

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 794 of 2022

**&
I.A. No. 2124 of 2022**

IN THE MATTER OF:

Vikram Puri & Anr. (Suspended Directors) ...Appellant

Versus

Universal Buildwell Pvt. Ltd. through Resolution Professional ...Respondent

Present:

For Appellant: Mr. Achal Gupta, Advocate

For Respondent:

ORDER
(Virtual Mode)

26.07.2022: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the Order dated 04th March, 2022. By which Order, I.A. No. 5312 of 2021 filed by the Appellant has been rejected. The Appellants-Suspended Directors of the Corporate Debtor had filed the I.A. praying for following reliefs:

- “a) Direct the Resolution Professional to forward the Proposal dated 12th October, 2021 of the Applicant to the Committee of Creditor; and*
- b) Direct the Resolution Professional to call for a meeting of the Committee of Creditors to discuss and vote on approval of the Proposal dated 12th October, 2021 of the Applicant.”*

3. In the facts of the present case, the Committee of Creditors has already approved the Resolution Plan on 11.11.2019 and an Application to approve the Resolution Plan was filed by the Resolution Professional before the Adjudicating Authority on which the Adjudicating Authority passed an Order on 11th June, 2021 remitting the Resolution Plan back to the Committee of Creditors for certain limited issues.

4. After the said Order passed by the Adjudicating Authority, the Appellants who are the Suspended Directors has filed this Application bearing I.A. No. 5312 of 2021 seeking prayers as noted above.

5. Learned Counsel for the Appellant submits that Appellant has submitted proposal dated 12th October, 2021 which was a better financial proposal and ought to have been directed by the Adjudicating Authority to be placed before the Committee of Creditors for consideration. Learned Counsel for the Appellant submits that plan of the Appellant is beneficial to the Home Buyers and is better plan with regard to all seven projects. He further submits that after remanding back by the Adjudicating Authority, the matter is again before the Adjudicating Authority which is pending consideration for approval.

6. On a query to the Learned Counsel for the Appellant that how the Suspended Directors are eligible to submit Resolution Plan, Learned Counsel for the Appellant has referred to Section 32A of the Insolvency and Bankruptcy Code, 2016 (IBC in short). Section 32A of the Code provides for liability for prior offences, etc. Section 32(1) of the Code is as follows:

“Section 32. Appeal.- (1) Any Appeal from an order approving the Resolution Plan shall be in the manner and on the grounds laid down in sub-section 3 of Section 61.

32-A. 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, or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge 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.”

7. We are of the view that Section 32A does not give any right to the Suspended Directors to submit a plan. Section 29A is a provision which clearly provides that Appellant are not eligible to submit a Resolution Plan i.e. Suspended Directors. More so, in the present case, Plan has already been

approved which has been remitted back by the Adjudicating Authority to the Committee of Creditors for limited issues hence this is not a stage even to consider and direct any proposal of the Appellant to be placed before the CoC.

8. We do not think that any of the submission of the Appellant would make any dent towards his ineligibility to seek consideration of his proposal dated 12th October, 2021. We do not find any error in the Order of the Adjudicating Authority. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Mr. Barun Mitra]
Member (Technical)**

Basant/nn