

Supreme Court allows two broke firms to settle dispute

In what may be a future relief for corporate debtors facing insolvency proceedings, the Supreme Court used its extraordinary constitutional powers to allow two companies to withdraw from insolvency proceedings and settle their loan dispute despite the case having been admitted by the National Company Law Tribunal (NCLT).

Once the NCLT admits a case for initiating corporate insolvency resolution process under the Insolvency and Bankruptcy Code of 2016, the case cannot be withdrawn even if the parties have decided to settle.

However, a Bench of Justices Rohinton Nariman and S.K. Kaul used the Supreme Court's powers to do "complete justice" under Article 142 of the Constitution to bring a quietus to the financial dispute between Lokhandwala Kataria Construction Pvt Ltd and Nisus Finance and Investment Manager LLP, represented by Shiv Kumar Suri and Shikhil Suri.

The court took on record the consent terms entered into by the companies and their undertaking to abide by these terms in settling the amounts due.

The Bench's decision came despite the National Company Law Appellate Tribunal finding no merit in the appeal filed by Lokhandwala for withdrawal of the insolvency proceedings.

The NCLAT Bench led by Chairperson Justice S.J. Mukhopadhyaya on July 13, 2017 recorded in its order that it is open for the financial creditor to withdraw the insolvency application under the Code only before a case is admitted and not after.

"Even the financial creditor (in this case Nisus) cannot be allowed to withdraw the application once admitted, and matter cannot be closed till claims of all the creditors are satisfied by the corporate debtor," the NCLAT had observed. The NCLAT refused to use its inherent powers under Rule 11 of the NCLAT Rules of 2016 to allow the parties' plea to withdraw the case.

In the second appeal before the Supreme Court, Lokhandwala asked whether NCLAT could have used its inherent powers under Rule 11 to take on record the consent terms post the admission of the insolvency proceedings and before the stage of making the public announcement of the proceedings under Section 13 of the Insolvency Code. Is it only after the public announcement under Section 13 that an insolvency proceedings attains representative character, the parties had asked the Supreme Court in their appeal.

In its order, the apex court Bench found the NCLAT order of July 13 *prima facie* correct. "The NCLAT was of the view that the inherent power could not be utilised. According to us, *prima facie* this appears to be the correct position in law," the Bench observed in an order on July 24. However, its position on the question of law did not stop the apex from using its own special powers to allow the parties a second chance to settle their dispute.

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The process of holding the requisite Board Meetings and Shareholder Meetings has been completed in phases in September 2017.

Ruben George is staying at Ram Nath Kovind's house at Kalyanpur, near Kanpur

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