NATIONAL COMPANY LAW TRIBUNAL
COURT ROOM NO. 1,
MUMBAI BENCH

Item No. 30

IVN.P (IBC)/42(MB) 2025, IVN.P (IBC)/47(MB) 2025, IVN.P (IBC)/77(MB) 2025 and IA(I.B.C)/1219(MB)2025 In C.P. (IB)/366(MB)2024

CORAM:

SH. PRABHAT KUMAR
HON'BLE MEMBER (TECHNICAL)

SH. SUSHIL MAHADEORAO KOCHEY
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **09.09.2025**

NAME OF THE PARTIES: **M/S. MOHANDAS CHHATARAM V/s GOKUL SUGAR INDUSTRIES LIMITED**

Section 7 & 60(5) of the Insolvency and Bankruptcy Code, 2016

ORDER

1) Adv. Honey Satpal, Adv. Akash Agarwalla for the Intervenor Indian Bank present. CA. Raghunath Sarangapani for the Intervenor in I.A No. 47 of 2025, Adv. Malhar Zatakia & Adv. Kaushal Ameta for Intervenor(Union Bank of India) in Intervention Petition No.42/2025. Adv. Amit Tungare i/b Asahi Legal for Resolution Professional in all IA's present.

2) The captioned Company Petition No. 366 of 2024 was filed on 1st May 2024 by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w. Rule 4 of the Insolvency and Bankruptcy {Application to Adjudicating Authority) Rules, 2016 and this Company Petition was admitted on 27th June 2024. The Corporate Debtor through its Suspended director filed a Company Appeal No. 1403 of2024 on I 8th July 2024 challenging the CIRP order dated 27th June 2024 passed by this Tribunal. The Hon'ble NCLAT vide its order dated 24th January 2025 disposed of said appeal giving following directions :

"3. As prayed, appellant is allowed three weeks' time to file an application under Section 12A and we also grant liberty to all the intervener and claimant to file their objections to 12A application which may be considered and decided by the Adjudicating Authority in accordance with law.

4. For a period of three weeks' the protection granted in the appeal shall continue, in the event the application is filed under Section 12A, further proceeding shall be taken as per the order of the Adjudicating Authority. The appeal is disposed of with the above observations and directions. In event Section 12A application is not filed as above or the same is not allowed, the CoC shall be constituted and CIRP in pursuance of impugned order shall proceed in accordance with law."

3) The present application was filed on 12.02.2025 enclosing thereto one Form FA dated 10.02.2025 duly signed by the original financial creditor M/s Mohandas Chhataram, a partnership firm through its partner Mr. Pankaj Somaiya. Since this application was filed within a period of three weeks, the CoC has not been constituted as yet.

4) In the meantime, Union Bank of India, one of the financial creditor, having filed a claim of Rs. 42,34,66,252.87 in form C with IRP, filed in an Intervention Application registered as IVN.P 42 of 2025 on 12.03.2025. Further, The Solapur District Central Co-operative Bank Limited, one of the financial creditor, having filed a claim of Rs. 153,47,71,730/-in form C with IRP, filed in an Intervention Application registered as IVN.P 47 of 2025 on 25.03.2025. An Application registered as IVNP 77 of 2025 was filed on 20.06.2025 by M/s. Mohandas Chhataram to intervene in the Intervention Application No. IVN.P 47 of 2025 filed by The Solapur District Central Co-operative Bank Limited.

5) Learned Counsel for the Union Bank of India in IVN.P 42 of 2025, learned Counsel for the Solapur District Central Co-operative Bank Limited in IVN.P 47 of 2025 and learned Counsel for the Indian Bank, whose Intervention Application is pending registration and is yet to come on board, informs that they are objecting to the said withdrawal of the CIRP.

6) Heard the learned Counsel and perused the material on record.

7) In the present case, the IRP has filed the application for withdrawal of CIRP under section 12A of the Code read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. Relevant extract of section 12A and Regulation 30A is reproduced below:

> *12A. Withdrawal of application admitted under section 7, 9 or 10. – The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified.*
>
> *30A. 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:*

8) It is relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Glas Trust Company LLC v. Byju Raveendran & Others (Civil***

Appeal No. 9986 of 2024 with Special Leave Petition (C) No. 21023 of 2024), the relevant extract of the said judgment are reproduced as under:

> *"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.*
>
> *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.

75. The provision stipulates that "any person" who is aggrieved by the order of the NCLAT may file an appeal before the Supreme Court within the prescribed limitation period. Similar language is used in Section 61 of the IBC, which provides for appeals to NCLAT from orders of the NCLT. The use of the phrase "any person aggrieved" indicates that there is no rigid locus requirement to institute an appeal challenging an order of the NCLT, before the NCLAT or an *order of the NCLAT, before this Court. Any person who is aggrieved by the order may institute an appeal, and nothing in the provision restricts the phrase to only the applicant creditor and the corporate debtor.* ***As noted above, once the CIRP is initiated, the proceedings are no longer restricted to the individual applicant creditor and the corporate debtor but rather become collective proceedings (in rem), where all creditors, such as the appellant, are necessary stakeholders.*** *The appellant is not an unrelated party to the CIRP, but is in fact, an entity whose claims had been verified by the IRP vide letter 19 August 2024. The appellant who claims to be a Financial Creditor, has expressed reasonable apprehensions about the prejudice it would face if there were roundtripping of the funds, and the prioritization of the debts of the second respondent, an operational creditor.*

79. In such cases, the legal framework mandates that an (i) application for withdrawal be moved; (ii) the application has to be moved through the IRP; and (iii) it be placed before the NCLT for approval. *None of these requirements were met in the present case. First and foremost, there was no formal application instituted to seek the withdrawal of the CIRP. The settlement agreement was taken on record and approved by the NCLAT based on the submissions and assurances of the counsel before it and the affidavits/undertakings filed by the parties. Further, the first respondent, who is a former director of the Corporate Debtor, did not move the application through the IRP and instead approached the NCLAT directly. Finally, the request to approve the settlement was moved before the NCLAT during appellate proceedings, instead of being placed before the NCLT. Despite these grave deviations, the NCLAT still proceeded with approving the settlement and setting aside the CIRP by invoking its inherent power under Rule 11 of the*

NCLAT Rules."

9) On the scope of this Tribunal's jurisdiction while considering an application for withdrawal u/s 12A of the Code before constitution of COC, the Hon'ble NCLAT, in the case of in ***Himanshu Singh v. HDFC Bank Limited — CA (AT) (Ins.) No. 336 of 2025 dated 05.03.2025***, held as follows :

> ***"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."*

10) In the present case the CIRP commenced on an application by the original petitioner (at whose behest the said withdrawal application has been filed) for a default of Rs 33,00,00,000/ - (Rupees Thirty-Three Crores Only) along with 12% p.a., while Union Bank of India and The Solapur District Central Co-operative Bank Limited claiming for Rs. 42,34,66,252.87 and Rs. 153,47,71,730/-in CIRP have objected to the said withdrawal. Further, another Financial Creditor, Indian Bank whose application is still to come on board is also objecting to the said withdrawal.

The total value of the claim of objecting Financial Creditor is more than five times of the value of the claim of the Financial Creditor at whose behest the said withdrawal application has been filed on the ground of settlement. In other words, the objecting Financial Creditors constitute dominant majority in the category of financial creditor. Accordingly, after considering the nature and quantum of claim of the stakeholders (who are financial creditors), we are of considered view that the present application seeking withdrawal of CIRP cannot be allowed in view of substantial majority of the Financial Creditor objecting to said withdrawal.

11) In view of above, the application IA(I.B.C)/1219(MB)2025 is dismissed. IVN.P (IBC)/42(MB) 2025 and IVN.P (IBC)/47(MB) 2025 are allowed and disposed of. IVN.P (IBC)/77(MB) 2025 is dismissed.

Sd/-	**Sd/-**
PRABHAT KUMAR	**SUSHIL MAHADEORAO KOCHEY**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

/Nitesh Puri Goswami/