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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 5th August, 2024**

\+ W.P.(C) 10768/2024, CM APPL. 44336/2024 & 44335/2024

ARYAN CONSTRUCTIONS THROUGH MR. AMIT SINGH YADAV (PROPRIETOR) .....Petitioner

Through: Mr. Raghav Sabharwal, Ms. Yashita Dalmia, Mr. Abhishek Shandilya and Mr. Vijay Laxmi Ojha, Advocates.

versus

PUNJAB NATIONAL BANK LTD. THROUGH ITS CMD & ORS. .....Respondents

Through:

Mr. Sanjay Bajaj, Mr. Shivam Takkar and Mr. Sarthak Sehgal, Advocates for R-1.

Mr.Sanjeev Sagar, SC for SBI/R-2

Mr.Ramesh Babu and Ms.Nisha Sharma, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner, who claims itself to be an 'Operational Creditor' of the 'Corporate Debtor' ["**CD**"] has preferred this writ petition under Article 226 of the Constitution of India seeking the following reliefs:

> "(i) Grant an appropriate writ, order or direction, directing the Respondent Banks to take appropriate steps for protecting the interests of the bona fide creditors of the Bhushan Steel & Power

Ltd. by initiating appropriate proceedings to *inter alia*, secure the moneys siphoned off by the erstwhile promoters of Bhushan Steel & Power Ltd., including but not limited to the assets of over Rs. 4000 crores attached by the Directorate of Enforcement;

(ii) Grant an appropriate writ, order or direction, directing the Reserve Bank of India to issue appropriate directions to the Respondent Banks under Section 35A of the Banking Regulation Act, 1949;

(iii) Pass such other or further order/s which this Hon'ble Court may deem fit and proper in the interest of justice."

2. Learned counsel for respondent No.1/Punjab National Bank ["**PNB**"] and respondent No.2/State Bank of India ["**SBI**"] are present on advance notice. Learned counsel for respondent No. 3/RBI is also present on advance notice.

FACTUAL BACKGROUND:

3. Shorn of unnecessary details, the CD[1] was admitted to CIRP[2] by an order dated 26.07.2017 in C.A./C.P (IB) No.202/(PB)/2017, at the behest of the PNB, by the adjudicating authority[3] wherein the Resolution Professional ["**RP**"] admitted the claims for an amount of Rupees Forty Seven Thousand Crores (approximately) payable to the 'Financial Creditors' as well as claims for an amount of Rupees Six Hundred and Twenty Crores (approximately) with respect to the 'Operational Creditors'. It appears that some of the erstwhile directors of the CD had certain grievances to the extent that theyhad not been provided with relevant documents, consequent to which they challenged the CIRP proceedings instituted before the Punjab & Haryana High Court bearing CWP No. 10325/2019 (O&M), whereby

[1]Bhusan Steel & Power Limited
[2]Corporate Insolvency Resolution Process
[3]National Company Law Tribunal

certain directions were given to the learned NCLT to consider the preliminary issues raised by them *vide* order dated 18.04.2019. Eventually the 'Resolution Plan' submitted by JSW Steel Limited[4] was approved by the 'COC' on 16.10.2018 and was submitted by the RP for approval before the Adjudicating Authority i.e., the NCLT in terms of Section 30(6) and 31(1) of the Insolvency and Bankruptcy Code ["**IBC**"] vide CA No. 254(PB)/2019. The 'Resolution Plan' was approved by the Adjudicating Authority *vide* judgment dated 05.09.2019 with certain conditions, and insofar as 'Operational Creditors' are concerned, in which category the petitioner was infact bracketed, the amount of Rs. 350 crores was admitted by the RP after a haircut of 52.31%, and was ordered to be disbursed.

4. The grievance of the petitioner seems to be that right from the beginning, the respondents have been deliberately committing arbitrary and illegal omissions thereby causing direct and tangible losses to the creditors of the 'Corporate Debtors' and in this regard, the attention of the Court is invited to issue appropriate directions to the respondent-banks under Section 35A (a), (aa) and (b) of the Banking Regulation Act, 1949[5].

5. It is further the grievance of the petitioner that while formulating the 'Resolution Plan', the respondents gave a complete go bye to the fact that the Resolution Applicant was infact a 'related

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[4]Resolution Applicant

[5]**35A. Power of the Reserve Bank to give directions**.—(1) Where the Reserve Bank is satisfied that—
(a) in the [public interest]; or
(aa) in the interest of banking policy; or
(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company;

party' of the CD in terms of Section 5(24) of the IBC, and therefore, was ineligible to submit a 'Resolution Plan' in terms of Section 29A of the IBC.

6. It was vehemently urged during the course of arguments that the CD and the SRA were joint venture partners in a company, namely M/s. Rohne Coal Company Private Limited, holding 24.09% and 49% equity respectively. It was urged that the said aspect was neither considered by the NCLT nor by the National Company Law Appellate Tribunal ["**NCLAT**"], but for the wanton failure on the part of the respondents to protect the interest of the creditors of the CD. During the course of arguments, learned counsel for the petitioner invited the attention of this Court to the directions passed by the learned Adjudicating Authority while approving the 'Resolution Plan', that *inter alia* provided as under:

> *"128. As a sequel of the above discussion, CA No- 254(PB)/2019 is allowed and the resolution plan of JSW-H1 Resolution Plan Applicant is accepted. The objections raised by the Ex-Directors cum Promoters of the Corporate Debtor and Operational Creditors are hereby over-ruled. However, the acceptance and approval of the resolution plan shall be subject to the following:*
> *xxx xxxxxx*
> *(i) The criminal proceedings initiated against the erstwhile Members of the Board of Directors and others shall not effect the JSW-H1 Resolution Plan Applicant or the implementation of the resolution plan by the Monitoring Agency comprising of CoC and RP. We leave it open to the Members of the CoC to file appropriate applications if criminal proceedings result in recovery of money which has been siphoned of or on account of tainted transactions or fabrication as contemplated under the provisions of the Code or any other law. Those applications shall be considered in accordance with the prevalent law.*
> *…"*

7. It was vehemently urged that despite such clear directions, the

respondents failed to take timely and conscious action for the benefit of all the stakeholders and while the Monitoring Committee of the CD was monitoring the change of management, on 10.10.2019, the Directorate of Enforcement of Central Government ["**ED**"] entered the arena and attached the assets of the CD, amounting to over Rs. 4000 crores, under Section 5 of the Prevention of Money Laundering Act, 2002 ["**PMLA**"].

8. Learned counsel for the petitioner, alluding to Section 8(8) of the PMLA, vehemently urged that the respondents and/or COC in terms of the aforesaid directions contained in the order dated 05.09.2019 ought to have filed appropriate applications to ensure that the money siphoned off and laundered by the erstwhile promoters/directors of the CD be returned to the creditors of the CD.

9. Lastly, referring to the provisions of Section 32A of the PMLA, which was brought onto the statute book w.e.f. 28.12.2019, there existed no provision in the IBC by which the attachment of properties of the CD by the ED could have been saved and there being neither any express nor implied condition that the amended provision is retrospective, Section 32A could not have been applied to the 'Resolution Plan' of the CD, which already stood approved under Section 31 on 05.09.2019 i.e., prior to coming into force of newly inserted Section on 28.12.2019. In this regard reference is invited to the judgment dated 17.02.2020 in Company Appeal (AT) (INS) No. 957/2019 passed by the NCLAT. It was pointed out that in the aforesaid proceedings, the ED took a stand that the newly inserted Section 32A was not retrospective, and therefore, did not affect the

attachment of the properties of the CD, which contention was rejected by the NCLAT. It is vehemently urged that in the aforesaid proceedings, while the erstwhile promoters of the CD supported the attachment by the ED, the respondents in the present writ did not support the said order, although they were the "victim creditors" and would have been direct beneficiaries of the attachment in terms of Section 8(8) of the PMLA.

10. Learned counsel for the petitioner vehemently urged that owing to the deliberate inaction on the part of the respondents, the petitioner stands to lose more than Rs. 4.52 crores which was due to him in the year 2017. Learned counsel for the petitioner, in support of his submissions has relied on the decisions in **Vadilal Chemcials Ltd. v. State of A.P.**[6]; **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund (Earlier Known as Kotak India Venture Limited)**[7]; and **Manish Kumar v. UOI**[8]**.**

11. Learned counsel appearing for the PNB through video conferencing, challenged the maintainability of the present writ petition pointing out that the 'Resolution Plan' stands approved upto the Supreme Court and the same cannot be questioned now by way of the present proceedings, particularly when personal insolvency proceedings have been initiated against the promoters/directors of the CD. It was urged that no direction can be passed against the assets of the CD. On the other hand learned, counsel for the SBI vehemently urged that the issues with regard to whether or not JSW Steel is a

[6](2005) 6 SCC 292
[7](2021) 6 SCC 436
[8](2021) 5 SCC 1

'related party' and whether the 'Resolution Plan' worked out by the COC shall provide no ground for interference by the ED, is pending before the Supreme Court in a bunch of matters. It was vehemently urged that the claims of the petitioner were considered and adjudicated upon, thereby allowing the claim *albeit* with anecessary haircut. In this regard, a copy of the order dated 18.12.2019 passed by the Supreme Court in SLP No. 29327-29328/2019, titled **Committee of Creditors v. Directorate of Enforcement,** was shared through video conferencing, whereby there is stay on the order dated 10.10.2019 passed by the Directorate of Enforcement.

ANALYSIS AND DECISION:

12. Having heard the learned counsels for the parties present and on perusal of the record, unhesitatingly, this Court finds that the present writ petition is not legally sustainable and deserves to be dismissed.

13. First things first, the plea raised by the learned counsel for the petitioner that even at the state of approving 'Resolution Plan', COC failed to ensure compliance of Section 29A read with Section 5(24) of the IBC for the CD and the 'Resolution Applicant' being a joint venture in one M/s. Rohne Coal Company Private Limited, and thus being 'related parties', is clearly misconceived since the said aspect was dealt with in some detail by the NCLAT *vide* its judgment dated 17.02.2020, whereby it was observed as under:

> **"II. The Appellant is not related party of the Corporate Debtor**
> 10. The basis of ED's submissions that the Appellant is a related party of the Corporate Debtor is the existence of a company namely Rohne Coal Company Private Limited ("RCCPL") which was incorporated in 2008 as a joint venture amongst (i) JSW Steel Ltd. (Appellant); (ii) Bhushan Power and Steel Ltd. (Corporate

Debtor) and (iii) Jai Balaji Industries Ltd. In this regard, Appellant seeks to place on record the following facts:

(i) The Appellant had individually applied to the Government of India for allocation of a Coking Coal Block. Such application was not made jointly with any entity. However, by letter of intent ("LoI") dated 9th April, 2017, the Government of India, through Ministry of Coal, proposed joint allocation of Rohne Coking Coal Block amongst the aforesaid three companies, including the Appellant and the Corporate Debtor herein, with their respective proportionate share of coal reserve.

(ii) At the behest of the Ministry of Coal, a joint venture agreement dated 05.03.2008 was executed by and amongst the Appellant, Corporate Debtor and Jai Balaji Industries Ltd., pursuant to which RCCPL came to be incorporated.

(iii) Vide the LoI and the proportionate share of coal reserve allotted to each Allocattee specified thereunder, the Appellant was entitled to 69.01% of coal reserve. Further, as per the JVA, the Appellant was entitled to subscribe to 69.01% of the share capital of RCCPL together with its affiliate company/s. Therefore, the Appellant had directly subscribed to 49% of the share capital in RCCPL and one of its affiliate, Everbest Consultancy Services Pvt. Ltd. had subscribed to the remaining 20.01% of share capital.

(iv) While the Coal Block was under development, the Hon'ble Supreme Court of India vide its order dated 24.09.2014 passed in Manohar Lal Sharma v. The Principal Secretary & Others. W.P. (Criminal) 120/2012, cancelled the allocation of the coal blocks by the Government of India (to States and private sector industries). Consequently, the allocation of Coal Block to RCCPL stood cancelled and the operations of RCCPL have been inactive since the said cancellation. Further, post the cancellation, the Coal Block has been allotted to National Mineral Development Corporation (NMDC).

(v) While the operations of RCCPL have been inactivesince the cancelation of the Coal Block, the jointventure has not been dissolved as on date, onaccount of a pending litigation with respect to theCoal Block before the Hon'ble Delhi High Court inRohne Coal Co. Ltd. vs Union of India and Ors. WP(C) 11551/2015 and the resolution of issues withrespect to reimbursement of costs incurred byRCCPL for development of the mine until it wascancelled."

14. Further, on a careful perusal of the aforesaid order, it is significant to note that the 'Resolution Applicant' made full and

truthful disclosure of its background learned NCLAT at the time of submission of 'Resolution Plans' and it was after a detailed analysis that the learned NCLT arrived at the conclusion that the 'Resolution Applicant' was not falling foul of the bar of Section 29A of the IBC. In this regard, the learned Tribunal referred to the notification dated 19.04.2017 issued by the Government of India through Ministry of Coal, highlighting the following facts:

i) JSW Steel Limited in its individual capacity applied for allocation of 'Rohne Coking Coal Block' in its favour;
ii) the Central Government took a decision to make a joint allocation of the Rohne Coking Coal Block in favour of M/s. JSW Steel Ltd., M/s. Bhushan Power & Steel Ltd. and M/s. Jai Balaji Sponge Ltd.;
iii) That neither of the aforesaid three companies have any control or say in the issuance of the notification;
iv) That the notification resulted in the formation of the JV entity which would be given such joint allocation to meet the proportionate share of requirement of coal of the aforesaid three entities.

15. In the said backdrop, it was observed that M/s. JSW Steel Limited applied for the allocation of Rohne Coking Coal Block in terms of the mandate of the Central Government. Thus, the plea that the 'Resolution Applicant' was a 'related party' has no merits as nothing is brought on the record so as to show its nexus or connection with the activities of the 'CD'.

16. Insofar as the second limb of the argument raised by the leaned counsel for the petitioner, alluding to Section 32A of the IBC read with Section 8(8) of the PMLA is concerned, even assuming for the sake of convenience that the 'operational creditors' of the CD are the 'victims' of illegal actions of the erstwhile management, evidently the said provision would come into play only at a post-conviction

stage.Be that as it may, it is well ordained in corporate law that once the CIRP proceedings are initiated and 'Resolution Plans' are approved, the adjudication of the claim of the creditors could only be in accordance with the IBC. Needless to state that the COC, once constituted in accordance with the IBC, acts on behalf of all the creditors and the taskof the COC is to attain a balance between the twin goals of the CIRP process *viz.*, maximization of the value of the assets of the CD and also a planned course for revival of the CD. These being the twin objectives, the decisions take by the COC, which have been approved by the NCLT are considered to be commercially viable and cannot be condemned on any counts by the petitioner.

17. At this juncture, it would be pertinent to reproduced Section 31(1) of the IBC, which reads as under:

> "31.(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan."

18. A plain and grammatical interpretation of Section 31 of the IBC, would show that every creditor or stakeholder is bound by the 'Resolution Plan' approved by the NCLT/NCLAT, irrespective of the fact whether they have consented to it or not. Reference in this regard can be made to the decision by the Supreme Court in the case of **Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited**[9]**,** wherein it was held as under:

[9](2023) 10 SCC 545

"61.11. Section 31 IBC deals with the approval of the resolution plan which shall bind everyone i.e. the corporate debtor, guarantors, creditors, other stakeholders, etc. Thus, whatever amount is allotted to the creditor under the plan, the same will have to be accepted without any option.

61.12. The new avatar of the corporate debtor does not have to deal with the various "hydra heads" i.e. multiple new claims popping up after the approval of the plan (para 107 of *Essar Steel* [*Essar Steel India Ltd. (CoC)* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] .)

61.13. The aforesaid has been accepted as a "Clean Slate Theory". [*See* paras 93-94 of *Ghanashyam Mishra & Sons (P) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.* [*Ghanashyam Mishra & Sons (P) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638]

61.14. This Court in *Ebix Singapore (P) Ltd.* v. *Educomp Solutions Ltd. (CoC)* [*Ebix Singapore (P) Ltd.* v. *Educomp Solutions Ltd. (CoC)*, (2022) 2 SCC 401 : (2022) 1 SCC (Civ) 586] , has held that the resolution plan binds even the persons who have not consented. Paras 115 & 117, respectively, read thus : (SCC pp. 489-90)

> "*115*. While the above observations were made in the context of a scheme that has been sanctioned by the court, the resolution plan even prior to the approval of the adjudicating authority is binding inter se the CoC and the successful resolution applicant. The resolution plan cannot be construed purely as a "contract" governed by the Contract Act, in the period intervening its acceptance by the CoC and the approval of the adjudicating authority. Even at that stage, its binding effects are produced by IBC framework. The BLRC Report mentions that '[w]hen 75% of the creditors agree on a revival plan, this plan would be binding on all the remaining creditors'. The BLRC Report also mentions that, 'the RP submits a binding agreement to the adjudicator before the default maximum date' [*Id*, p. 92.] . We have further discussed the statutory scheme of IBC in Sections I and J of this judgment to establish that a resolution plan is binding inter se the CoC and the successful resolution applicant. *Thus, the ability of the resolution plan to bind those who have not consented to it, by way of a statutory procedure, indicates that it is not a typical contract.*
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> *117*. … The terms of the resolution plan contain a commercial bargain between the CoC and resolution

> applicant. There is also an intention to create legal relations with binding effect. However, it is the structure of IBC which confers legal force on the CoC-approved resolution plan. *The validity of the resolution plan is not premised upon the agreement or consent of those bound* (although as a procedural step IBC requires sixty-six per cent votes of creditors), *but upon its compliance with the procedure stipulated under IBC*."

19. That being the proposition of law, the plea that the respondents-banks should have pursued attachment of the properties of the CD merits no consideration.As regards the plea that Section 32A[10]of the

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[10]**[32A. Liability for prior offences, etc.**--(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

IBC ishaving no retrospective effect, the decision in the case of ***Manish Kumar (supra)*** cited by the learned counsel for the petitioner rather goes against his submissions, wherein it was held as under:

> **"316.1.** Section 32-A provides immunity to the corporate debtor and its property when there is approval of the resolution plan resulting in the change of management of control of corporate debtor. **This is subject to the successful resolution applicant being not involved in the commission of the offence.** Statutory basis has now been given under Section 32-A to the law laid down by this Court in the decision of *Essar Steel India Ltd. Committee of Creditors* [*Essar Steel India Ltd. Committee of Creditors* v. *Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] . **This Court took the view therein that successful resolution applicant cannot be faced with undecided claim after its resolution plan has been accepted. The object is to ensure that a successful resolution applicant starts off on a fresh slate.**
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> **{bold portions emphasis supplied}**

20. Avoiding a long academic discussion at this preliminary stage of the matter, suffice to state that in the case of **Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta**[11] it was observed by the Supreme

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(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.]

[11](2020) 8 SCC 531

Court that a 'Successful Resolution Applicant' cannotbe faced with undecided claims after the 'Resolution Plan' is accepted as that would amount to a hydra head popping up which would throw into uncertainty, the amounts payable by a prospective 'Resolution Applicant', which would be counterproductive to taking over the business of the CD. The same proposition of law was later reiterated in the case of **P. Mohanraj v. Shah Brothers Ispat PrivateLimited**[12]wherein it was held as under:

> **"41.** Section 32-A cannot possibly be said to throw any light on the true interpretation of Section 14(1)(*a*) as the reason for introducing Section 32-A had nothing whatsoever to do with any moratorium provision. At the heart of the section is the *extinguishment* of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32-A(1) operates only after the moratorium comes to an end. At the heart of Section 32-A is the IBC's goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability.
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> x xx
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> **43.** A section which has been introduced by an amendment into an Act with its focus on cesser of liability for offences committed by the corporate debtor prior to the commencement of the corporate insolvency resolution process cannot be so construed so as to limit, by a sidewind as it were, the moratorium provision contained in Section 14, with which it is not at all concerned. If the first proviso to Section 32-A(1) is read in the manner suggested by Shri Mehta, it will impact Section 14 by taking out of its ken Sections 138/141 proceedings, which is not the object of Section 32-A(1) at all. Assuming, therefore, that there is a clash between Section 14 IBC and the first proviso of Section 32-A(1), this clash is best resolved by applying the doctrine of harmonious construction so that the

[12](2021) 6 SCC 258

> objects of both the provisions get subserved in the process, without damaging or limiting one provision at the expense of the other. If, therefore, the expression "prosecution" in the first proviso of Section 32-A(1) refers to criminal proceedings properly so-called either through the medium of a first information report or complaint filed by an investigating authority or complaint and not to quasi-criminal proceedings that are instituted under Sections 138/141 of the Negotiable Instruments Act against the corporate debtor, the object of Section 14(1) IBC gets subserved, as does the object of Section 32-A, which does away with criminal prosecutions in all cases against the corporate debtor, thus absolving the corporate debtor from the same after a new management comes in."

21. Thus, the effect that a 'Resolution Plan' once approved would bring is to proceed on a "clean slate" with the successful resolution applicantrather than carrying the cargo of such debts which need to be satisfied to the extent required and then jettisoned, as stated by the Supreme Court in the case of **Japee Kesington Boulevard Apartments Welfare Association v. NBCC (India) Limited**[13].

22. All said and done, the NCLT in its judgment dated 17.02.2019 had an occasion to observe that the Central Bureau of Investigation, which was carrying out an investigation had not alleged any act of money laundering or any other criminal act or omission against JSW Steel Limited or its management. No investigation by the Serious Fraud Investigation Office ["**SFIO**"], which is under the control of the Ministry of Corporate Affairs was pending against the said company and incidentally, the NCLAT in its aforesaid order had referred to the affidavit dated 10.10.2019, to the effect that even before the passing of the ordinance by the Union of India, the affidavit had categorically stated as under:

[13](2022) 1 SCC 401

"5) It is submitted that if any Corporate Debtor is undergoing investigation by the Central Bureau of Investigation ("CBI"), Serious Fraud Investigation Office ("SFIO") and/ or the Directorate of Enforcement ("ED"), such investigations are separate and independent of the Corporate Insolvency Resolution Process ("CIR Process") under the IBC and both can run simultaneously and independent of each other. It is further submitted that the erstwhile management of a company would be held responsible for the crimes, if any, committed under their regime and the new management taking over the company after going through the IBC process cannot be held responsible for the acts of omission and commission of the previous management. In other words, no criminal liability can be fixed on the successful resolution applicant or its officials.

6) In so far as the corporate debtor or its assets are concerned, after the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan.

7). Resolution Plan submitted by the interested Resolution Applicants are duly examined and validated by the Resolution Professional and the Committee of Creditors ("CoC"). Once the Resolution Plan is voted upon and approved by the CoC, it is submitted to the Ld. Adjudicating Authority for its approval. The Ld. Adjudicating Authority after hearing the objections, if any, and being satisfied that the Resolution Plan is in compliance with the provisions of the law, approved the Plan. The CIR Process is desired to ensure that undesirable persons do not take control of the Corporate Debtor by virtue of Section 29A of the IBC. The purpose and scheme of the CIR Process is to hand over the company of the corporate debtor to a bona fide new resolution applicant. Any threat of attachment of the assets of the corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for wrong doing of the previous management will defeat the very purpose and scheme of CIR Process, which inter-alia includes resolution of insolvency and revival of the company, and the efforts of the bank to realise dues from their NPAs would get derailed. Otherwise too, the money realised by way of resolution plan is invariably recovered by the banks and public financial institutions and other creditors who have lent money to the erstwhile promoters to recover their dues which they have lent to the erstwhile management for creation of moveable or immoveable assets of the corporate debtor in question and therefore, to attach such an asset in the hands of new

promoters of resolution applicant would only negate the very purpose of IBC and eventually destroy the value of assets.

8). **In light of the above, the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC. In so far as a Resolution Applicant is concerned, they would not be in wrongful enjoyment of any proceeds of crime after acquisition of the Corporate Debtor and its assets, as a Resolution Applicant would be a bona fide assets acquired through a legal process. Therefore, upon an acquisition under a CIR Process by a Resolution Applicant, the Corporate Debtor and its assets are not derived or obtained through proceeds of crime under the Prevention of Money Laundering Act, 2002 ("PMLA") and need not be subject to attachment by the ED after approval of Resolution Plan by the Adjudicating Authorities.**" (Emphasis supplied)

23. In view of the above, there is no escape from the conclusion that once the 'Resolution Plan' was approved, the assets of the CD in the hand of the 'Resolution Applicant' stood shielded from the criminal prosecution and attachment. Section 32A of the IBC is merely clarificatory in nature. Although, it was sought to be urged that a contrary stand has been taken by two different agencies of the Government of India inviting attention of this Court to the decision in the case of ***Vadilal Chemcials Ltd. (supra),*** there is no need for this Court to delve into said aspect any further.

24. In view of the foregoing discussion, the petitioner has failed to make out a case for issuance of any prerogative writs by this Court. There is nothing as such to find any blemishes or flawed actions or inactions on the part of the respondent No.2 in any manner requiring interference by this Court. Hence, the present writ petition is

dismissed with costs of Rs. One lakh, for wasting the precious time and efforts of this Court, which brings enormous strain on the already clogged justice delivery system.

25. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

AUGUST 05, 2024
Sadiq