant was relieved the services of the Corporate Debtor from 04.02.2019 without settlement of arrears of salary and other dues. The applicant / Operational Creditor therefore issued a demand notice under section 8 of the Code claiming the salary of outstanding dues from the Corporate Debtor. When the matter was reserved for orders the counsels exchanged draft of consent terms vide an email dated 10.05.2021 and 11.05.2021.
2. Pursuant to the admission of the CIRP on 13.05.2021, the parties executed settlement agreement on 25.05.2021 agreeing to forthwith withdraw the company petition. In view of the settlement arrived, the counsel for the promoter requested the IRP in accordance of regulation of 30A of Insolvency and Bankrupt Code of India (Insolvency resolution process of Corporate person) requested the IRP to file the withdrawal application before NCLT. However, the IRP failed to response to an email sent by the counsel for the promoter. The IRP raised hyper technical objections for non-filing of withdrawal applications and finally on 26.05.2021 the IRP sent an email stating that the application for withdrawal cannot be filed without the bank guarantee.
3. On 27.05.2021, the applicant addressed an email to the IRP restating the difficulty in obtaining bank guarantee and thus, the IRP was requested to take necessary steps for filing the withdrawal application

by accepting upfront provision of costs. Despite several email communication there was a lack of corporation and hostile attitude towards the settlement process by the IRP. On 27.05.2021, the parties chose to execute another settlement agreement which is identical to the terms of settlement agreement dated 25.05.2021.

4. On 31.05.2021, Company Appeal no. 382 of 2021 was listed and was heard by Hon'ble NCLAT wherein the applicant appeared and relied upon the settlement agreement dated 27.05.2021 and treated that the applicant be allowed to withdraw the Company Petition. The operative portions of the order of Hon'ble NCLAT are reproduced below;

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 382 of 2021

IN THE MATTER OF:

Kamal K Singh

Versus

...Appellant.

Nitin Arora & Anr.

...Respondents.

For Appellant:

**Mr. Abhijeet Sinha, Mr. Mahesh Agarwal,
Mr. Himanshu Satija, Mr. Divyang
Chandiramani, and Mr. Shadab S Jan,
Advocates.**

For Respondent:

**Mr. Sudipto Sarkar, Sr. Advocate for R-1.
Mr. Abhinav Vashisht, Sr. Advocate with
Ms. Ranjana Roy Gawai, Mr. Perviner,
Mr. Vineet Kumar, Mr. Ananya Chug,
Ms. Vandana Garg, Advocates for IRP-R-2.**

ORDER
(Virtual Mode)

31.05.2021 This Appeal has been filed by the Appellant-Mr. Kamal K. Singh-Promoter of the Corporate Debtor-Rolta Defence Technology Systems Pvt. Ltd. against Impugned Order dated 13th May, 2021 filed by the Respondent No. 1-Nitin Arora under Section 9 of Insolvency and Bankruptcy Code, 2016 (IBC in short). The Application was admitted vide the Impugned Order dated 13th May, 2021 and CIRP has been initiated and Insolvency Resolution Professional (IRP in short) has been appointed.

2. It is stated by the Learned Counsel for Respondent No. 1 that soon after the Impugned Order was passed the Appellant and Respondent No. 1 have settled their dispute and have moved the IRP with Form FA to settle under Section 12A of IBC.

3. The Learned Counsel for IRP is present and submits that the IRP has received various claims of huge amounts from different claimants. It is stated

Company Appeal (AT) (Ins.) No. 382 of 2021

True copy
S. S. Chugh

that the various claimants are opposing the effort to settle as there are huge debts owed by the Corporate Debtor. For Appellant it is being argued that the Impugned Order passed was bad as it did not meet the threshold requirement as specified under Section 4 of IBC. Various arguments with regard to the merit of the Appeal are being raised.

4. However, considering that this matter is at the stage of admission, we are keeping the issues open. At this stage, as it is stated that the Operational Creditor and the Appellant have entered into settlement, an opportunity needs to be given and we leave it to the Adjudicating Authority to take a decision as per law with regard to Section 12A of IBC, in case it is moved before the next date.

5. As it is stated that CoC is yet to be constituted, the CoC may not be constituted till the next date.

6. Meanwhile, the Respondents to file Reply-Affidavits to the Appeal within two weeks and Rejoinder, if any, may be filed within a week, thereafter along with brief Written-Submissions not more than three pages be filed within three weeks

7. The Adjudicating Authority will decide the Application under Section 12A without being influenced by the fact that present Appeal is pending.

List the Appeal 'For Admission (After Notice)' Hearing on 28th June, 2021.

[Justice A.I.S. Cheema]
The Officiating Chairperson

[Mr. V.P. Singh]
Member (Technical)

Basant B./gc.

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In view of the order of Hon'ble NCLAT, the Hon'ble NCLAT directs the Adjudicating Authority to take the decision as per the law, the matter was heard and reserved for orders on 13.07.2021.

Hence, the applicant has filed the present application.

Objections of the Intervenors / Financial Creditors

5. The Financial Creditors filed an Interim Application to intervene and oppose the withdrawal of CIRP against the Corporate Debtor under section 12A of the Code. The Financial Creditor are the consortium of public sector banks comprising of Union bank of India, Bank of India, Central bank of India, Bank of Baroda and Canara Bank. The claims of the Financial Creditor are against the two Corporate Debtors namely Rolta India Ltd and Rolta Defence Technology Systems Pvt. Ltd.. The claims of the Financial Creditor are as follows;

CLAIM OF FINANCIAL CREDITORS AGAINST ROLTA INDIA LTD.

NAME OF BANK	CLAIM AMOUNT (IN RUPEES)
UNION BANK OF INDIA (LEAD BANK)	17,567,071,355.56
BANK OF INDIA	9,792,017,355.24
CENTRAL BANK OF INDIA	12,052,738,033.00
BANK OF BARODA	10,969,142,702.53
CANARA BANK	3,966,441,261.00
TOTAL (RS.)	54,347,410,707.33
TOTAL (IN CRORES)	5,434.74

**CLAIM OF FINANCIAL CREDITORS AGAINST ROLTA DEFENCE
TECHNOLOGY SYSTEMS PVT. LTD.**

NAME OF BANK	CLAIM AMOUNT (IN RUPEES)
UNION BANK OF INDIA (LEAD BANK)	10,063,268,627.00
BANK OF INDIA	4,947,836,482.60
CENTRAL BANK OF INDIA	12,052,738,033.00
BANK OF BARODA	3,520,935,030.65
CANARA BANK	-
TOTAL (RS.)	30,584,778,173.25
TOTAL (IN CRORES)	3,058.48

6. After considering the huge financial debt, and that they are public sector lender, enormous public interest and public moneys are involved the Financial Creditor submitted that this is not the fit case to exercise discretion under section 21 A of the Code.
7. The Financial Creditors are relied upon the judgment of Hon'ble Supreme Court in Swiss Ribbons vs Union of India & Ors. wherein the Swiss Ribbons vs Union of India & Ors. reported in (2019) 4 SCC 17 wherein it was held that at any stage when the committee of creditors is not constituted, a party may approach NCLT directly and the Tribunal may in exercise of the powers under rule of the NCLT allows or disallows an application for withdrawal or settlement. The counsel for the Financial Creditor also relied upon the judgment of the Hon'ble Supreme Court in Indus Biotech V. Kotak India, 2021 SCC Online SC 268 wherein it was held that once the petitioner under section 7 is triggered the proceedings are in rem and even the creditor who has triggered the process would also lose the control of the proceedings,

as CIRP is required to be a considered to the mechanism required under Insolvency and Bankruptcy Code.

8. The Financial Creditor also pointed out the Corporate Debtor had earlier been admitted into the CIRP by the order dated 22.10.2019 which was subsequently nullified by the Hon'ble Bombay High court vide an order dated 29.11.2019. The Corporate Debtor is the habitual offender and had defaulted on repayment of its financial obligations to its employees and Financial Creditors

The Written Submissions filed by the RP

9. the IRP had received claims / intimation of claims of worth more than Rs. 8000 crores from the detailed claim sheet depicting the status claims by the IRP is as follows;

Sr. no.	Particulars (Rs. In crores)	Rolta India Limited		Rolta Defence Technology Systems Pvt Ltd		Rolta Big Data & Data Analytics Pvt Ltd.		Total amount of claims
		No. of claims	Amount	No. of claims	Amount	No. of claims	Amount	
1	Financial Creditors	5.00	5,434.74	4.00	3,058.48	-	-	
2	Operational Creditors	15.00	2.66	1.00	0.11	-	-	
3	Workmen & Employees	567.00	86.41	35.00	5.79	35.00	7.46	
	Total	587.00	5523.81	40.00	3064.38	35.00	7.46	8595.65

10. At the outset, the IRP has pointed out that there are about 600 employees in the three Corporate Debtors with the total claim amounting to more than Rs. 100 crores.

11. Settlement with employees under the settlement agreement is deferred and is subject to withdrawal of the Petitions. The IRP also pointed that there are two Financial Creditors who have initiated proceedings under section 7 and are pending before Bench 1

a. **Union Bank of India V/s Rolta India Ltd C.P.(IB)530/MB/2020;**

b. **Value Partners Greater China High Yield Income Fund & Anr V/s Rolta India Ltd C.P.(IB)- 4375/(MB)/2018**

12. The relevant extracts of joint settlement agreement executed by the promoter of the Corporate Debtor with the employees are reproduced below;

"Joint Settlement Agreement dated 10.06.2021

5. Upon the Adjudicating Authority approving (i) withdrawal of the Admitted Petitions under Interim Application No.1196 of 2021, Interim Application No. 1197 of 2021, Interim Application No. 1198 of 2021 and (ii) withdrawal memos for the remaining 51 operational creditors, **Mr. Kamal Singh either himself or through the Corporate Debtors shall make payment towards the two tranches, in terms of the particulars specified under Schedule I either through hand-over of demand drafts or**

direct transfer, as maybe mutually agreed between the parties. It is also agreed that on the withdrawal of the Admitted Petitions being allowed as mentioned above and withdrawal memos being filed by 51 Operational Creditors, the Operational Creditors would be paid as token on the same day a sum of Rs.50,000/- by Mr. Kamal Singh, either through hand-over of demand drafts or direct transfer, as maybe mutually agreed between the parties.

Joint Settlement Agreement dated 24.06.2021

6. Upon the Adjudicating Authority approving (i) withdrawal of the Admitted Company Petition under Interim Application No. 1196 of 2021 and (ii) withdrawal of the captioned Company Petition, **Mr. Kamal Singh Kishan jointly and/or severally along with the Corporate Debtor agree to make payments in two tranches, in terms of the particulars specified under Schedule I as follows:**

a. The first tranche of payment i.e., 15% of the Settlement Amount after deduction of applicable of income tax more specifically mentioned in Schedule I hereinunder, shall be paid on the date of the Adjudicating Authority approving the withdrawal of the Admitted Company Petition and the captioned Company Petition, by handing a demand draft pr bank transfer to that effect, issued in the name of the Operational Creditor, to their authorized representative;

b. The second tranche payment i.e., 85% of the Settlement Amount after deduction of applicable income tax, more specifically mentioned in Schedule I hereinunder, shall be paid on or before 30th July 2021 by way of demand draft or bank transfer to that effect, issued in the name of the Operational Creditor, to their authorized representative."

13. The application for withdrawal in form FA is not being filed by the IRP, regulation 30 A reads as under;

Regulation 30A of the CIRP Regulations:

30 A. Withdrawal of application

(1) An application for withdrawal under section 12A 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.

.....
.....

(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 counsel for the IRP referred to the judgment of Hon'ble Supreme Court in Swiss Ribbons vs Union of India & Ors. wherein the quoted the under lying principle that upon admission, third parties rights if created in all of the Creditors of the Corporate Debtors and will have ergonomic effect. The counsel for the IRP relied upon the judgment of Hon'ble NCLAT in the matter of Jai Kishan Gupta vs. Green Edge Buildtech LLP, Company Appeal (AT) (Ins) No. 969-970 of 2019 reported in 2019 SSC online NCLAT. 916 wherein the Hon'ble NCLAT did not accept the plea of the appellant and did not intervene the order passed by the NCLT wherein the objections raised by the creditors, the application to withdraw on settlement was not allowed. The Hon'ble NCLAT as follows pg. 8
15. The counsel for the IRP also relied upon the judgment of principal Bench, NCLAT in the matter is Ranjeet Ramakrishna Yadav vs. JNC Construction Pvt. Ltd. [C.P.(IB) No. 272(PB)/2019] wherein it was held as follows

"...In the present case settlement was reached on 18.06.2019 and CoC has been constituted on 19.06.2019. In the mean while the Interim Resolution Professional, who is present in the Court has received 308 claims from the other financial creditor-home buyers. It is true that in some of the earlier cases we have taken the view that even if the claims have been filed before the IRP and the Committee of Creditors has not been constituted then the application for withdrawal could be entertained and allowed. However, in the present case the CoC has been constituted day after the compromise has been entered and the claims as on today by 308 other home buyers have also been filed. Therefore, we prefer to issue notice of the application to the corporate debtor with the object of seeking its response as to whether it is prepared to satisfy the claims of each and everyone as per the record with the IRP / Corporate Debtor. In the absence of satisfying the claim of each and every financial creditor/ operational creditor it may not be possible to permit the withdrawal of CIR Process by allowing the instant application as it would result in multiplication of litigation and even the

transaction of settlement/ compromise would be hit by the concept of preferential transaction.”

...”

16. The counsel for the IRP also relied upon the report of the Bankruptcy Law Committee on withdrawal of the settlements and pointed out the difference between the pre-amendment and post-amendment of regulation 30A of IBBI (the insolvency Resolution Process of Corporate Person Regulation 2016) and in the pre-amendment, the COC was given ultimate authority to consider, approve or reject the application filed by the withdrawal under section 12A. however, post the amendment the withdrawal was allowed even to the prior of the constitution of COC.

Submissions of Promoter

17. Prior to the communication of the admission order, a joint settlement agreement was executed on behalf of the 24 employees. Under the joint settlement agreement dated 27.05.2021, the parties have agreed to settle the disputes amicably and withdraw the respective applications.
18. Pursuant to the direction of the Tribunal, on 10.06.2021 the promoter has entered into full and final settlement with additional 77 employees vide Joint Settlement Agreement dated 10.06.2021. Joint Settlement Agreement dated 10.06.2021, 23.06.2021 and 24.06.2021 and some of the settlement agreement have been partly implemented by the promoter by making payment of Rs. 57,000. The aforesaid settlement agreement have been entered into the further employees only in spirit of direction orally given by the Hon'ble Tribunal the settlement agreement are legally enforceable and are novatio to the earlier employment contracts and any amounts which are payable there under.

19. The promoter also submitted that in view of the settlement agreement the original cause of action as default stands obliterated and consequently the action of section 9 is also de facto and is quo jure obliterated. Promoter has given the list of the 103 employees who have filed an application under section 9 as on 10.06.2021, have been settled as per the directions of the Hon'ble Tribunal.
20. The applicants have approached the IRP for filing the Form FA under regulation 30(A)(1)(a) to seek the withdrawal of Company Petition. The IRP did not cooperate with the applicant and thus the applicant may constrain to file the present application under rule 11 seeking withdrawal of the Company Petition.
21. The counsel for the promoter has relied upon the judgment of the Hon'ble Supreme Court in Swiss Ribbons vs Union of India & Ors. and wherein the right of applicant to approach the Adjudicating Authority under rule 11 and seek for withdrawal prior to constitution of COC is recognized.
22. Concomitantly, section 12A r/w regulation with 30A envisaged the withdrawal mechanism of pre constitution of the COC. The counsel for the promoter relied upon the judgment of Haresh Enterprises vs. Mohota Industries Ltd. wherein the withdrawal of CIRP was allowed and thus COC is yet to be constituted. The facts also revealed that the settlement has been reached between the Operational Creditor who has filed the original petition and the Corporate Debtor.
23. The Promoter also relied upon the judgment of Appellant Tribunal in K C Sanjeev vs. Easwara Pillai Kesavan Nair wherein the Appellant Tribunal held that before the constitution of COC they can settle and the withdrawal of the petition can be permitted. The counsel for the Promoter also pointed out that unless the Creditor has able to show prima facie that the settlement arrived, takes away any vested right of the Creditor who has right to security or is in the

nature of preferential payment, no such creditor has other right to oppose withdrawal of the petition.

Finding

24. The question arising for consideration is whether the withdrawal of CIRP can be permitted with the given facts that the IRP has received the claim of Rs. 8,595.65 crores post admission of the CIRP in all the three Petitions.
25. This bench ordered the admission the order of CIRP of Rolta India Ltd. and Rolta Defence Technology Systems Pvt. Ltd. and Rolta BI & Big Data Analysis Pvt. Ltd. The table of claims received by the IRP post publication of public notice upon admission of the Petition is as follows;

Sr. no.	Particulars (Rs. In crores)	Rolta India Limited		Rolta Defence Technology Systems Pvt Ltd		Rolta Big Data & Data Analytics Pvt Ltd.		Total amount of claims
		No. of claims	Amount	No. of claims	Amount	No. of claims	Amount	
1	Financial Creditors	5.00	5,434.74	4.00	3,058.48	-	-	
2	Operational Creditors	15.00	2.66	1.00	0.11	-	-	
3	Workmen & Employees	567.00	86.41	35.00	5.79	35.00	7.46	
	Total	587.00	5523.81	40.00	3064.38	35.00	7.46	8595.65

26. The Petition was admitted on the basis of the claims of the employees who have not been paid their salaries and other emoluments pursuant to an employment agreement. The said claim was adjudicated and admitted by this Tribunal against three different

Corporate Debtors on 13.03.2021. The applicant / Operational Creditors have filed an application to withdraw the CIRP against the Corporate Debtor in pursuance of execution of settlement agreement dated 27.05.2021. The promoter have also approached the NCLAT. The Promoter of the Corporate Debtor in Rolta Defence Technology Systems Pvt. Ltd. has filed an appeal before the Hon'ble NCLAT in view of the fact that the settlement agreement has entered between the parties. The Hon'ble NCLAT has directed the Adjudicating Authority to take a decision as per law with regard to section 12A of IBC however, the Hon'ble NCLAT has directed that COC may not be constituted till the next date. The Hon'ble NCLAT also directed the Adjudicating Authority that the application under section 12 A will be decided without being influenced by the fact that the present appeal is pending

27. It is pertinent to refer to section 12A of the Code r/w regulation 30A of the IBBI regulations the same is reproduced below;

Regulation 30A of the CIRP Regulations:

"30 A. Withdrawal of application

(1) An application for withdrawal under section 12A 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 subregulation (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 subregulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

.....

.....

(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 5 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."

28. The code empowers the Adjudicating Authority under section 12A to allow the withdrawal of the application admitted under section 7,9 and 10 on an application made by the Applicant. Further regulation 30A also prescribes that power of Adjudicating Authority to allow a withdrawal of under section 12 before the constitution of COC through the IRP however in this instant case, the Application is filed by the original Petitioner who initiated the CIRP against the Corporate Debtor in pursuance of the joint settlement agreement dated 27.05.2021.
29. It is relevant to refer the judgment of Hon'ble Supreme Court in Swiss Ribbons vs Union of India & Ors. where it was stated that at para 52 that once a court gets triggered by admission of creditors Petition under section 7 or 9 the proceedings before the Adjudicating Authority is a collective proceeding and proceedings 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 his claim. Further, before the constitution of COC the parties can approach NCLT directly. The Tribunal in exercise of his inherent powers under rule 11 of NCLT rules may allow or disallow an application for withdrawal of the settlement. It is also pertinent to refer to the judgment of Hon'ble NCLAT in Jai Kishan Gupta vs. Green Edge Buildtech LLP, Company Appeal (AT) (Ins) No. 969-970 of 2019 reported in 2019 SSC online NCLAT. 916 wherein the Hon'ble NCLAT did not accept the plea of applicant and did not intervene in the order passed by the Hon'ble NCLAT whereby notice was received by the objections raised by the Creditors and the applications to withdraw on settlement was not allowed.

30. It is pertinent to note the judgment of Hon'ble Supreme Court in Indus Biotech V. Kotak India, 2021 SCC Online SC 268 wherein the Corporate Debtor held that when a petition is admitted it becomes proceeding in rem, even the creditor who has triggered the process would lose the control in proceedings and the CIRP proceedings is required to be considered under the provision of IB Code. The operative portion of eh judgment of the Hon'ble Supreme Court is as follows;

".....

25. In the case of Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC 17 and Pioneer Urban Land and Infrastructure Limited vs. Union of India & Ors. (W.P.(C) No.43/2019) relied on behalf of Kotak Venture, the entire scope and ambit of the IB Code was considered and the validity of the provisions were upheld. The said decisions have also been relied on to contend that when the petition under Section 7 of IB Code is triggered it becomes a proceeding in rem and even the creditor who has triggered the process would also lose control of the proceedings as Corporate Insolvency Resolution Process is required to be considered through the mechanism provided under the IB Code. The principles as laid down in Swiss Ribbons (supra) was also referred to in detail in the case of Pioneer Urban Land and Infrastructure (supra) wherein the observations contained in para 39 though in the case of Real Estate Development was laid down. The relevant portion which has been referred to, reads as follows:-

"Thus, any allottee/home buyer who prefers an application under Section 7 of the Code takes the risks of his flat/apartment not being completed in the near future, in the event of there

being a breach on the part of the developers. Under the Code, he may never get refund of the entire principal, let alone interest. This is because, the moment a petition is admitted under Section 7, the resolution professional must first advertise for and find a resolution plan by somebody, usually another developer which has then to pass muster under the Code, i.e. that it must be approved by at least 66 per cent of the Committee of Creditors and must further go through challenges before NCLT and NCLAT before the new management can take over and either complete construction or pay out for refund amounts.

26. The underlying principle, therefore, from all the above noted decisions is that the reference to the triggering of a petition under Section 7 of the IB Code to consider the same as a proceedings in rem, it is necessary that the Adjudicating Authority ought to have applied its mind, recorded a finding of default and admitted the petition. On admission, third party right is created in all the creditors of the corporate debtors and will have erga omnes effect. The mere filing of the petition and its pendency before admission, therefore, cannot be construed as the triggering of a proceeding in rem. Hence, the admission of the petition for consideration of the Corporate Insolvency Resolution Process is the relevant stage which would decide the status and the nature of the pendency of the proceedings and the mere filing cannot be taken as the triggering of the insolvency process.....”

31. It is clear that the Code gets triggered by admission of the creditors Petition, the proceedings is a collective proceedings in rem and in the light of the facts of the present case the outstanding debt

of the Corporate Debtors in all the three company Petition vide Company Petition No. 1370 of 2020, Company Petition No. 1069 of 2020 and Company Petition No. 1302 of 2020 amounts to Rs. 8,595.65 crores. This being the case, it is clear that the Company Petitions in all the three Petitions are under the huge financial debt and with this conspectus of factual matrix can the withdrawal be allowed. Considering the huge claim of Rs. 8,595.65 crores of the creditors, this Bench is of the view that under extraordinary circumstances, it is not just a proper to order withdrawal of the said petition and the application filed by the Petitioning creditors is thus dismissed.

32. It is the discretion of the Adjudicating Authority under rule 11 and the inherent powers conferred upon it and take a judicious view considering the magnitude of the claims of the creditors and whether such settlement would prejudice the rights of the creditors and the intention of the legislature while enacting the process of CIRP in the interest of all stake holders it will be completely jeopardize by the withdrawal of the CIRP in the instant case. The report of the Insolvency Law Committee further recommends that with regard to the withdrawal of CIRP against the Corporate Debtor it is necessary to ensure that all keys stakeholders will participate to collectively assess the viability and the law must ensure that who have capability and willingness to restructure the liabilities must be part of the negotiable process. The liabilities of all creditors who are not part of the negotiable process must also be met in any negotiated solution. Thus, the report envisaged that once the CIRP is initiated, it is no longer the proceedings only between the applicant/ creditor or the Corporate Debtor but is envisaged to be a proceeding invoking all creditors and debtors the intent of the Code, is to discourage

individual action for enforcement or settlement to the exclusion of the general benefit to all the creditors.

33. The decision of the Hon'ble Supreme Court in Swiss Ribbons vs Union of India & Ors. has categorically held at para 82 that the Adjudicating Authority to allow or to disallow an applicant for withdrawal for settlement will be decided after hearing the parties concern and after considering all the relevant facts and factors of each case. This Bench after hearing all the Petitioning creditors, the Financial Creditor, the promoter of the Corporate Debtor and the IRP are of the view that withdrawal of the CIRP against the Corporate Debtor without settlement of claims of all the Creditors to the tune of Rs. 8,595.65 crores cannot be entertained. But in the instant case, the IRP received 40 claims(financial creditors and operational creditors) and the claim of Rs 3064.38/ crores, the prayer for withdrawal is disallowed.

34. This Court doth orders as follows:
a) Application U/sec 12A for withdrawal of CIRP against the Corporate Debtor is rejected.
b) IA No.1198 of 2021 is dismissed

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)