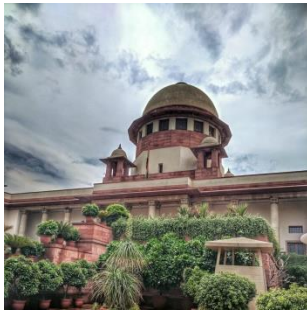


<https://barandbench.com/supreme-court-recording-consent-terms-insolvency-code/>

Varun Marwah July 25, 2017 *Litigation News, News*

Supreme Court allows recording consent terms after case is admitted under **Insolvency Code**



A Supreme Court Bench of **Justice Rohinton Nariman** and **Justice Sanjay Kishan Kaul** yesterday exercised powers under Article 142 of the Constitution to record consent terms between the parties post admission of the application under Insolvency and Bankruptcy Code, 2016.

The Mumbai Bench of NCLT had, in June 2017, initiated corporate insolvency resolution process against the corporate debtor, **Lokhandwala Kataria Construction** on an application filed by financial creditor, **Nisus Finance & Investment Manager LLP** under Section 7 of the Code.

Both parties to this application, however, approached the NCLAT after the case was admitted to record consent terms between them. The NCLAT refused to do so while observing **Rule 8** of the *Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016*, which which allows withdrawal of application only before its admission.

While the Supreme Court upheld the decision of the NCLAT inasmuch as the NCLAT is bound by the Rules, the Bench, however, exercised powers under Article 142 of the Constitution to allow recording of consent terms.

This ruling by the Apex Court does not grant NCLAT the powers to allow recording of consent terms between parties after admission. The NCLAT will continue to remain bound by the Rules and each time such a situation arises, the parties will have to invoke the powers of the Supreme Court under the Constitution to get relief.

Krishnan Venugopal, Senior Advocate along with **Shikhil Suri** instructed by **Suri & Suri Law Offices** appeared for the financial creditor.

Senior Advocates **Mukul Rohatgi** and **KV Vishwanathan** instructed by **Khaitan & Co** appeared for the corporate debtor.