2026 INSC 275

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APELLATE JURISDICTION

MISC.APPLICATION NO.1256 OF 2025

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 12264 OF 2024

M/S.LAMBA EXPORTS PVT. LTD. ...PETITIONER

VERSUS

M/S.DHIR GLOBAL INDUSTRIES PVT. LTD. AND ORS. ...RESPONDENTS

WITH

MISC. APPLICATION NO. 1257 OF 2025

IN

SPECIAL LEAVE PETITION (CIVIL) NO. 12264 OF 2024

J U D G M E N T

VIKRAM NATH, J.

1. The present Miscellaneous Application No. 1256 of 2025 (hereinafter referred to as the "MA") has been filed in Special Leave Petition (Civil) No. 12264 of 2024 (hereinafter referred to as the "SLP") seeking recall of the order dated 25.02.2025 passed by this Court, whereby the SLP filed against the judgment and order

dated 06.05.2024 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3916 of 2022 came to be dismissed. The case set up in the MA is that subsequent developments, including the alleged non-disclosure of the proposal for a One Time Settlement (hereinafter referred to as the "OTS"), the eventual settlement arrived at between the secured creditor and the corporate debtor, and the withdrawal of the Corporate Insolvency Resolution Process (hereinafter referred to as the "CIRP") under Section 12A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC"), have a material bearing on the foundation on which the matter proceeded earlier and warrant reconsideration of the order dated 25.02.2025.

2. The facts giving rise to the present MA are as follows:

2.1. The dispute between the parties arises out of an Agreement to Sell dated 13.08.2021 in respect of the subject property owned by Respondent No. 1. The applicant claims rights on the basis of the said agreement. The respondents, on the other hand, dispute the enforceability of the said arrangement and contend that the agreement did not survive in the manner asserted by the applicant.

2.2. The applicant instituted Civil Suit No. 1248 of 2022 seeking specific performance of the Agreement to Sell dated 13.08.2021, along with consequential reliefs of declaration, mandatory injunction, and permanent injunction. The case set up by the applicant was that the suit property, bearing UV-375, Udyog Vihar, Phase-IV, Gurugram, was agreed to be sold for a total sale consideration of Rs.21,00,00,000/-. It was alleged that the applicant had paid Rs.30,00,000/- as earnest money, Rs.1,20,00,000/- to Respondent No. 4 Bank towards the upfront amount for the proposed OTS, and a further sum of Rs.30,00,000/- to Respondent Nos. 1 to 3. According to the applicant, Respondent Nos. 1 to 3 thereafter sought to resile from the Agreement to Sell by legal notice dated 25.03.2022 on the ground that the proposed OTS had not been accepted by the Bank, whereas the applicant maintained that the Agreement to Sell was not liable to be rescinded on that basis and that it had always been ready and willing to perform its part of the contract.

2.3. Along with the suit, the applicant moved an application seeking interim injunction restraining Respondent Nos. 1 to 3 from selling, alienating,

encumbering, or otherwise creating third party rights in respect of the suit property during the pendency of the suit. By order dated 19.07.2022, the Civil Judge (Junior Division), Gurugram allowed the said application and granted interim protection in favour of the applicant. Aggrieved thereby, Respondent Nos. 1 to 3 preferred an appeal, which came to be allowed by the learned Additional District Judge, Gurugram by order dated 06.09.2022, whereby the order dated 19.07.2022 passed by the Trial Court was set aside.

2.4. The applicant thereupon challenged the appellate order before the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3916 of 2022. By judgment and order dated 06.05.2024, the High Court dismissed the revision petition. The High Court held, in substance, that the Agreement to Sell dated 13.08.2021 was itself contingent in nature, inasmuch as its performance was predicated upon the acceptance of the OTS by the Bank. The High Court noted that the suit property was mortgaged, that the Bank was not a party to the Agreement to Sell, and that without the Bank's approval to the OTS, Respondent Nos. 1 to 3 were

not in a position to convey title in respect of the property. On that reasoning, the High Court held that no prima facie case for grant of interim injunction was made out and that, at the highest, the applicant could claim recovery of the amounts paid by it, but could not, at that stage, insist upon specific performance of an agreement the performance of which had become uncertain in the absence of the Bank's approval.

2.5. It appears that the underlying suit for specific performance, being Civil Suit No. 1248 of 2022, continues to remain pending, the proceedings before this Court having arisen from orders passed on the interlocutory application seeking interim protection.

2.6. When the SLP came up before this Court on 04.06.2024, notice was issued. This Court also directed the applicant to deposit a sum of Rs.13,00,00,000/- (Rupees Thirteen Crores Only) with the Registry of this Court within four weeks and to file an undertaking to deposit an additional amount of Rs.13,00,00,000/- (Rupees Thirteen Crores Only) within four weeks after Respondent No. 4 entered appearance. It is the case of the applicant that, in compliance with the said order, a

total sum of Rs.26,00,00,000/- (Rupees Twenty-Six Crores Only) came to be deposited with the Registry of this Court.

2.7. The SLP was ultimately dismissed by order dated 25.02.2025. The present MA has thereafter been filed seeking recall of the order dated 25.02.2025 on the basis of subsequent events which, according to the applicant, have a direct bearing on the matter. The respondents have raised a preliminary objection to the maintainability of the MA and contend that no such recall application would lie after dismissal of the SLP.

2.8. The subsequent events relied upon in the MA are that during the pendency of the SLP, Respondent No. 1 is stated to have addressed a proposal dated 14.02.2025 to Respondent No. 4 for an OTS and for withdrawal of the CIRP under Section 12A of the IBC. It is further the case of the applicant that an OTS was thereafter concluded on 21.03.2025 for an amount of Rs.34.85 crore, and that the Committee of Creditors (hereinafter referred to as the "CoC"), in its meeting dated 05.04.2025, approved withdrawal of the CIRP under Section 12A of the IBC. The applicant also relies upon an email dated 23.03.2025 addressed by it to the Resolution

Professional expressing its willingness to participate in the process.

2.9. It is on the strength of the aforesaid developments that the applicant alleges suppression of material facts and seeks recall of the order dated 25.02.2025. The respondents dispute the said allegations. Their stand is that the proceedings before the National Company Law Tribunal were independent of the proceedings arising from the suit for specific performance, that the MA is not maintainable after dismissal of the SLP, and that the OTS has already been acted upon.

3. Having heard learned counsel for the parties and having perused the material placed on record, we are of the considered view that the present MA does not merit acceptance.

4. The first obstacle in the way of the applicant is one of maintainability. The order dated 25.02.2025, recall of which is sought, is not an executory order. It merely records that this Court was not inclined to interfere with the impugned judgment and order and, accordingly, dismissed the SLP. The present MA does not seek correction of any clerical or arithmetical error. Nor is it a case where directions contained in an

executory order of this Court have become impossible of implementation by reason of subsequent events. The settled position is that a post-disposal miscellaneous application can be entertained only in rare situations of that nature. The present case does not fall within that limited class.

5. In ***Jaipur Vidyut Vitran Nigam Ltd. v. Adani Power Rajasthan Ltd.***[1]**,** this Court has held in clear terms that, once a matter stands disposed of, the Court becomes functus officio and does not retain jurisdiction to entertain an application except in the narrow situations recognized by law. The same position was reiterated in ***Ajay Kumar Jain v. The State of Uttar Pradesh & Anr.***[2], where this Court deprecated the growing practice of filing miscellaneous applications in disposed of proceedings and clarified that such an application would be maintainable only in the limited situations already noticed above. The maintainability objection, therefore, goes to the root of the matter and cannot be brushed aside merely because notice had been issued in the present MA.

6. That apart, the controversy which is now sought to be projected in the present MA travels well beyond the

[1] (2024) 19 SCC 353
[2] 2024 INSC 958

four corners of the proceedings from which the SLP had arisen. The SLP arose from a suit-based dispute concerning the Agreement to Sell dated 13.08.2021 and the correctness of the order passed by the High Court in Civil Revision No. 3916 of 2022. The present MA, however, seeks to found a case for recall on the basis of later developments said to have taken place in the insolvency proceedings, including the proposal for One Time Settlement, the subsequent settlement, the decision of the Committee of Creditors, and the order passed by the National Company Law Tribunal under Section 12A of the IBC. Whether those later steps were proper or otherwise cannot be examined collaterally in an MA filed in a disposed of SLP arising out of a civil revision. If the applicant is aggrieved by any act done or order passed in that separate statutory framework, it is always open to the applicant to avail of such remedy as may be permissible in law before the competent forum.

7. At this stage, we may also clarify that we are not inclined to accept the broad submission that the dismissal of the SLP on 25.02.2025, by itself, attracted the doctrine of merger. The law is clear that an order refusing special leave to appeal, whether speaking or non-speaking, does not attract merger. However, that

does not carry the matter any further for the applicant. The absence of merger does not mean that a disposed of SLP can be reopened through a miscellaneous application on grounds which do not satisfy the settled parameters of maintainability.

8. Much emphasis was placed by the applicant on alleged suppression and on the submission that the order dated 25.02.2025 deserves to be recalled on the ground that fraud was practiced upon this Court. There can be no quarrel with the principle that fraud vitiates all proceedings and that a Court is not powerless where its order has been procured by fraud. But the exception is a serious one and cannot be invoked on the basis of assertion alone. In the present case, the order dated 25.02.2025 is a non-speaking order dismissing the SLP. The order dated 25.02.2025 does not indicate that the dismissal turned upon any specific representation which is now alleged to have been suppressed. The material now relied upon, even if taken at its highest, may at best furnish the applicant with a separate grievance arising out of subsequent or parallel proceedings. It does not persuade us to hold, in the present proceedings, that the order dated 25.02.2025 itself was procured by practicing fraud on this Court.

9. There is yet another aspect of the matter. The challenge to the judgment and order dated 06.05.2024 passed by the High Court had to be considered on the record and circumstances as they then stood. Subsequent developments in another forum, howsoever strongly relied upon by the applicant, cannot retroactively render the earlier adjudicatory exercise vulnerable in a disposed of SLP. A later event may, in a given case, furnish an independent cause of action. It cannot, by itself, be used to reopen finality in proceedings of a different character and origin.

10. Even otherwise, we are unable to accept the applicant's attempt to invite this Court, in the present MA, to comparatively assess the alleged superiority of its offer vis-à-vis the settlement which came to be accepted in the insolvency process. The statutory scheme of Section 12A of the IBC contemplates withdrawal of the insolvency process, after constitution of the CoC, only upon approval by the requisite voting share of the CoC. Once the matter enters that domain, the decision whether to accept a settlement, whether to continue with the process, or whether to adopt one commercial course over another, falls essentially within the realm of the collective commercial wisdom of the CoC. In ***K. Sashidhar v.***

Indian Overseas Bank*[3]*, this Court emphasized that the legislature has consciously made the commercial wisdom of the financial creditors non-justiciable and that the adjudicating and appellate authorities do not sit in appeal over such business decisions.

11. The same principle was reiterated and explained in **Essar Steel (India) Ltd. Committee of Creditors v. Satish Kumar Gupta**[4]**,** where this Court held that it is the commercial wisdom of the majority of the CoC which determines, through negotiations and assessment of viability, how and in what manner the corporate insolvency resolution process is to proceed. More particularly, this Court observed that the adjudicating authority cannot make any inquiry beyond the limited statutory parameters, nor can it issue directions in relation to the exercise of commercial wisdom of the CoC, whether in approving, rejecting, or otherwise dealing with a proposal. Likewise, in ***Vallal RCK v. Siva Industries & Holdings Ltd.***[5]***,*** this Court reiterated that where a withdrawal under Section 12A of the IBC has received the requisite approval, the scope of interference remains narrow and the commercial decision of the

[3] (2019) 12 SCC 150
[4] (2020) 8 SCC 531
[5] (2022) 9 SCC 803

CoC is not to be displaced except on grounds known to law.

12. At the same time, it is necessary to state that primacy of commercial wisdom does not mean that every action taken in the insolvency process is altogether immune from scrutiny in every situation. Where a challenge is laid in an appropriate proceeding on a legally sustainable foundation, such as statutory illegality or a jurisdictional infirmity, the matter would naturally be considered in accordance with law. However, that is not the exercise which can be undertaken in the present MA. In these proceedings, which arise out of a disposed of SLP in a civil revision concerning an Agreement to Sell, this Court cannot be called upon to sit over the comparative financial attractiveness of rival offers or to substitute its own view for the business decision taken by the CoC in the statutory process under the IBC. The mere assertion by the applicant that its offer was higher would not, by itself, furnish a ground to reopen the dismissal of the SLP or to unsettle steps taken in a separate insolvency framework.

13. For all the aforesaid reasons, we are not persuaded to entertain the present MA as a vehicle either for reopening the dismissal of the SLP dated 25.02.2025

or for examining the legality of the subsequent steps taken in the insolvency proceedings.

14. Accordingly, Miscellaneous Application No. 1256 of 2025 is dismissed. In view of the same, MA No. 1257 of 2025 for ad-interim relief is not required to be dealt with.

15. It is, however, clarified that we have expressed no opinion on the merits of any proceedings undertaken under the Insolvency and Bankruptcy Code, 2016, including the order dated 14.05.2025 passed by the National Company Law Tribunal, or on the merits of Civil Suit No. 1248 of 2022, which, as per the record before us, remains pending. All rights and contentions of the parties in such proceedings are left open to be urged before the competent forum in accordance with law.

16. Pending application(s), if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI
MARCH 23, 2026