

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Interlocutory Application No.6625 & 7235 of 2024

In

Company Appeal (AT) (Insolvency) No. 1495 of 2024

IN THE MATTER OF:

Vantage Point Asset Management Pte. Ltd.

... Appellant

Versus

Gaurav Misra

Resolution Professional of Alchemist Infra Reality Ltd. ... Respondent

Interlocutory Application No.6625 of 2024

AND IN THE MATTER OF:

Directorate of Enforcement,
Through its Deputy Director
Delhi Zonal Office-II, 1st Floor, Block-C,
Pravartan Bhawan, Dr. APJ Abdul Kalam Road,
New Delhi – 110011

... Applicant

Present:

For Appellant : **Mr. Zoheb Hossain, SPP ED, Mr. Vivek Gurnani,**
Applicant **Panel Counsel ED with Mr. Suradish Vats and Mr.**
Sai M. Sud, Advocates for the Applicant

Mr. Arun Kathpalia, Sr. Advocate with Mr. Palash
S Singhai, Ms. Diksha Gupta and Ms. Harsha
Sareen, Advocates for SRA.

For Respondents : **Mr. Krishnendu Datta, Sr. Advocate with Ms.**
Varsha Banerjee, Advocate.

Ms. Prachi Johri and Ms. Abhipsa Sahu,
Advocates for Intervenor

J U D G M E N T

ASHOK BHUSHAN, J.

IA No.6625 of 2024

This Application has been filed by Directorate of Enforcement,
praying for recall of order dated 13.08.2024, by which Company Appeal

Interlocutory Application Nos.6625 & 7235 of 2024 in
Company Appeal (AT) (Ins.) No. 1495 of 2024

(AT) (Ins.) No.1495 of 2024 was allowed. The prayers made in the Application are as follows:

- a. Recall order dated 13.08.2024 passed by this Hon'ble Court in Company Appeal (AT) (Insolvency) No.1495 of 2024;
- b. Vacate the direction pertaining to lifting the Provisional Attachment order dated 24.01.2019;
- c. Declare that the attached properties could never have formed part of the resolution plan and
- d. Pass such other orders/orders as this Hon'ble Tribunal may deem fit.

2. The brief background facts necessary to be noticed for deciding this Appeal are:

- (i) The Corporate Debtor ("**CD**") – Alchemist Infra Realty Limited was subjected to Corporate Insolvency Resolution Process ("**CIRP**") by order dated 08.10.2021 passed by Adjudicating Authority in an Application under Section 7 filed by Technology Parks Ltd.
- (ii) In the CIRP of the CD, Resolution Plan submitted by Vantage Point Asset Pte. Ltd. (hereinafter referred to as the "**Appellant**") was approved by order dated 04.07.2024 passed by NCLT, New Delhi Bench (Court-II) in CP(IB) No.635/PB/20021 by allowing IA No.01 of 2024 filed by the Resolution Professional ("**RP**") for approval of Resolution Plan. The Adjudicating Authority while approving the Resolution Plan also considered the prayers made by the Successful Resolution Applicant ("**SRA**")

regarding relief/ concession/ waiver. The properties of CD were attached by the Directorate of Enforcement vide order dated 24.01.2019. The SRA had prayed before the Adjudicating Authority to issue direction to release the attachment of the assets enforced by Directorate of Enforcement ("**ED**"). The said relief prayed by the SRA was not granted. In paragraphs 60 and 61 of the judgment, the Adjudicating Authority made following observations:

"60. In sum and substance, the SRA/ CD would be entitled to no other relief/ concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016. Nevertheless, the properties which are already attached by ED, under PMLA would not be released and it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. In any case, the changed management covered under Sec. 32A(l)(a) & (2)(i) of IBC, 2016, would not be entitled for any criminal consequences for the offences committed by the ex-management of the CD prior to commencement of the CIRP. It is also noticed that though in the certificate furnished by the RP in Form-H prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016, as also in the Affidavit filed by him, the RP has authenticated that the SRA does not suffer any ineligibility under Sec. 29A of IBC, 2016, but in terms of provisions of Sec. 30(1) of the Code, a Resolution Applicant should submit the Resolution Plan along with an affidavit stating that he is eligible under Sec. 29A to submit a Resolution Plan, to the Resolution Applicant. We could not find any such affidavit filed by SRA on record. Nevertheless, in the interest of justice we deem it appropriate to give an opportunity to SRA to file the affidavit required in terms of provisions of Sec. 29A read with Sec. 30(1) of the IBC, 2016.

61. In the backdrop of aforementioned factual position, discussion, analysis and findings, the IA-01/2024 filed by the RP for approval of the Resolution Plan. is allowed. The Plan submitted by the SRA, certified by the RP is approved subject to filing of Affidavit of SRA under Section 29A r/w Sec. 30(1) of IBC, 2016 by the RP within 15 days of this Order. It is made clear That no relief/ concession is accorded to the SRA. The relief sought regarding direction to ED to release the property of the CD attached by it is specifically rejected. It would be open to SRA to resort to the remedies available under PMLA for release of the attached properties in accordance with law. As has been noted hereinabove, the SRA has committed that it would implement the plan irrespective of the fact that no relief/ concession sought by him is granted by this Tribunal. If the affidavit of SRA under Sec. 29A read with Sec. 30(1) of the Code is not filed within 15 days from the date of uploading of this order, the application for approval of plan would be deemed to be rejected and the security amount deposited by the SRA would stand forfeited.”

- (iii) From the above order, it is clear that relief sought regarding direction to ED to release property of CD attached by it, was specifically rejected. The Appellant aggrieved by the said order, filed the present Appeal, in which, following prayers were made:

“a. Pass an order setting aside the finding at Para 60 in the Impugned Order dated 04.07.2024 passed in IA No.01 of 2024 in CP (IB) No. 635/PB/2021 by the Ld. Adjudicating Authority, New Delhi Bench II wherein the Adjudicating Authority refused to enlarge the protection of Section 32-A of IBC to uplift the attachment by Enforcement Directorate over the properties; and

- b. Pass an order for release of properties and accounts seized and attached by Central and State Agencies including Enforcement Directorate, Income Tax, Himachal Pradesh Government/ Authorities etc. to uphold the legislative scheme of Section 32-A of IBC;
- c. Pass any such further or other order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the Appellants.”

(iv) The Appeal came to be considered by this Tribunal and by the impugned judgment dated 13.08.2024, this Tribunal allowed the Appeal. The operative portion of the order dated 13.08.2024 is as follows:

“23. In result, we allow the Appeal, set aside the findings recorded in the impugned order in paragraph 60 and observations made in the judgment, denying the benefit of Section 32-A to the SRA. The SRA is entitled to relief of extension of benefit of protection of Section 32-A to lift the attachment by Enforcement Directorate over the assets of the Corporate Debtor. We allow the reliefs as prayed in the Appeal and set aside the findings in paragraph 60 of the judgment and the observations in the judgment, denying the protection of Section 32-A of the IBC. The Appeal is allowed accordingly. There shall be no order as to costs.”

The present Application has been filed by the ED praying for recall of the above order.

3. We have heard Shri Zoheb Hossain, learned Counsel appearing for the Applicant; Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant; and Shri Krishnendu Dutta, learned Senior Counsel appearing for the RP.

4. Shri Zoheb Hossain, learned Senior Counsel appearing for the Applicant – ED, submits that the order dated 13.08.2024 has been passed without giving an opportunity to the Applicant, whose rights were to be affected by the order of the Adjudicating Authority and the order, which is in violation of principles of natural justice, deserves to be recalled. It is submitted that order of attachment of the assets was passed by the ED on 24.01.2019, in pursuance of liberty obtained from Delhi High Court in Writ Petition No.4974 of 2018 vide order dated 22.01.2019. It is submitted that against the order dated 22.01.2019 passed by learned Single Judge, an LPA No.104 of 2019 was filed, in which LPA, the Delhi High Court passed an order that Petitioner (CD) shall not alienate the property in any manner during the pendency of the Appeal and further directed that *status quo* with regard to the property in question, which are the subject matter of provisional attachment shall be maintained. It is submitted that order passed by this Tribunal, directing for release of attachment is not in conformity with the order of the Division Bench of the Delhi High Court dated 13.02.2019. The learned Counsel further submits that the judgment of Delhi High Court on which reliance was placed by this Tribunal in order dated 13.08.2024, i.e. ***Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2022 and Anr.***, was questioned by the ED in ***Special Leave Petition (Civil) Diary No(s). 34194/2024***, where the Hon'ble Supreme Court on 12.08.2024 issued Notice granting leave against the judgment of Delhi High Court. It is submitted that judgment relied by this Tribunal in ***Shiv Charan*** (supra) , had not become final and was subject to consideration before the Hon'ble

Supreme Court. It is submitted that the Applicant is entitled to be given an opportunity before deciding the Company Appeal (AT) (Ins.) No.1495 of 2024. The Appellant had not impleaded the ED as one of the Respondent in the Appeal, hence, the order impugned dated 13.08.2024 be recalled and the Appeal be heard afresh.

5. Shri Arun Kathpalia, learned Counsel appearing for the Appellant refuting the submission, submits that Applicant was neither necessary, nor proper party in the Appeal. This Tribunal passed the order allowing the Appeal after hearing the Appellant and the RP, who alone were necessary parties to the proceedings. The order passed by this Tribunal dated 13.08.2024 is in accordance with law and this Tribunal has rightly relied on the judgment of Delhi High Court in **Shiv Charan**'s case. Further, this Tribunal has relied on the judgment of the Hon'ble Supreme Court in **Manish Kumar vs. Union of India and Anr. – (2021) 5 SCC 1**. The Applicant was not required to be heard while deciding this Appeal. Hence, no grounds have been made out to recall order dated 13.08.2024. It is submitted that SRA was entitled for the benefit of Section 32-A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**"), which is statutory provision and the judgment of this Tribunal accepting the applicability of Section 32-A to the SRA is in accordance with statutory provisions of law as declared. It is submitted that insofar as Civil Appeal No.9692– 9693 of 2024 filed by ED, the Hon'ble Supreme Court has adjourned the matter noticing that two wings of the Government of India are trying to resolve the issue.

6. Shri Krishnendu Datta, learned Senior Counsel appearing for the RP, also supported the submission of the Appellant and contends that no grounds have been made out by the Applicant to recall order dated 13.08.2024 passed by this Tribunal in Company Appeal (AT) (Ins.) No.1495 of 2024.

7. We have considered the submissions of learned Counsel for the Applicant, learned Counsel for the Appellant and learned Counsel for the RP.

8. The question which has arisen for consideration in this Appeal is as to whether the judgment of this Tribunal dated 13.08.2024 allowing Company Appeal (AT) (Ins.) No.1495 of 2024, deserve to be recalled. The ground to recall a judgment are well settled. A five Member Bench of this Tribunal in ***Union of India vs. Dinkar T. Venkatasubramanian & Ors. – (2023) SCC OnLine NCLAT 283*** has dealt upon the grounds, on which an Application for recall of a judgment can be entertained.

9. From the facts as noticed above, it is clear that Adjudicating Authority has specifically rejected the prayer of SRA, seeking a direction to ED to withdraw the attachment on the assets under PMLA Act, 2002. The Appeal filed by SRA was limited to the findings in paragraph 60 of the judgment as extracted above. The approval of Resolution Plan was not under challenge in the Appeal and the order of the Adjudicating Authority was dated 04.07.2024 was challenged, insofar as it refused to withdraw the attachment and further refused to extend the protection of Section 32-

A. Learned Counsel for the Applicant has submitted that the Applicant is praying for recall of judgment and matter be heard again and at present the Applicant is not raising any issues pertaining to statutory scheme under Section 32-A and the law as governed under the IBC. The issue in question and the arguments shall be addressed when the Appeal is heard afresh.

10. One of the judgments, which has been relied by this Tribunal while delivering the judgment on 13.08.2024 was judgment of the Bombay High Court in **Shiv Charan & Ors.**, which judgment has been referred and relied in paragraph 9, 10 and 17 of the judgment. The Applicant has brought on the record the order of the Hon'ble Supreme Court dated 12.08.2024, which was passed in Civil Appeal filed by ED, challenging order of the Bombay High Court in **Shiv Charan's** case. The order of the Hon'ble Supreme Court dated 12.08.2024 is as follows:

“Application for exemption from filing a certified copy of the impugned judgment is allowed.

Delay condoned.

The issue raised in the petition requires hearing. Therefore, we grant leave.

We direct the appellant to implead Union of India through Ministry of Finance and Ministry of Corporate Affairs as added respondents Amended cause title to be filed within a period of one week from today.

The name of respondent No.4-adjudicating authority is deleted from the array of parties.

Mr. Ravi Raghunath, the learned counsel accepts notice on behalf of respondent Nos.1 to 3.

List for hearing on 16th October, 2024 in the first five matters.

In the meanwhile, the order of attachment dated 14th February, 2019 will continue to operate. Needless to add that the contempt petition before the High Court will not proceed.

The parties are free to file the brief submissions in writing one week before the next date.”

11. The Hon’ble Supreme Court in the **Shiv Charan**’s case granted leave and further directed the Appellant/Applicant to implead Union of India through Ministry of Finance and Ministry of Corporate Affairs to decide the issues and also granted an interim order that order of attachment will continue to operate. Although, the judgment of this Tribunal was delivered on 13.08.2024, but the order dated 12.08.2024, could not be placed before this Tribunal, so that Tribunal be informed that issues are being considered by the Hon’ble Supreme Court. Learned Counsel for the Appellant submits that the said Appeal filed by ED being Civil Appeal No(s). 9692-9693 of 2024, wherein it was noticed by the Hon’ble Supreme Court that two wings of the Government of India are trying to resolve the issue.

12. We have noticed above that Adjudicating Authority has specifically rejected the prayer of the SRA praying to withdraw the attachment by ED dated 24.01.2019. The Appeal was filed against the said order of the Adjudicating Authority praying that direction be issued to the ED to withdraw the attachment.

13. In a proceeding before a Court or Tribunal, all necessary parties are to be impleaded, even if, a party is not a necessary party, which may be treated as a proper party, whose presence may be necessary for deciding

the issues, which have come up before the Court or who may have some stake in the issues, which has arisen for adjudication. The Hon'ble Supreme Court in ***AIR (1963) SC 786 – Udit Narain Singh Malpharia vs. Additional Member Board of Revenue, Bihar and Anr.*** has laid down that a necessary party is one without whom no order can be made effectively; and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. It is useful to refer to paragraphs 7 and 10 of the judgment of the Hon'ble Supreme Court, which are as follows:

“7. To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled : it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

“10. In addition, there may be parties who may be described as proper parties, that is parties whose presence is not necessary for making an effective order, but whose presence may facilitate the settling of all the questions that may be involved in the controversy. The question of making such a person as a party to a writ proceeding depends upon the judicial discretion of the High Court in the circumstances of each case. Either one of the parties to the proceeding may apply for the impleading of such a party or such a party may suo motu approach the court for being impleaded therein.”

14. This Tribunal in Company Appeal (AT) (Ins.) No.1417 of 2019 – Union of India vs. Oriental Bank of Commerce decided on 22.05.2010 had also

occasion to consider as to who is the necessary party and who may be proper party. In paragraph 14 of the judgment, following has been laid down:

“**14.** A necessary party is a person who ought to have been arrayed as a party and in whose absence no effective order can be passed by a Court of Law/ Tribunal/ Appropriate Authority. A proper party is a party who although not a necessary party is a person whose presence will enable the Authority to effectively, efficaciously, comprehensively and adequately adjudicate upon all the controversies centering around a given case.”

15. Even if, the ED was not necessary party in the Appeal filed by the SRA, it would have been appropriate that ED was also heard while deciding the issue, which was raised in the Appeal. We, thus, are of the view that ED also needs to be heard before deciding the Appeal finally, which has the effect, not only on the issues raised in the Appeal, but has larger ramification.

16. We, thus, are of the view that ends of justice will be served in recalling judgment dated 13.08.2024 and giving an opportunity to the Applicant to be heard before the Appeal is decided afresh. We, however, make it clear that in the Appeal, there was no challenge to the approval of the Resolution Plan., which was approved by the Adjudicating Authority vide order dated 04.07.2024 allowing IA No.01 of 2024. The Company Appeal (AT) (Ins.) No.1495 of 2024 was filed on limited issue as noted above. We, thus, make it clear that the recall of the judgment dated 13.08.2024, shall have no bearing on the implementation of the Resolution Plan as approved on 04.07.2024 and the recall of judgment dated

13.08.2024 is only with respect to limited issue raised in the Appeal regarding withdrawal of the attachment by the ED on the assets of the CD.

17. In result, IA No.6625 of 2024 is allowed. The judgment dated 13.08.2024 is recalled. We make it clear that recall of judgment dated 13.08.2024, shall have no effect on the order dated 04.07.2024 passed by Adjudicating Authority approving the Resolution Plan and the Resolution Plan shall be implemented as approved on 04.07.2024 and the recall of this judgment is only for consideration of limited issue as noted above. IA No.7235 of 2024 is accordingly disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

9th January, 2025

Ashwani