

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**COMPANY PETITION 23 OF 2016**

with

**COMPANY PETITION 14 OF 2011**

with

**COMPANY PETITION 24 OF 2016**

**COMPANY PETITION 23 OF 2016**

Murlidhar s/o. Suganchand Agrawal,  
aged about 66 yrs, Occ. Business,  
r/o. Mittal Villa, 22, East Wardhaman Nagar,  
Nagpur 440 008

.....**PETITIONER**

**...VERSUS...**

Murli Industries Ltd., Nagpur  
a company duly registered under the  
Companies Act, 1956, having  
registered office at : 101, Jai Bhawani  
Society, Wardhaman Nagar,  
Nagpur 440 008, through its  
Director Mr. Nandlal Maloo,  
aged major, r/o. 1418-C,  
Deshpande Layout, Wardhaman Nagar,  
Central Avenue, Nagpur 440 008,  
Maharashtra, India having Directors  
Identification No. i.e. DIN No. : 00088363

... **RESPONDENT**

**COMPANY PETITION 14 OF 2011**

APL Co. Pte Ltd.,  
Add : 456 Alexandra Road,  
NOL Building, Singapore

.....**PETITIONER**

**...VERSUS...**

M/s. Murli Industries Ltd.,

Add : 101 Jai Bhawani Society,  
Central Avenue, Wardhaman Nagar,  
Nagpur

... **RESPONDENT**

**COMPANY PETITION 24 OF 2016**

Nitin s/o. Murlidhar Agrawal,  
aged about 35 yrs,  
Occ. Business, r/o. Mittal Villa,  
222, East Wardhaman Nagar,  
Nagpur 440 008

.....**PETITIONER**

**...VERSUS...**

M/s. Murli Industries Ltd., Nagpur,  
A company duly registered under the  
Companies Act, 1956, having  
registered office at : 101, Jai Bhawani  
Society, Wardhaman Nagar, Nagpur 440 008,  
through its Director Mr. Nandlal Maloo,  
aged major, r/o. 1418-C, Deshpande Layout,  
Wardhaman Nagar, Central Avenue,  
Nagpur 440 008, Maharashtra,  
India having Directors Identification  
No. i.e. DIN NO. : 00088363

... **RESPONDENT**

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Mr. H.R. Gadhia, counsel for petitioners.  
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**CORAM: ROHIT B. DEO, J.**

**DATE : 29.01.2021**

**ORAL JUDGMENT:**

Heard Mr. H.R. Gadhia, the learned counsel for the  
petitioners.

2. These petitions are preferred under sections 433(e)

and 434(1) of the Companies Act, 1956 for winding up on the ground that the company is not in a position to repay the debts of the creditors.

3. The erstwhile Resolution Professional of M/s. Murli Industries Limited Mr. Vijaykumar V. Iyer has filed an affidavit in Company Application 10/2017 in Company Petition 6/2012, which states that he verified the claim submitted by the creditors/ stakeholders of the company and after closure of the process, Dalmia Cement (Bharat) Limited (Dalmia”) a resolution applicant, proposed a resolution plan for the revival of the company which was approved by unanimous vote of the committee of creditors in the meeting dated 20.12.2017. It is further stated that during the pendency of the insolvency process, and as directed by this Court, a Public Announcement dated 30.11.2018 was published in prominent newspapers inviting all creditors and stakeholders to resubmit their claims by December, 2018. It is then stated that the claims received were verified in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. Paragraph 6 of the affidavit reads thus:

*“6. I say that I filed an application before the NCLT seeking its approval of Dalmia’s resolution plan. The NCLT vide orders dated July, 3, 2019 and July 22, 2019 (“Plan Approval Orders”),*

finally approved the resolution plan of Dalmia. A copy of the Plan Approval Order is annexed hereto and marked hereto as **Annexure – A**”.

4. Paragraphs 7 to 12 are also relevant, and read thus:

*“7. I submit that pursuant to the passing of the Plan Approval Orders by the NCLT, the Managing Committee (“MC”) was appointed consisting of members of Committee of Creditors (CoC) to manage the affairs of the Corporator Debtor till the takeover of the Corporate Debtor by Dalmia. Accordingly, I demitted office with effect from July, 26, 2019”.*

*“8. Since Dalmia’s resolution plan was approved by the NCLT, steps were being taken by the MC and Dalmia for takeover of the Corporate Debtor’s business by Dalmia”.*

*“9. Soon after the passing of the Plan Approval Orders, seven appeals were filed by various parties before the Hon’ble National Company Law Appellate Tribunal (“NCLAT”) (**Appeals**)”. The Appeals were then argued at length by all the parties and accordingly the NCLAT passed its judgment dated January 24, 2020, thereby dismissing all the Appeals. A copy of the judgment dated January 24, 2020 passed by NCLAT is annexed hereto and marked as **Annexure – B**”.*

*“10. I say that pursuant to the dismissal of the Appeals, various stakeholders filed appeals before the Hon’ble Supreme Court of India (“**Supreme Court**”). Out of the appeals filed before the Supreme Court, three appeals were listed on November 20, 2020. All such listed appeals were disposed of by the Supreme Court by an order of equal date. A copy of the order dated November 20, 2020 passed by the Supreme Court is annexed hereto and marked as **Annexure – C**”.*

*“11. I say that around September 25, 2020, Dalmia completed the takeover of the business of the Corporate Debtor and the MC has ceased to manage the affairs of the Corporate Debtor’s business”.*

*“12. I say that in light of the above, the CIRP of the Corporate Debtor has been successfully completed”.*

5. Mr. H.R. Gadhia fairly states that the petitioner submitted claims before the Resolution Professional, which are rejected and that the appeals preferred before the NCLT are also rejected and the petitioners have challenged the rejection of the claims before the Apex Court, and the challenge is pending.

6. In view of the developments, I do not see any propriety in keeping the winding up petitions pending. The claims of the petitioners are subjudice before the Apex Court. If the claims are granted by the Apex Court, obviously there is no cause of action. If the claim are rejected by the Apex Court, then also the winding up petitions cannot continue since adjudication cannot be an empty formality.

7. However, Mr. H.R. Gadhia would submit that the petitions be kept pending since if the claims succeed before the

Apex Court, the petitioners would be remedy-less and would not be in a position to recover the claims if the company is left with no assets. The submission is recorded only for rejection. If the petitioners are held entitled to the claim, they would be free to approach the appropriate authority and / or tribunal. However, in no eventuality can the winding up petitions continue in the present form and against M/s. Murli Industries Limited, which is taken over by Dalmia.

8. The petitions are disposed of.

**Judge**

Belkhede RS