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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 8th May, 2024***
+ **O.M.P. (COMM) 283/2017**

M/S AKASH CONSTRUCTION Petitioner
Through: Mr. Sujit Kumar Singh, Adv.

versus

M/S INDRIA PRIYADHARSHINI HYDRO POWER PRIVATE
LIMITED Respondent
Through: Ms. Sukrit R Kapoor, Adv.

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+ **O.M.P. (COMM) 392/2017**

INDIRA PRIYADARSHINI HYDRO POWER PVT LTD
..... Petitioner
Through: Ms. Sukrit R Kapoor, Adv.

versus

AKASH CONSTRUCTION Respondent
Through: Mr. Sujit Kumar Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 2318/2022 In O.M.P. (COMM) 283/2017 (under Section 151 CPC on behalf of Applicant Manikaran Power Limited seeking Disposal of the present petition being Non-maintainable in terms of the Resolution Plan



approved by the National Company Law Tribunal, Hyderabad vide its Order dated 02.07.2021)

1. An application has been filed on behalf of *applicant Manikaran Power Limited/successful Resolution Applicant* for dismissal of the present petition under Section 34 of the *Arbitration & Conciliation Act, 1996* (hereinafter referred to as “*Act, 1996*”), as not maintainable.
2. The factual background as stated by the petitioner in the petition under Section 34 of the *Arbitration & Conciliation Act* was that the work which was being executed for respondent Company was terminated citing various reasons. Disputes arose inter-se the parties and this Court had appointed the Sole Arbitrator in *Arb. P. No.314/2014*. The petitioner filed the Claim for a total sum of Rs.6,43,62,410/-. The respondent also filed a Counter-Claim in the sum of Rs.6,40,83,557/- along with interest and cost. The learned Sole Arbitrator passed the Arbitral Award dated 15.03.2017 whereby after adjusting the Claims and Counter-Claims including *pre and pendent lite* interest, directed respondent Company to pay a sum of Rs.1,70,01,663/- to the petitioner M/s Aakash Construction.
3. The Award was challenged by the petitioner as well as by the respondent vide OMP.(COMM) No.283/2017 and OMP (COMM) 292/2017 respectively.
4. While the two petitions under Section 34 of the Act were pending, an application being *CP(IB) No.110/9/HDB/2019* was filed under Section 9 of the *Insolvency and Bankruptcy Code, 2016 ("IBC")* by one *M/S Andritz Hydro Pvt. Ltd. (operational creditor)* against the respondent *M/S Indira Priyadarshini Hydro Power Private Limited*. The Company Petition was admitted by NCLT, Hyderabad vide Order dated 12.12.2019. The



Resolution Process (CIRP) commenced a Moratorium under *Section 14* of IBC which was imposed against all legal proceedings against the respondent Company and the publication was consequently effected inviting the claims which were collated by the Interim Resolution Professional (IRP) under *Section 18(1)(b)* of IBC and other applicable Regulations.

5. It is submitted in the application that the amount claimed by the petitioner against the respondent Company is a '*claim*' as defined under *Section 3(6)* of the IB Code. Further, under *Section 18* of IBC, it is the duty of IRP to receive and collate all the Claims submitted by the creditors to him pursuant to the public announcement made under *Sections 13* and *15* of the Code. Under *Section 25(2)(e)* of IBC, the Resolution Professional (RP) has to maintain an updated list of Claims so that the financial position of the Corporate Debtor is reflected and incorporated in the Information Memorandum prepared by the Resolution Professional under *Section 29* of IBC.

6. It is submitted that from the provisions of IBC, it is evident that the amount claimed by the petitioner in the Arbitral proceedings including that which form part of the Arbitral Award, is a '*claim*' and had to be mandatorily submitted to IRP or the RP as the case may be and should have been part of the *Information Memorandum*.

7. *Section 30* of the IBC provides that the Resolution Plan be submitted by intending Resolution applicants to provide for payment of the debts of the Corporate Debtor, on the basis of the Information Memorandum prepared under *Section 29* of IBC. The Resolution Professional examines each Resolution Plan received by him to confirm that the provisions of IBC are not contravened and conform to the requirements specified therein. The



Resolution Professional then presents to the Committee of Creditors (CoC) the Resolution Plan for approval which may approve the Plan by a vote of not less than 66% of the voting share of the Financial Creditors. The RP then has to file the approved Resolution Plan before the NCLT i.e. the Adjudicating Authority for its approval under Section 31 of IBC, whereby the Resolution Plan so approved, becomes binding on all the stakeholders.

8. In the present case, the Corporate Insolvency Resolution Professional (CIRP) of the respondent Company followed due procedures and Resolution Plans were invited by the RP. The Resolution Plans were submitted as per Section 30 of IBC. The Resolution Plans were placed before CoC which examined and evaluated the same in the light of Evaluation matrix. The Resolution Plans were approved with 100% voting on 04.03.2021.

9. Thereafter, the NCLT, Hyderabad accepted the Resolution Plan vide Order dated 02.07.2021, submitted by Successful Resolution Applicant (SRA) Manikaran Power Limited (MPL), who has filed the present Application. After the approval of Resolution Plan by NCLT, the MPL has received the respondent Company as a “clean slate” with the obligation to pay the dues only as per the Resolution Plan. The petitioner herein is entitled to the payments of its dues only to the extent provided in the Resolution Plan.

10. The applicant has relied upon the judgment of Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta (2020) 8 SCC 531 and Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited Civil Appeal No.8129 of 2019, wherein the Apex Court has clarified that after the Resolution Plan which is duly approved by the Adjudicating Authority, the *Claims* mentioned in the



Resolution Plan stand frozen and binding on the Corporate Debtor and its employees, members and creditors including the Central Government, State Government, local authority, guarantors and other stakeholders. All such Claims which are not a part of Resolution Plan stand extinguished and no person shall be entitle to initiate or continue any proceedings in respect to any Claim.

11. It is, therefore, submitted that the present petition under Section 34 of the Act filed by the petitioner, has become non-maintainable and is liable to be dismissed. The applicant has also relied upon the judgment of Adani Power Limited vs. Shapporji Pallonji and Co. Pvt. Ltd. and Ors. Civil Appeal No.1741 of 2023 and Ruchi Soya Industries Ltd. and Ors. vs. Union of India (UOI) and Ors. (2022) 6 SCC 343.

12. The petitioner in its **Reply** to the said Application has denied all the averments made in the Application. It is asserted that the petitioner is a Micro, Small and Medium Enterprise (MSME) registered under the Enterprises Development Act, 2006 and has been a resident of village of Banoi, District Kangra, Himachal Pradesh. The petitioner has submitted that even though the Insolvency Petition got filed in the year 2019, the present Petition under S.34 of the Act was listed on various dates thereafter, but at no point of time did the respondent inform the petitioner about the proceedings undertaken against the respondent in NCLT, Hyderabad. Even though Publications were taken out and Claims were invited, but deliberately none of those Notices ever got annexed in the present petition. Moreover, the Notices published by IRP neither came to the knowledge nor were brought to the notice of the petitioner, who was kept in total dark about the NCLT proceedings. It is further submitted that the NCLT petition has



not yet been disposed of and is pending before NCLT. It is, therefore, submitted that the present application is not maintainable and is liable to be rejected.

13. **Submissions heard.**

14. The Claims before the learned Arbitral Tribunal had been filed by the petitioner against the respondent which was decided vide Award dated 15.03.2017. Both the petitioner as well as the respondent have filed their objections under Section 34 of the Act to the extent they were not satisfied with the Award. While the two petitions under Section 34 of the Act were pending, the insolvency proceedings got initiated against the respondent M/S Indira Priyadarshini Hydro Power Pvt. Ltd. which have resulted in an Resolution Plan submitted by M/S Manikaran Power Private Limited accepted. The question which now comes before the Court is *whether after the Resolution Plan has been accepted, can the present petition be continued?*

15. In the case of Essar Steel India Ltd. Committee of Creditors (supra) the NCLAT allowed the admissions of certain additional and belated claims of operational creditors and held that the claims which have been decided by the Adjudicating Authority or the Appellate Tribunal on merits, may be decided by an appropriate Forum under Section 60(6) of IBC. The Apex Court considered the questions relating to the role of Resolution Applicants, Resolution Professionals and the Committee of Creditors constituted under IBC as well as the jurisdiction of NCLT and NCLAT, and observed that the *Successful Resolution Applicant* (SRA) who takes over the business of the Corporate Debtor, must start running the business of the Corporate Debtor on a “*clean slate*”. The relevant observations of the Apex Court are as



under :

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank V. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count..”

16. Likewise, in the recent Three Judges decision in the case of Ghanashyam Mishra and Sons Private Limited (supra), the Apex court while considering Section 31 of IBC, held that once the Resolution Plan is approved by the Adjudicating Authority, it shall be binding on the Corporate Debtor as its employees, members etc. since, revival of Corporate Debtor is one of the dominant purpose of IBC. The Apex Court further observed that any debt which did not form part of the approved Resolution Plan, shall stand extinguished. The Apex Court in Ghanashyam Mishra and Sons Private Limited (supra) thus, observed as under :



“95.....

(i) That once a Resolution Plan is duly approved by the Adjudicating Authority under sub-section (1) of Section 31, the claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of Resolution Plan by the Adjudicating Authority, all such claims, which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the Resolution Plan;

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the Resolution Plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.”

17. It was concluded that “...*the successful resolution applicant cannot be flung with surprise claims which are not part of the Resolution Plan.*”

18. The proposition of law having been crystallized that once a successful Resolution Plan is accepted, all the Claims against Corporate Debtor gets extinguished and only such debts which form part of Resolution Plan would be taken up by the Successful Resolution Applicant.

19. The question which now arises is whether the petition under Section 34 challenging the Award, would become not maintainable. The scheme as



envisaged in IBC is that a Notice is required to be given at various stages since the inception of the petition till the approval of the Resolution Plan, by the IRP. The Claims so submitted by the Operational Creditors before the Interim Resolution Professionals pursuant to these Public Notices, are then considered and made into *Information Memorandum* which becomes the basis for the Resolution Applicant to submit its plan. If any other claims after the acceptance of the Resolution Plan by the NCLT/NCLAT, are to be permitted to be agitated, it would completely derail the Plan submitted by the Successful Resolution Applicant, for the simple reason that such Claims are not in its contemplation and are beyond its assessment of the debts.

20. The amounts as determined under the Arbitral Award and challenged under Section 34 are also qualified as '*claims*' as defined under Section 3(6) of IBC. The Award holder is, therefore, under an obligation to submit its Claims before the Interim Resolution Professional to be incorporated in the Information Memorandum, rather than to wait for the adjudication of their application under Section 34 of the Act.

21. Similar observations have been made by Calcutta High Court in the recent case of *Sirpur Paper Mills Limited v. I.K. Merchants Pvt. Ltd.* A.P. 550 of 2008.

22. The petitioner has taken an objection that the Notices claimed to have been published in various Newspapers, never came to his knowledge as he is a resident of Village Banoi, District Kangra, Himachal Pradesh. So much so that even while these proceedings under Section 34 were pending, the respondent failed to inform the petitioner since 2019 about the pendency of the proceedings before NCLT, Hyderabad. Therefore, there was no occasion for the Award holder to have approached the Insolvency



Resolution Professional.

23. However, this argument may not enure to the benefit of the petitioner for the simple reason that the RP has also issued a Public Announcement in Form A dated 14.05.2020 in two Newspapers; namely *Dainik Jagran*, *Himachal Pradesh* and *Times of India, Chandigarh Edition* thereby implying that there was every occasion for the petitioner to have public notice of the initiation of the insolvency proceedings against the respondent.

24. The Supreme Court in *Essar Steel India Ltd. Committee of Creditors* (supra) and *Ghanashyam Mishra and Sons Private Limited* (supra) has categorically held that the successful Resolution Applicant receives the Company of a Corporate Debtor with a *clean slate* with his liabilities been confined to those mentioned in the Resolution Plan. All other pre-existing or undecided claims which do not feature in the collation of claims and the Resolution Plan, shall stand extinguished. In the present case, the Resolution Plan has been duly accepted by the CoC and thereafter by the NCLT Tribunal. Harsh as it may be, but since the petitioner herein has failed to lodge any claim in CIRP, it cannot be permitted to continue without present petition.

25. It is hereby held that the present petition is ceased to be maintainable and is hereby dismissed.

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26. In view of the decision in O.M.P. (COMM) 283/2017, the Ld. Counsel for Petitioner has submitted on instructions that the present petition filed by the Respondent under Section 34 of the Act, challenging the Award be permitted to be withdrawn.



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27. The petition is permitted to be withdrawn and is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 08, 2024

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