THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

IA No.598/2021, 599/2021
in
CP (IB) No.114/Chd/Pb/2017
(admitted)

In the matter of:

State Bank of India ….Petitioner-Financial Creditor
Versus

SEL Manufacturing Company Limited ….Respondent-Corporate Debtor

And in the matter of:-
IA No.598/2021 **Under Section 60(5) read with Section 32A of the IBC, 2016**

SEL Manufacturing Company Limited
through its Authorises Director, Mr. Naveen Arora …Applicant
Vs.
Punjab Small Industries & Export Corporation Limited ….Respondent

And in the matter of:-
IA No.599/2021 **Under Section 60(5) read with Section 32A of the IBC, 2016**

SEL Manufacturing Company Limited
through its Authorises Director, Mr. Naveen Arora …Applicant
Vs.
The Commissioner, Commissionerate of Central Excise ….Respondent

Order delivered on: 03.06.2022

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Applicant in
IA No.598/2021 and 599/2021 : 1. Mr. Anand Chhibbar, Senior Advocate
2. Mr. Arvind Gupta, Advocate
3. Mr. Vaibhav Sahni, Advocate

For the Respondent in
IA No.598/2021 : Mr. Sanjeev Sharma, Advocate

For the Respondent in
IA No.599/2021 : Mr. Sourabh Goel, Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

IA No.598/2021

This is an application filed under Section 60(5) read with Section 32A of the IBC, 2016. In the present application, **SEL Manufacturing Company Limited through its Authorises Director, Mr. Naveen Arora** is the applicant, and **Punjab Small Industries & Export Corporation Limited** is the respondent.

2. In the present application, the applicant prays to pass an order setting aside the impugned demand notice dated 05.03.2021 issued by the respondent corporation; pass an order extinguishing the claim of the respondent corporation as envisioned under Clause 6 of the resolution plan; award costs of this application; and any further order, direction that this Bench may deem fit to order.

3. In this application, the applicant states inter alia, that subsequent to approval of the resolution plan under Section 30 and 31 of the Code, 2016 by this Adjudicating Authority on 10.02.2021, it has received a demand from PSIEC pertaining to Plot No.256-57, Phase-VIII, Focal Point Ludhiana for an amount which was payable prior to the CIRP. The applicant has stated that the demand notice cannot be sustained in the eyes of law, firstly because the same pertains to a period prior to the CIRP of the present applicant and in view of the statutory provisions of the Code, 2016 under Section 31 and Section 32A.

3.1 It is further stated that this demand notice is also creating further hindrance in the dismissal of this non core asset as per the resolution plan, since as per the plan the same needs to be sold so as to repay the financial creditors.

3.2 The applicant has also placed reliance on the decisions of the Hon'ble Supreme Court in ***Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta, (2020) 8 SCC 531,*** in the case of ***Manish Kumar Vs. Union of India, (2021) 5 SCC 1*** and in the case of ***Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657***

4. The Respondent by its reply filed by Diary No.01354/2 dated 12.04.2022, invited our attention to Clause 2(iii) of the allotment letter dated 01.12.1995 and further Clause 2(ii) which provides as under:-

> *"2(iii) The above price of the plot is subject to variation with reference to the actual measurement of the plot and cost of acquisition of land. In case of enhancement of compensation on account of acquisition of land of this Focal Point by the court or otherwise you shall have to pay the additional price of the plot, if any, as may be determined by the Corporation within 30 days from the dates of demand.*
>
> *2(ii) The plot has been allotted on lease hold basis for 99 years in the first instance, as such you shall also pay annual lease rent Rs.1/- 1000 sq. yards in advance for 99 years at the time of execution of lease deed agreement." (emphasis supplied)*

4.1 It is stated that in this backdrop the impugned demand notice was raised and the applicant company being successor-in-interest of the original allottee is liable to pay the same. It is further stated the subsequent transferee i.e M/s Preet Hosiery Exports Limited, Tibba Road, Ludhiana from whom M/s SCL Manufacturing Company had purchased the plot in question and M/s Preet Hosiery Exports Limited made only a part payment leaving balance of

outstanding amount of Rs.17,42,010/- as in the year 2008 and an indemnity bond dated 28.07.2008 was also executed by M/s Preet Hosiery Export Limited to keep the respondent-corporation indemnified against all claims. It is further stated that this enhanced amount of compensation was challenged before the Hon'ble High Court of Punjab and Haryana in CWP No.8821 of 2001 but the same was dismissed as withdrawn, thus upholding the demand of respondents. The respondent states that the original lease deed was handed over to the State Bank of Bikaner and Jaipur by letter dated 20.01.2009 as NOC for mortgage of the same plot in question with a clear stipulation that original lease deed would not be handed over to the lessee. It is also submitted that in the lease deed, there was a clear stipulation in para 2 and 3 of the lease deed that the price of plot was tentative and was subject to variation with reference to the actual measurement of the plot and enhancement in the cost of acquisition of land. In Clause 3, it was provided that non-payment of delayed payment of additional cost within 30 days was to attract 3% penal interest in addition to normal interest of 15% with half yearly compounding effect on the defaulted amount for the defaulted period. The additional amount is determined @Rs.474/- per sq. yard keeping in view the judgement of the Hon'ble Punjab and Haryana Court dated 25.08.2008 read with judgment of the Hon'ble Supreme Court of India dated 25.03.2015 on this issue. Upon failure of the transferee, a show cause notice for cancellation of allotment on account of failure to deposit enhanced land cost amounting to Rs.1,05,10,685/- was issued vide letter dated 08.03.2019. The said demand and show cause notice is challenged by the transferee by filing a civil suit before the learned Civil Judge, Ludhiana and the matter is still subjudice and

the allottee instead of waiting for the outcome of the said suit has filed the present application under IBC without disclosing the said material particulars. It is further stated that it was only on 27.10.2021 that, while requesting for issuance of No Due Certificate, the transferee informed about the approval of resolution plan by this Hon'ble Tribunal and acting contumaciously, the factum of charge and repeated demands of enhanced land cost compensation, was not brought to the notice of the either the IRP or Committee of the Creditors, thus M/s SEL Manufacturing Limited has not only cheated the answering respondent but have also misled the IRP, CoC and this Hon'ble Tribunal before getting the CIRP approved from this Hon'ble Tribunal. The respondent submits that the application deserves to be dismissed on the short ground that it is a well established principle of law that a vendor cannot pass on a better title than the one he has. Since there is already a clog on ownership for want of payment of enhanced compensation, therefore, neither the original allottee nor the financial creditors and for that matter, Committee of Creditors (CoC) can pass on a clear title in favour of the applicant. In spite of full knowledge that demand for enhanced land cost was still pending, this important aspect was not brought to the knowledge of IRP, CoC and Hon'ble NCLT before approval of the resolution plan. It is further stated that the applicant has filed a Civil Suit dated 22/23.04.2019 laying challenge to the same very demand of enhanced land compensation and the said civil suit is pending adjudication. Thus, the applicant has already chosen a remedy and should not be permitted to indulge in Forum hunting and make a further application under this Adjudicating Authority. The respondent further submits that no notice

whatsoever was served upon the respondent relating to insolvency proceedings and as such the respondent had no notice of the proceedings.

5. Subsequently, the applicant has filed written submission by Diary No.01354/4 dated 25.04.2022 and has made the following additional submissions:-

5.1 The impugned demand cannot be sustained in the eyes of law, once it does not form a part of the resolution plan and in view of the statutory mandate of the provisions of the Code, as well as the various judgements passed by various Hon'ble Courts. The following extract from the Section 31 of the Code dealing with approval of resolution plan has been relied upon in support of the contention of the applicant:-

> *"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, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.*
>
> *xx xx xx xx"* *(emphasis supplied)*

5.2 It has also placed reliance on Clause 6 of the resolution plan and all its sub clauses wherein the plan itself provides for extinguishment of all claims that do not form a part of the plan and the same cannot now be enforced after the approval of the plan by the respondent.

5.3 It is further stated that the costs accrued prior to the plan having been approved and thus cannot be enforced against the present application

post the approval of the plan as all undecided claims not forming a part of the plan stand extinguished.

5.4 The applicant has also placed reliance on the decisions of the Hon'ble Supreme Court in ***Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta, (2020) 8 SCC 531,*** in the case of ***Manish Kumar Vs. Union of India, (2021) 5 SCC 1*** and in the case of ***Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657***

6. In the synopsis and list of dates and events filed on behalf of the Respondent by Diary No.01354/3 dated 19.04.2022, the fact that issue is subjudice before the learned Civil Court at the instance of the present application has been highlighted. It is also stated that as per the clauses of allotment letter and lease deed, ownership continues to vest with PSIEC and lease rights cannot be transferred/alienated without prior consent of PSIEC. The respondent has relied on the doctrine of caveat emptor i.e. buyer beware and if the incoming promoter has not cared to verify title documents it cannot take shelter behind technicalities and is thus estopped both in law as well as on facts from raising such untenable pleas. It is further mentioned that the enhanced demand was upheld by the Hon'ble High Court and was demanded only in the light of judgement of the Hon'ble High Court dated 25.08.2008 read with judgement of the Hon'ble Supreme Court dated 25.03.2005. The respondent points out that Section 31 of the IBC do not come to the rescue of the petitioner because the Section does not talk about the defect in title and only refers to the statutory dues under Municipal Laws and local laws whereas the present case of of non-payment of enhanced land compensation towards

price of the plot directly effects title of the property and Section 31 does not cover any such eventuality. The respondent in support of its contention has placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***Municipal Corporation of Greater Mumbai (MCGM) Vs. Abhilash Lal & Others reported as 2020 (13) SCC 234*** and in the case of ***M/s Consolidated Construction Consortium Limited Vs. M/s Hitro Energy Solution Private Limited reported as 2022 (1) RCR (Civil) 825.***

7. We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

8. In the present case, the liability to pay enhanced land compensation arises from the conditions mentioned in the Allotment Letter dated 01.12.1995. This has been a subject matter of litigation between the parties and the additional amount is determined on the basis of the judgment of the Hon'ble Punjab and Haryana Court dated 25.08.2008 read with judgment of the Hon'ble Supreme Court of India dated 25.03.2015 on this issue. We also note that the applicant has filed a Civil Suit dated 23.04.2019 on the issue of enhanced land compensation and the said civil suit is pending adjudication. It is further noted that the ownership continues to vest with PSIEC and the lease rights cannot be transferred/alienated without prior consent of PSIEC. Strictly speaking, the amount of enhanced land cost payable, which had crystallized before the initiation of the CIRP proceedings, is not a statutory due. It is also noticed that in the present case, the PSIEC was totally oblivious of the CIRP proceedings in the case of the applicant and came to know about the same much after the approval of the resolution plan by the Adjudicating Authority. It is an admitted fact that under the present

framework, there is no requirement for the corporate debtor to inform about any ongoing proceeding. We have gone through the judicial decisions by the Hon'ble Supreme Court relied upon by the applicant. While the ratios in these decisions lay down the law of the land, we very respectfully submit that the facts in the present case are distinguishable.

8.1 In this context, we refer to the following observation in the decision of the Hon'ble Supreme Court in the ***Municipal Corporation of Greater Mumbai (MCGM) Vs. Abhilash Lal & Others reported as 2020 (13) SCC 234 in Civil Appeal no.6350 of 2019 dated 15.11.2019,*** which inter alia deals with mortgage of plot and buildings by public authorities.

> *"35……The only mode permitted is through prior permission of the corporation. It is a matter of record that in the present case, the resolution plan was never approved by the corporation and that it was put to vote. The contesting parties, including the RP and CoC were unable to point out to anything on the record to establish that a valid permission contemplated by Section 92 was ever obtained with regard to the proposal in the resolution plan. The proposal was approved by the NCLT and MCGM's appeal was rejected by NCLAT. The proposal could be approved only to the extent it did not result in encumbering the land belonging to MCGM."* *(emphasis supplied)*

8.3 The Hon'ble Supreme Court in the same case has further observed in para 47 that:

> *"47. In the opinion of this Court, Section 238 cannot be read as overriding the MCGM's right - indeed its public duty to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM's objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM's approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM's properties.*

> *Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in question which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM's independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation (MCGM)." (emphasis supplied)*

8.4 In the present case, there was a defect in the title of the land itself and this issue has now been resolved after prolonged litigation. This fact was not a subject matter of discussion during the CIRP proceedings. The extra payment of compensation will only remedy the defect in the title to the land and PSIEC can cancel the lease as per the terms and conditions of the original allotment letter. The applicant has claimed that the demand notice can't be sustained in view of the provisions of Section 31 of the I&B Code. For the sake of clarity, the relevant part of the Section 31 is extracted below:

> ***Section 31: Approval of resolution plan.***
> ** **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, [1][including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan. ……*
> *(emphasis supplied)*

8.4 After going through the records before us, we hold that the additional payment made in the demand notice is a payment towards removing the defect in the title to the land and is not linked to the CIRP. The approved Resolution Plan cannot preclude the control that PSIEC has under

law to deal with its properties and the plot in question which is undeniably a public property.

9. In view of the above discussion, this Bench is of the opinion that the enhanced land compensation is a payment towards rectifying the defect in the title to the property and is not "statutory dues" within the meaning of the provisions of Section 31 of the I&B Code. Consequently, the applicant's prayer to set aside the impugned demand notice issued by the Respondent Corporation is rejected.

10. Consequently, IA No.598/2021 is dismissed and accordingly stands disposed of.

IA No.599/2021

This is an application filed under Section 60(5) read with Section 32A of the IBC, 2016. In the present application, **SEL Manufacturing Company Limited through its Authorises Director, Mr. Naveen Arora** is the applicant, and **The Commissioner, Commissionerate of Central Excise** is the respondent.

2. In the present application, the applicant prays to pass an order setting aside the impugned attachment and detention orders issued by the respondent; direct the respondent to release the attached and detained goods, in consonance with the scheme of the Code, 2016 and the resolution plan; pass an order extinguishing the claim of the respondent as envisioned under Clause 6 of the resolution plan; award costs of this application; and any further order, direction that this Bench may deem fit to order.

3. In this application, it is stated that the Attachment Order was passed on the basis of the final order dated 22.02.2011 by the CESTAT, issues decided by the applicant company. The impugned order is under appeal before the Hon'ble High Court of Himachal Pradesh, by the applicant company challenging the order passed by the learned CESTAT by way of an appeal bearing No.CEA-2-2013 and the same is still pending. Subsequently, this Tribunal by order dated 10.02.2021 has approved the resolution plan in pursuant to which the management of present applicant company was taken over by Successful Resolution Applicant Consortium of ARR ESS Industries Private Limited and Leading Edge Commercial FZE. It is further stated that in terms of the resolution plan and in view of the Section 32A of the Code, makes it abundantly clear that once the plan is approved, any erstwhile prosecutions against the applicant company, shall cease as on the date of approval of the plan.

4. The Respondent by its reply filed by Diary No.01367/2 dated 12.04.2022 stated that the applicant company had taken input credit amounting to Rs.19,45,955/- during the period April 2003 to June 2003. The order has gone through the appellate process and finally the party deposited all the dues except interest amounting to Rs.29,85,928/- and filed an appeal before the Hon'ble High Court of Himachal Pradesh against the CESTAT final order dated 20.02.2011 confirming duty and interest. The Hon'ble High Court of Himachal Pradesh vide detailed judgment date 24.02.2022 has dismissed the appeal filed by the applicant company. Meanwhile goods pertaining to M/s Saluja Exim Ltd. (Now M/s SEL Manufacturing Co. Ltd.), Plot no.106, HPSIDC, Indl. Area, Baddi, valuing Rs.38,53,440/- were detained on

22.02.2013 and have been kept lying in the safe custody. It is also stated that the fact regarding the CIRP process was not brought to the notice of the Hon'ble High Court of Himachal Pradesh by the applicant. It is further stated that the CoC has not taken into consideration the fact regarding the detention of the goods undertaken by the respondent in order to protect the Government Revenue. The respondent states that Section 32A of the Code is in relation to the offences committed and in the present case the claim is arising not in relation to any offence but as a result of the order of the Hon'ble High Court of Himachal Pradesh.

5. We have gone through the arguments along with their submissions filed by all the parties and have perused the records carefully.

6. Going through the timelines of the case, it is apparent that at the time of initiation of CIRP, the interest amounting to Rs.29,85,928/- stood as the liability of the applicant company towards payment of interest in view of the CESTAT order. The goods lying in the safe custody were only to secure the payment of the outstanding dues subject to the final orders of the Hon'ble High Court of Himachal Pradesh. As per the provisions of the Insolvency and Bankruptcy Code, 2016, it was the duty of the Commissionerate of Central Excise to lodge its claim before the IRP in response to as per Regulation 7 dealing with claims by operational creditors as no claim was filed during the CIRP proceedings. There is no evidence on record to suggest that any such claim was lodged. It is also noted that the alleged offenses were committed prior to the initiation of the CIRP proceedings, the provisions of Section 32A will be squarely applicable to the present case. The effect of goods being tendered and kept lying in the safe custody of the applicant will not prevent the

applicability of the Section 32A, relevant part of which is extracted below for the sake of clarity:-

> *"**Section 32A: Liability for prior offences, etc.***
> *[1]**[32A.** (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 ……..*
>
> *……*
> *(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……"*

As the offences in the present case were committed in the year 2003, we are of the view that the above provisions are squarely applicable.

7. In view of the above discussions, the prayer of the applicant to set aside the impugned attachment and detention orders issued by the respondent is allowed, and the respondent is directed to release the attached and detained goods and any claim of the respondent against the applicant on the issues discussed is ordered to be extinguished.

8. Consequently, IA No.599/2021 is allowed and accordingly stands disposed of.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

June 03, 2022
AV