NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1733 of 2024

(Arising out of Order dated 21.08.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court-II, Mumbai Bench in IA No.2241 of 2024 in Company Petition (IB) No.1806/MB/2019)

IN THE MATTER OF:

Vidyadhar Sarfare & Anr …Appellants

Versus

CS Anagha Anasingharaju & Ors. …Respondents

Present:

For Appellant	**:**	**Ms. Madhavi Divan, Mr. Abhijit Sinha, Sr. Advocates with Mr. Akshay Petkar, Mr. Vishesh Kalra, Ms. Heena Kochar, Ms. Anoushka Deo, Mr. Hardik Khatri and Mr. Aishani Narain, Advocates.**
For Respondent	**:**	**Mr. Amol Nehra, Mr. Ashish Choudhury, Advocates for R-6 to 12.** **Mr. Ashish Pyasi Advocate for R- 2, 4, 5.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor ("**CD**") – Sant Dnyaneshwar Hospital Pvt. Ltd. has been filed challenging order dated 21.08.2024 passed by National Company Law Tribunal, Court-II, Mumbai Bench, rejecting IA No.2241 of 2024 filed by the Appellant in CP (IB) No.1806/MB/2019. The Appellant aggrieved by rejection of the Application – IA No.2241 of 2024 has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) The Corporate Debtor – Sant Dyaneshwar Hospital Pvt. Ltd. was incorporated on 20.03.2003 by Respondent Nos.6 to 12. The CD, which is a Hospital, became debt ridden Company, the erstwhile Directors entered into a Memorandum of Understanding ("**MoU**") dated 17.02.2016 with Accord Mediplus Pvt. Ltd. (the Company of the Appellants). Under the MoU, entire shareholding of Sant Dyaneshwar Hospital proposed to be transferred to Accor Pathlab Pvt. Ltd. and/ or its affiliated (Accord Group) for a consideration of Rs.17.50 crores. As a transient measure for operation of the Bank account of the Company maintained with Janseva Sahakari Bank Ltd., it was decided that two nominees of Accord Group was mandatory to sign for clearing of cheques. The Appellant No.2 is one of such nominees.

(ii) In October 2016, an amount of Rs.1.96 crores was deposited in the Corporate Debtor and transferred by Respondent No.6 to 12 into a Trust of which Respondent No.6 to 12 were also Directors. On 28.03.2017, another amount of Rs.35 lakhs was deposited in the account of the CD, which was transferred on 31.03.2017 by Respondent No.6 to 12

into the Trust. The erstwhile Directors resigned from the Company in April 2017.

(iii) On 21.04.2017, a Share Purchase Agreement was executed, wherein the erstwhile Directors sold their equity in favour of Accord Mediplus Pvt. Ltd. Respondent Nos.6 to 12 also resigned from the Trust on 01.09.2017.

(iv) Respondent Nos.6 to 9, erstwhile Directors of the Company filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "**IBC**") on 26.03.2019, claiming a debt of Rs.2.60 crores against the CD.

(v) Respondent Nos.6 to 9 have also invoked arbitration proceedings by filing an Application under Section 17 of the Arbitration and Conciliation Act, 1996, which Application was dismissed by the Arbitrator.

(vi) On 08.10.2021, the Adjudicating Authority admitted the CD into insolvency. The Appellant immediately on 17.11.2021 wrote to the IRP that the claim of Respondent Nos.6 to 15 are without any basis and civil and criminal proceedings were initiated by the Hospital against them much prior to initiation of CIRP. The Appellant wrote to the RP that claims of Respondents, cannot be admitted.

(vii) An IA No.1238 of 2022 under Section 65 of the IBC was filed by the Appellant, claiming that initiation of CIRP is *ex facie* mala fide. The Application was heard on 11.05.2022 by the Adjudicating Authority and Adjudicating Authority directed the RP not to hold any voting on the Resolution Plan, which position continued as on date.

(viii) IA No.2106 of 2022 was filed by the Appellant, challenging admission of the claim of erstwhile Directors. During the CIRP, the Appellant operated the Hospital along with the RP satisfactorily, which caused good financial results. However, prolonged CIRP hampered the Hospital to being upgraded. The Financial Institutions (Respondent Nos.2 to 5) holding 92.17% vote share of CoC, sought to settle the debt and revive the Hospital.

(ix) On 06.05.2021, the Appellant filed IA No.2241 of 2024 praying for recall of the admission order dated 08.10.2021 and for withdrawal of the CIRP against the CD in exercise of inherent power. Certain other prayers were also made in the Application. The Application – IA No.2241 of 2024 was heard by the Adjudicating Authority and by the impugned order 21.08.2024, the Application was rejected. The

Adjudicating Authority held that no ground has been made out either for recall of the admission order dated 08.10.2021 or for withdrawal of CIRP against the CD, on the ground that the matter has been settled with the creditors. Aggrieved by the impugned order, this Appeal has been filed by the Suspended Directors.

3. We have heard Ms. Madhavi Divan, learned Senior Counsel and Shri Abhijeet Sinha, learned Senior Counsel for the Appellant; Shri Amol Nehra and Shri Ashish Choudhury, learned Counsel for Respondent Nos.6 to 12; and Shri Ashish Pyasi, learned Counsel for Respondent Nos.2, 4 and 5.

4. Learned Counsel for the Appellant in support of the Appeal contends that the CD did not owe any debt to Respondent Nos.6 to 12. The claim of debt against the CD was created by Respondent Nos.6 to 12 by circular transaction. It is submitted that the Appellant came to know about relevant fact after reply was filed by Janseva Sahakari Bank, which clarified that the amount was transferred by Respondent Nos.6 to 9 in the CD, which was immediately transferred to the Trust controlled by them and from Trust, the amount was transferred for clearing the debt obligation of the Trust. The fact pertaining to circular transaction/ fraudulent transfer, came to the fore by the reply affidavit of Janseva Sahakari Bank filed in IA No.1770 of 2022. It is submitted that Respondent Nos.6 to 9 have initiated Section 7 proceedings malafidely and fraudulently for purposes other than resolution of the CD. It is

submitted that initiation of CIRP being fraudulent and malicious, the Adjudicating Authority ought to have permitted withdrawal of CIRP, exercising its inherent power. It is submitted that the Financial Creditors, who are Financial Institutions holding 92.17% vote shares have already settled their debt and other Financial Creditors are already receiving repayment. The Financial Creditors have also filed a pursis before the Adjudicating Authority expressing their consent for settlement. However, the Applicants being Respondent Nos.6 to 9, who have malafidely and fraudulently initiated the CIRP are opposing the settlement with the Financial Creditors under Section 12A. The Application for withdrawal can be filed only by the Applicant, i.e. Respondent Nos.6 to 9, who initiated the CIRP, hence, withdrawal under Section 12A is not permissible. However, the Adjudicating Authority does not lack jurisdiction to permit closure of the CIRP in the facts of the present case exercising its jurisdiction. It is submitted that since 92.17% of CoC, who are genuine Financial Creditors in their commercial wisdom have settled with the CD, the CIRP cannot be allowed to be continued. It is submitted that the Hon'ble Supreme Court in ***SBI vs. Consortium of Murari Lal Jalan & Florian Fritsch – (2024) SCC OnLine SC 3187*** has held that Tribunal would not be precluded from exercising its inherent power in order to secure the object of the IBC. It is further submitted that the Appellant has already filed an Application under Section 65 of the IBC on 11.05.2022 being IA No.1238 of 2022, pleading that initiation of CIRP is malafide, in which Application the Adjudicating Authority has directed the RP not to hold any voting on the Resolution

Plan and which IA has not yet been disposed of. It is submitted that present is a case where Adjudicating Authority ought to have invoked the jurisdiction under Section 65 for closure of the CIRP. It is submitted that present is a case where erstwhile Directors had played a fraud by creating charade of financial debt by engineering circular transaction, which had come to light subsequently and after filing of the affidavit in reply by Janseva Sahakari Bank on 27.06.2023. It is submitted that present is a fit case for exercising jurisdiction by this Tribunal, closing the malafide and fraudulent CIRP initiated by the Respondents. It is submitted that Respondent Nos.6 to 9, who have entered into an MoU and Share Purchase Agreement transferring their all rights in the Company with intent to regain the control has adopted this malafide and fraudulent exercise of initiation of CIRP.

5. Learned Counsel for Respondent Nos.6 to 12, opposing the submissions of learned Counsel for the Appellant submits that Respondent Nos.6 to 12 has never been approached for any settlement. No offer of settlement having been given to Respondent Nos.6 to 12, there is no occasion to file any Application under Section 12A of the IBC for withdrawal. It is submitted that Appellant has no *locus standi* to file IA No.2241 of 2024 for seeking withdrawal. It is submitted that an Appeal was filed against the order admitting Section 7 Application, which came to be numbered as Company Appeal (AT) (Ins.) No.881 of 2021, which was dismissed by this Appellate Tribunal on 25.11.2022 and 10.01.2023. Challenging the order of this Appellate Tribunal, an Appeal (Diary

No.4846 of 2023) was filed before the Hon'ble Supreme Court, which too was dismissed on 20.02.2023. It is submitted that the Appellant had filed various IAs with similar, if not identical prayers, as prayed in IA No.2241 of 2024, IA Nos.1238 of 2022 and IA No.2106 of 2022. The Appellants have filed Application for setting aside the claims of answering Respondents and staying the CIRP and direct the RP to take action on the alleged fraudulent actions of the Respondents. Despite there being no stay on admission order and on the basis of some oral stay, the Appellants are repeatedly stating that CIRP has been stayed. Nothing has transpired post the passing of the admission order that would merit an Application under Section 65 for invoking the inherent powers of the NCLT. All the grounds and facts, which are mentioned by Appellants for recalling the admission order are facts and events that transpired prior to passing of the admission order. The NCLT in the impugned order has considered various submissions made by the Appellants. The present Appeal deserves to be dismissed. Withdrawal under Section 12A of the IBC is not permissible in the facts of the present case.

6. Learned Counsel appearing for Respondent Nos.2, 4 and 5 submits that the Financial Creditors have already expressed their consent to the settlement. This Tribunal while issuing notice on 03.09.2024 has also recorded the submission of Respondent Nos.2, 4 and 5 that they have given consent beyond which they have nothing more to say. Respondent No.3 has also expressed his agreement by letter, which is brought on the record by the Appellant.

7. We have considered the submission of learned Counsel for the parties and have perused the record.

8. By the impugned order, IA No.2241 of 2024 filed by the Appellants, has been rejected by the Adjudicating Authority. We need to first notice the prayers made in the IA, which are as follows:

> "7.1. That this Hon'ble Tribunal be pleased to exercise its inherent power under Rule 11 of the NCLT Rules, 2016 to recall the admission order dated 08.10.2021;
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> 7.2. In the alternative and without prejudice to prayer 7.1, this Hon'ble Tribunal be pleased to pass an order for withdrawal of CIRP proceedings against Sant Dnyaneshwar Hospital Pvt. Ltd. on such terms and conditions as it may deem fit in the exercise of its inherent powers;
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> 7.3. Pending the hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to direct the Respondent No.1 - Resolution Professional to act in terms of the settlement dated 26.04.2024 for repayment of the debt due to financial institutions in terms of the settlement from the monthly profits generated by the Hospital under the management of the Applicants / Accord Group.
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> 7.4. In the alternative and without prejudice to prayer 7.3, pending the hearing and final disposal of the present application, this Hon'ble Tribunal be pleased to direct the Respondent No.1 - Resolution Professional to deposit an amount of 25 lacs per month from the Hospital accrued from 08.10.2021 till the disposal of this application with the Financial Institutions as per settlement plan.

7.5. Interim and ad-interim orders in terms of prayer clauses 7.3 and 7.4 above;

7.6. Any other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

9. In the Application – IA No.2241 of 2024 in paragraph 1.1, the Appellant has made following pleadings:

> "1.1 The Applicants are suspended directors of the Corporate Debtor - Sant Dnyaneshwar Hospital Pvt. Ltd. ("Hospital") - currently in the Corporate Insolvency Resolution Process ("CIRP"). The Hospital is registered as a small enterprise under the Micro, Small and Medium Enterprises Development Act, 2006. By virtue of transactions between"17.02.2016 to 21.04.2017, the Applicants had taken over the Hospital from its erstwhile shareholders and directors being the Respondent Nos. 6 to 9, by way of the transaction for sale of shares of the Hospital from the Respondent Nos. 6 to 9 to the Applicants. It is the case of the Applicants that the initiation of CIRP by Respondent Nos.6 to 9 claiming to be creditors of the Hospital was fraudulent and I.A. No.1238 of 2022 is pending to that effect."

10. Further in paragraph 1.3, it was pleaded that Respondent Nos.2 to 5 Financial Creditors/ Financial Institutions constitute 92.17% of the CoC have worked out a settlement to resolve the debt of Hospital (CD). In paragraph 1.3, following is pleaded:

> "1.3. Respondent Nos. 2 to 5 are Bankers/Financial Institutions ("Financial Institutions") and are genuine and bona fide Financial Creditors of the Hospital. Respondent Nos. 2 to 5 constitute 92.17% of the

> Committee of Creditors ("COC") and are interested and have worked out a settlement to resolve the debt of the Hospital and revive the Hospital. The said Bankers agree to bring the Hospital out of CIRP as the Financial Creditors have realized that even during CIRP, the Hospital working under the suspended management of the Applicants is able to do sustainable business and was otherwise not insolvent in the first place."

11. The first prayer in the Application was to recall order dated 08.10.2021 admitting Section 7 Application. Reply has been filed in this Appeal by Respondent Nos.6 to 12, where orders passed by this Tribunal in the Appeal filed by the Suspended Directors challenging order dated 08.10.2021 has been brought on the record. The Appellants filed an Appeal before this Tribunal against order dated 08.10.2021 – Company Appeal (AT) (Ins.) No.881 of 2021. The Appeal was dismissed on 25.11.2021 by passing following order:

> "**25.11.2022:** At the outset Ms Adya Singh, learned counsel submits that she has been engaged by the appellant to appear and file Vakalatnama in the present case and she requests for granting short adjournment for filing the same. On the last date i.e. 11.11.2022, when the matter was taken up, a proxy counsel on behalf of the appellant requested for adjournment of the appeal. The prayer was allowed and the case was adjourned. Today the appellant has come out with a proposal of engaging a new counsel and requested for time for filing Vakalatnama and appearance.
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> The present appeal was filed under Section 61 of the IBC. Admission order of CIRP was passed on 08.10.2021. It goes without saying that for completion of CIRP proceeding

upper time limit has been prescribed i.e. 180 days. Admission order was assailed but no stay order was passed in the present appeal. In view of the said situation unnecessary adjournment may not be granted that too to the appellant who is intending to drag the matter by engaging new counsel. On the examination of record it appears that the appellant instead of getting the appeal finally decided, one way or the other is trying to drag the matter. Such a prayer may not be entertained in a proceeding in which time is essence.

Accordingly the appeal stands dismissed due to non-prosecution.

This order was passed in present of learned counsel for the Respondent."

12. The Restoration Application (AT) No.15 of 2022 was filed by the Appellants to restore Company Appeal (AT) (Ins.) No.881 of 2021, which was dismissed by this Tribunal on 10.01.2023. Aggrieved by both the aforesaid order, the Appellant filed Civil Appeal (Diary No.4846 of 2023) before the Hon'ble Supreme Court, which Appeal was also dismissed by the Hon'ble Supreme Court vide order dated 20.02.2023. The order dated 08.10.2021 having been questioned and challenged by the Appellant by means of Appeal under Section 61 of the IBC and further the Appeal under Section 62 of the IBC before the Hon'ble Supreme Court and both the Appeals before this Tribunal as well has Hon'ble Supreme Court having been dismissed, we are of the view that Adjudicating Authority did not commit any error in rejecting the prayer of the Appellant in IA No.2241 of 2024 for recall of the order dated 08.10.2021. The Adjudicating Authority has also in paragraph 26 has noted the order

passed by this Appellate Tribunal and has rightly observed that no case has been made out for recall of the admission order dated 08.10.2021. We do not find any error in the order of the Adjudicating Authority rejecting the prayer of the Appellant to recall order dated 08.10.2021. The order of Adjudicating Authority to that extent is not interfered with.

13. The next submission which has been pressed by learned Counsel for the Appellant is that present is a case where the Adjudicating Authority ought to have exercised its inherent jurisdiction permitting withdrawal of CIRP proceedings against the CD. Learned Counsel for the Appellant submits that the CIRP having been initiated by Respondent Nos.6 to 9 fraudulently and malafidely, the Adjudicating Authority should have very well permitted withdrawal of the proceedings. With regard to withdrawal under Section 12A of the IBC, the law has been settled by Hon'ble Supreme Court in ***Glass Trust Company LLC v. BYJU Raveendran – (2024) SCC OnLine SC 3032***. The Hon'ble Supreme Court in the said judgment has noticed the procedure for withdrawal of the CIRP as provided in Section 12A and Regulation 30A of the CIRP Regulations. After noticing the statutory provisions, the Hon'ble Supreme Court in paragraphs 61 and 62 has laid down following:

> "**61.** The proviso to Regulation 30A (1) provides that when the application is made after the CoC has been constituted and after the invitation for expression of interest has been issued, the applicant shall state the reasons for withdrawal at this stage. In essence, the regulation in its amended form, deviates from its earlier form by also responding to the decision of this Court in *Brilliant Alloy Private Limited* (supra). Unlike the unamended

> regulation, the regulation acknowledges the possibility of withdrawal even after the invitation for expression has been issued. However, it mandates that an application for withdrawal in such cases must be accompanied by reasons.
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> 62. Regulation 30A (2) provides that the application must be made in the manner prescribed in Form FA of Schedule-I,45 and must be accompanied by a bank guarantee towards the specified expenses. Regulation 30A(3) provides that in cases where the application for withdrawal is moved before the constitution of the CoC, the IRP shall submit the application to the NCLT on behalf of the applicant within three days of receipt. Regulations 30A (4) and (5) deal with the situation where the CoC has already been constituted. They provide that the CoC shall consider the application within seven days of receipt, and subsequently, if the application is approved by the CoC with a ninety-percent voting share, the RP must submit the application with the approval to the NCLT within three days of the approval. Finally, regulation 30A(6) provides that on the receipt of the application under both mechanisms (before the CoC and after), the NCLT may pass an order approving the application submitted by the RP or IRP, as the case may be."

14. In the present case, Section 7 Application has been filed by Respondent Nos.6 to 9 and unless an Application is filed by the Applicant, who has initiated Section 7 Application, compliance of Section 12A read with Section 30A, cannot be made. We, thus, are of the view that present is not a case where CIRP can be withdrawn under Section 12A read with Regulation 30A.

15. The submission which has been pressed by learned Counsel for the Appellant is that Adjudicating Authority has ample jurisdiction under inherent power to permit withdrawal of the CIRP. Reliance has been placed on the judgment of the Hon'ble Supreme Court in ***SBI vs.***

Consortium of Murari Lal Jalan & Florian Fritsch – (2024) SCC OnLine SC 3187. The learned Counsel for the Appellant has relied on paragraphs 162 and 163, which provides as follows:

> "**162.** However, the aforementioned decision should in no manner be read so as to restrict the exercise of plenary powers under Article 142 of the Constitution even while in deviating from the statutory procedure and framework of the IBC, 2016 or the rules and regulations thereunder, if such deviation is very much necessary. This Court in Glas Trust (supra) only went so far as to say that, where there is a prescribed procedure in place for a particular purpose, then that particular thing must be done only in the manner prescribed. It no way lays a dictum that even where cogent reasons exist warranting such deviation, the court would be powerless to exercise such inherent powers. In other words, Glas Trust (supra) only went to the extent of saying that in the absence of any exceptional circumstances or extraordinary reasons necessitating a deviation from the procedure laid down, the court should refrain from invoking its inherent jurisdiction to do something which otherwise could have been validly done in accordance with the procedure.
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> **163.** We are of the considered view that where there exists extraordinary circumstances warranting the exercise of such powers in order to ensure that the very salutary purpose of the Code, 2016 is not frustrated, then the Court would be well-within its prerogative to exercise them to secure the object of the IBC, 2016. If the proposition that there ought to be no exercise of the inherent powers where a procedure is laid down were to be blanketly accepted then it may have a very chilling effect whereby the very purpose of vesting this Court with inherent powers under Article 142 and tribunals Rule 11 of the NCLT Rules would be rendered otiose and meaningless."

16. The above judgment clarified the law that where there exists extraordinary circumstances warranting the exercise of such powers in order to ensure that the very salutary purpose of the Code, is not frustrated, then the Court will be well within its prerogative to exercise them to secure the object of the IBC. Learned Counsel for the Appellant has also placed reliance on judgment of this Tribunal in ***Hindalco Industries vs. Hirakud Industries Works Ltd. – Company Appeal (AT) (Insolvency) No.42 of 2022***, where this Tribunal after noticing that the case was one which attracted Section 65 of the IBC, held that initiation of CIRP was done fraudulently by the CD, working in collusion with Financial Creditor and the Court took the view that admission under Section 7 was liable to be set-aside. Applying Section 65, the admission of Section 7 Application was set aside. In paragraph 97 of the judgment, following was laid down:

> "**97.** Section 65 of the IBC prescribes a stringent punishment, which may be a penalty extending up to Rs. one crore for fraudulent and malicious initiation of the CIRP. In such a background, we are of the clear view that the initiation of CIRP was done fraudulently by the corporate debtor working in collusion with financial creditor Nandakini and therefore such fraudulent initiation of CIRP started with the admission order under section 7 is liable to be set aside. Therefore, taking recourse to section 65 of the IBC, we set aside the admission order of the section 7 application as its basis, the section 7 application, and loan therein which is claimed to be due and in default are found to be fraudulent."

17. There can be no quarrel to the proposition that in a case where Adjudicating Authority comes to the conclusion that ingredients of Section 65 are attracted, i.e. Application has been filed with fraudulent or/ with malicious intent for the purpose other than the resolution of the Corporate Debtor, the Adjudicating Authority may impose on such person penalty. In a case where finding is returned within the meaning of Section 65, the Adjudicating Authority can very well exercise its inherent jurisdiction to close such CIRP proceedings. The Hon'ble Supreme Court in ***(2020) SCC OnLine SC 1233 – Beacon Trustship Ltd. vs. Earthcon Infracon Pvt. Ltd. and Anr.*** laid down following in paragraph 7:

> "7. Considering the provision of Section 65 of the IBC, it is necessary for the Adjudicating Authority in case such an allegation is raised to go into the same. In case, such an objection is raised or application is filed before the Adjudicating Authority, obviously, it has to be dealt with in accordance with law. The plea of collusion could not have been raised for the first time in the appeal before the NCLAT or before this Court in this appeal. Thus, we relegate the appellant to the remedy before the Adjudicating Authority."

18. In the present case, the Appellant has also pleaded that prior to filing of the Application, the Applicant has also filed an IA No.1770 of 2022 and IA No.1238 of 2022, which are pending consideration. It is useful to notice the prayers made in IA No.1238 of 2022 and also in IA No.1770 of 2022. In the present Appeal, a reply has been filed by Respondent Nos.6 to 12, in which reply in paragraph 2.1.9, Respondents

have referred to the prayers made in both the IAs. It is useful to extract paragraph 2.1.9 (a) and (b), which are as follows:

> "(a) IA No.1238/2022, seeking: (i) direction to the RP to take appropriate action u/s 43, 44, 45, 49 and 66 of the Insolvency and Bankruptcy Code, 2016 (Code) against the Respondent Nos. 1 to 4 therein for fraudulent transactions and siphoning of monies, (ii) that the money transfers dated 1 November 2016 and 31 March 2017 from the Company/ Corporate Debtor to Trust amounting to Rs.2,31,00,000/- by the Respondent Nos1 to 4 therein declared as fraudulent, (iii) declaration that the Respondent Nos.1 to 4 therein have initiated CIRP with malicious intent, (iv) declaration that Dr. Suhas Laxman Kamble (Respondent No.7 herein) as person not eligible to be a Resolution Applicant u/s 29A of the Code, (v) stay of CIRP, and (vi) to refrain from considering/ allowing/ discussing/ evaluating/ approving any Resolution Application from the Respondent No.7 herein.
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> (b) IA No.1770/2022, inter alia, seeking: (i) direction that the Janseva Bank to provide copies of the cheques and instruments for transfer of Rs.2.31 Crore from the account of the Company/ Corporate Debtor in the year 2016-17, (ii) direction that the Committee of Creditors of the Corporate Debtor not to consider and approve any Resolution Plan till the disposal of the application, (iii) declaration that the RP as ineligible to be appointed/ continue as RP, (iv)direction for IBBI to register a complaint against the RP for not disclosing her ineligibility to be appointed as RP and submitting false forms with the Hon'ble Tribunal for her appointment as RP; (v) direction for IBBI to appoint any person to conduct

> an investigation u/s 218 of the Code; and (vi) direction for IBBI to constitute a disciplinary committee to consider the reports of the investigating authority."

19. It is further relevant to notice that during submission learned Counsel for the Appellant submitted that Adjudicating Authority itself has issued a direction that no further steps will be taken in the CIRP, which was disputed by learned Counsel appearing for Respondent Nos.6 to 12 to the effect that no such orders have been passed. Learned Counsel for the Appellant has submitted that Adjudicating Authority had issued direction to the RP, not to proceed with the voting on the Resolution Plan. In the rejoinder, which has been filed by the Appellant, the Appellant has brought on record an Application (At Annexure A-6) filed by the RP in March 2023, in which Application, prayer was made for exclusion of 220 days from 16.09.2022 till 24.04.2022. In the said Application, it is useful to note paragraph 21, where RP himself has stated that Adjudicating Authority has issued an oral direction in IA 1238/2022 for staying the voting. In paragraphs 21 and 22, following has been pleaded by the RP:

> "21. It may be noted that as on date, as per the Order of this Hon'ble Bench dated 07.09.2022, the statutory period of CIRP was extended upto 09.11.2022. However, since there are oral directions acting vide an Order dated 11.05.2022 passed in IA 1238/2022 as stated *supra* this further lapsed 220 days shall be excluded and the statutory period of CIRP shall be extended further from 09.11.2022. Accordingly, by calculating the days the period of the CIRP will now stand extended upto 17.06.2023.

> 22. It is stated and submitted that as on date there are two Resolution Plans are on table which are to be voted upon by the CoC. And in light of the fact that the final voting cannot be taken upon, amid the Oral directions passed by this Hon'ble Bench on 11.05.2022, the CIRP would not be reached to tis finality."

20. From the above, it is clear that IA No.1238/2022 has not yet been heard and under the directions of the Adjudicating Authority, no steps have been taken towards voting on any Resolution Plan. From the facts as noted above, it is clear that the Appellants by filing IA No.1238 of 2022 as early as on 11.05.2022 have pleaded that initiation of CIRP by Respondent Nos.6 to 9 is malafide. We have extracted the prayers in IA No.1238 of 2022 as noticed in paragraph 2.1.9 of the reply of the Respondents, where one of the prayers is "declaration that the Respondent Nos.1 to 4 therein (Respondent Nos.6 to 9 herein) have initiated CIRP with malicious intent". Thus, the Appellant has flagged the issue within the meaning of Section 65 of the Code, as early as on 11.05.2022, which Application is still pending before the Adjudicating Authority.

21. We have already observed that Adjudicating Authority has rightly refused to grant the prayer made for recall of the order dated 08.10.2021 in IA No.2241 of 2024. We further notice that present is a case, where withdrawal of CIRP cannot be made under 12A read with Regulation 30A of the CIRP Regulations. Learned Counsel for the Appellant has also contended that present is a case where Financial Creditors, who have

vote share of 92.17% have already filed a compromise pursis before the Adjudicating Authority. The learned Counsel appearing for Respondent Nos.2, 4 and 5 has also submitted before us that they are agreeable to the arrangement letter dated 18.05.2024 sent by Respondent No.2 to the Appellant, which has also been brought on the record as Annexure A-27, where they have also given their consent for termination/ withdrawal of the CIRP of the Corporate Debtor.

22. While considering the exercise of inherent power by the Adjudicating Authority, we have already noticed the judgment of the Hon'ble Supreme Court in ***SBI vs. Consortium of Murari Lal Jalan & Florian Fritsch*** (supra), wherein the Hon'ble Supreme Court laid down that in an appropriate case, the Adjudicating Authority very well can exercise its inherent power. We have already noticed that IA No.1238 of 2022, in which averments and pleadings have been made within the meaning of Section 65 of the IBC, still pending consideration before the Adjudicating Authority and while hearing the said Application, the Adjudicating Authority directed for stay of voting on the Resolution Plan. We, thus, are of the view that IA No.1238 of 2022, which is pending consideration before the Adjudicating Authority, need to be heard and decided before proceeding any further in the CIRP. We, however, make it clear that we are not expressing any opinion on the merits of IA No.1238 of 2022, which is pending consideration before the Adjudicating Authority. It is for the Adjudicating Authority to consider all facts and pleadings and take appropriate decision in accordance with law.

23. In view of our above discussion and conclusion, we dispose of the Appeal in following manner:

(1) The order passed by Adjudicating Authority dated 21.08.2024, rejecting the prayer of the Appellant in IA No.2241 of 2024 to recall order of admission dated 08.10.2021 is upheld.

(2) IA No.1238 of 2022 filed by the Appellant on 11.05.2022, which is pending consideration before the Adjudicating Authority, be heard and decided by the Adjudicating Authority before proceeding further in the CIRP process. The Adjudicating Authority shall endeavour to consider and dispose of the Application at an early date.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

18th December, 2024

Ashwani