M/S Innovative Studios Pvt Ltd vs Shree Dhanvantri Steels on 27 May, 2024

Author: Suraj Govindaraj

Bench: Suraj Govindaraj

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 11127 OF 2014 (GM-RES)

BETWEEN:

1. M/S INNOVATIVE STUDIOS PVT. LTD.,
NO.135, OUTER RING ROAD
VARTHUR HOBLI, MARATHHALLI JUNCTION
BANGALORE, R/BY ITS CHAIRMAN & M.D.
MR.SARVANA PRASAD.

2. MR SARVANA PRASAD
A/A:40 YEARS
CHAIRMAN & MAIANGING DIRECTOR OF
M/S INNOVATIVE STUDIOS PVT. LTD.,
NO.135, OUTER RING ROAD
VARTHUR HOBLI, MARATHAHALLI JUNCTION
BANGALORE.

...PETITIONERS

(BY SRI.ROHAN TIGADI., ADVOCATE)

AND:

SHREE DHANVANTRI STEELS

AT NO.42 B, USMAN KHAN ROAD
N.R.ROAD, 2ND CROSS
BANGALORE-560002
REPRSENTD BY ITS PROPRIETOR
MR.VIJAYPRAKASH.

... RESPONDENT

(BY SRI. M.C. RAVIKUMAR, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.PC., PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI QUASHING THE ORDER DATED 22.12.2011 RECODING THE SETTLEMENT IN LOK ADALAT MARKED AS ANNEXURE-C PASSED BY

XIACMM BANGALORE IN CC NO.24453/2011 TO THE WRIT PETITION AND ETC.

THIS WRIT PETITION COMING ON FOR FURTHER HEARING AND HAVING BEEN RESERVED FOR ORDERS ON 24.04.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioners are before this Court seeking for the following reliefs;

i. Issue a writ in the nature of certiorari quashing the order dated 22.12.2011 recoding the settlement in Lok Adalat marked as Annexure-C passed by XIACMM Bangalore in CC No.24453/2011 to the writ petition. ii. Quash the order dated 14.2.2014 and the entire proceedings in Execution Case No.2186/2012 pending on the file of the 19th Addl. City Civil Judge, CCH 18, Bangalore, marked as Annexure- D to the Writ Petition.

iii. Grant such other order/s as this Hon'ble Court may deem fit in the circumstances of the case.

2. The petitioner No.1 is a company incorporated and registered with the Registrar of Companies, the petitioner No.2 is the Managing Director of Petitioner No.1. The respondent is the complainant in PCR No.16559/2011 filed against the petitioners herein under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. A sworn NC: 2024:KHC:17765 statement being recorded, Magistrate having taken cognizance on 28.11.2023 issued summons to the petitioner. Subsequently, thereto, the petitioners entered appearance.

3. A memo was filed by the complainant wherein the petitioners have acknowledged the debts and agreed/ undertaken to make payment of due amount with 24% interest per annum in monthly instalments. Subsequent thereto, the matter was adjourned, and in Lok Adalat, a joint memo was filed and accepted vide order dated 22.12.2011, recording that after negotiation, the matter was settled for the cheque amount with interest at 24% per annum.

4. The first instalment agreed to be paid on 17.12.2012; the entire amount covered by the cheque was directed to be paid as compensation in terms of section 357 of the CR.P.C. in default thereof, the accused was to undergo simple imprisonment for a period of one year.

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5. The complainant thereafter filed an execution proceeding in Ex.No.2186/2012 seeking for the execution of the order, in pursuance of which a attachment warrant of movables was issued, it is aggrieved by the same, the petitioners are before this court seeking for the aforesaid reliefs.

6. The submission of Sri.Rohan Tigadi., learned counsel for the petitioners is that;

6.1. The Magistrate has converted himself to the Lok Adalat which is not permissible. The Magistrate has passed an adjudicatory order which is also not permissible. In pursuance thereof, the execution proceedings in Ex.No.2186/2012 could not have been filed.

6.2. The execution court has not taken into consideration, the submissions of the petitioners that the Lok Adalat has not passed an award as per Section 21 of the Legal Services Authorities Act, 1987 and as such same could not be executed.

NC: 2024:KHC:17765 6.3. The execution Court has without considering the objections, held the execution petition to be maintainable and the award executable which is not sustainable. If the execution Court had taken into consideration, the aspect in the proper prospective the impugned order could not have been passed.

6.4. A settlement was arrived at due to the panic created by the complainant and his father, who is a practising advocate. The said father had represented the petitioners in CC No.20105/2010, CC No.20107/2010 without disclosing his interest, the complaint having been filed against the said father before the Bar counsel, no action has been taken. 6.5. During the pendency of the execution proceedings, certain proceedings have been taken up before the NCLT, Interim Resolution Professional (IRP) was appointed under Insolvency and Bankruptcy Code, 2016.

NC: 2024:KHC:17765 Thereafter a Resolution Professional (RP) was appointed, it was therefore for the petitioner to have placed any claim before the RP and for the RP to have adjudicated the claim. 6.6. The rehabilitation of the company not having gone through winding up proceedings having been initiated, there is a recommendation for winding up, the sustainability and revival of the company has been taken into consideration on the basis of the claims which had been filed before the Liquidator appointed, the respondent not having substantiated its claims, the liquidator has called upon the Respondent to so substantiate, the same not having been done the liquidator has rejected the claim of the Respondent, hence the execution proceedings cannot continue.

6.7. He relies upon the following decisions:

> NC: 2024:KHC:17765 6.7.1. Arun Kumar Jagatramka v. Jindal Steel & Power Ltd.,1 more particularly para nos.25, 30.23, 69, 78 and 80 thereof, which are reproduced hereunder for easy reference;
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> 25.NCLAT formulated two principal issues in the first of its judgments in appeal : (Jindal Steel & Power Ltd. case [Jindal Steel & Power Ltd. v. Arun Kumar Jagatramka, 2019 SCC OnLine NCLAT 759] , SCC OnLine NCLAT para 2) "2. ... (i) Whether in a liquidation proceeding under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the I&B Code") the Scheme for compromise and arrangement can be made in terms of Sections 230 to 232 of the Companies Act;

(ii) If so permissible, whether the promoter is eligible to file application for compromise and arrangement, while he is ineligible under Section 29-A IBC to submit a resolution plan. 30.13. Section 230 of the 2013 Act is a part of the settlement mechanism and is on a par with the provisions of Section 12-A. The impact of a compromise or arrangement is also that company is restored to the promoters with all its liabilities. While Section 12-A IBC permits withdrawal of an application, Sections 230 and 230-A of the 2013 Act envisage a compromise or arrangement. As such, they both form a part of the settlement mechanism and are not part of the resolution mechanism, to which (2021) 7 SCC 474 NC: 2024:KHC:17765 alone the ineligibility under Section 29-A applies. Hence, this ineligibility cannot now be engrafted into Section 230.

69. The statutory scheme underlying the IBC and the legislative history of its linkage with Section 230 of the 2013 Act, in the context of a company which is in liquidation, has important consequences for the outcome of the controversy in the present case. The first point is that a liquidation under Chapter III IBC follows upon the entire gamut of proceedings contemplated under that statute. The second point to be noted is that one of the modes of revival in the course of the liquidation process is envisaged in the enabling provisions of Section 230 of the 2013 Act, to which recourse can be taken by the liquidator appointed under Section 34 IBC. The third point is that the statutorily contemplated activities of the liquidator do not cease while inviting a scheme of compromise or arrangement under Section

230. The appointment of the liquidator in an IBC liquidation is provided in Section 34 and their duties are specified in Section 35. In taking recourse to the provisions of Section 230 of the 2013 Act, the liquidator appointed under the IBC is, above all, to attempt a revival of the corporate debtor so as to save it from the prospect of a corporate death. The consequence of the approval of the scheme of revival or compromise, and its sanction thereafter by the Tribunal under sub-section (6), is that the scheme attains a binding character upon stakeholders including the liquidator who has been appointed under the IBC. In this backdrop, it is difficult to accept the submission of Mr. Bajaj that Section 230 of the 2013 Act is a standalone provision which has no connect with the provisions of the IBC.

78. There is a fundamental fallacy in the submission. An application for withdrawal under Section 12-A is not intended to be a NC: 2024:KHC:17765 culmination of the resolution process. This, as the statutory scheme would indicate, is at the inception of the process. Rule 8 of the Adjudicating

Authority Rules, as we have seen earlier, contemplates a withdrawal before admission. Section 12-A subjects a withdrawal of an application, which has been admitted under Sections 7, 9 and 10, to the requirement of an approval of ninety per cent voting shares of the CoC. The decision of this Court in Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] (para 82 extracted above) stipulates that where the CoC has not yet been constituted, NCLT, functioning as the adjudicating authority, may be moved directly for withdrawal which, in the exercise of its inherent powers under Rule 11 of the Adjudicating Authority Rules, may allow or disallow the application for withdrawal or settlement after hearing the parties and considering the relevant factors on the facts of each case. A withdrawal in other words is by the applicant. The withdrawal leads to a status quo ante in respect of the liabilities of the corporate debtor. A withdrawal under Section 12-A is in the nature of settlement, which has to be distinguished both from a resolution plan which is approved under Section 31 and a scheme which is sanctioned under Section 230 of the 2013 Act. A resolution plan upon approval under Section 31(1) IBC is binding on the corporate debtor, its employees, members, creditors (including the Central and State Governments), local authorities, guarantors and other stakeholders. The approval of a resolution plan under Section 31 results in a "clean slate", as held in the judgment of this Court in Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 :

> (2021) 2 SCC (Civ) 443] . Rohinton F. Nariman, J. speaking for the three-Judge Bench of this Court, observed : (Essar Steel case [Essar Steel (India) Ltd. (CoC) v. Satish

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NC: 2024:KHC:17765 Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] , SCC p. 615, para 105) "105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , this Court relying upon Section 31 of the Code has held : (SCC p. 411, para 25) '25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.'"

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NC: 2024:KHC:17765 (emphasis supplied)

80. The benefit under Section 31, following upon the approval of the resolution plan, is that the successful resolution applicant starts running the business of the corporate debtor on "a fresh slate". The scheme of compromise or arrangement under Section 230 of the 2013 Act cannot certainly be equated with a withdrawal simpliciter of an application, as is contemplated under Section 12-A IBC. A scheme of compromise or arrangement, upon receiving sanction under sub-section (6) of Section 230, binds the company, its creditors and members or a class of persons or creditors as the case may be as well as the liquidator (appointed under the 2013 Act or the IBC). Both, the resolution plan upon being approved under Section 31 IBC and a scheme of compromise or arrangement upon being sanctioned under sub-section (6) of Section 230, represent the culmination of the process. This must be distinguished from a mere withdrawal of an application under Section 12-A. There is a clear distinction between these processes, in terms of statutory context and its consequences and the latter cannot be equated with the former.

6.7.2. Relying on the above he submits that the resolution plan now having been approved and a person having come forward to take over the assets and liabilities of the company, the respondent not having submitted the necessary documents to the

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NC: 2024:KHC:17765 liquidator cannot once again agitate its claim in an Execution Proceedings any claim would have to have been placed before the liquidator who would have adjudicated the claim, no documents having been placed the liquidator has rejected the claim.

6.7.3. SEBI v. Rajkumar Nagpal2 more particularly para nos.37, 39 and 40 thereof, which are reproduced hereunder for easy reference;

37. In terms of sub-section (1) of Section 391, the Company Court (prior to the substitution of the National Company Law Tribunal for the Company Court) could order a meeting of the creditors or a class of creditors or of members or of a class of members. Sub- section (2) of Section 391 required a stipulated majority representing three-fourths in value of the creditors or members or a class of them present and voting to agree to a compromise or arrangement. In that event upon sanction by the judicial body it would be binding on all creditors or members or a class of them, as the case may be. The impact of a compromise or arrangement when approved by the special majority as stipulated in Section 391(2) was that the scheme would bind even (2023) 8 SCC 274

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NC: 2024:KHC:17765 those who dissented or abstained from voting. These provisions applied to all kinds of creditors without exception.

39. The impact of Section 391 of the Companies Act, 1956 lay in its ability, in relation to the creditors or members of a company, to bind non-consenting members or creditors where the terms of the compromise or arrangement were approved by a special majority and assented to by the judicial body. Upon the enactment of the Companies Act, Section 230 which forms a part of Chapter XV is titled "Compromises, arrangements and amalgamations". Section 230 contains an analogous provision.

40. Sub-section (6) of Section 230 provides that where at a meeting which is held in pursuance of sub-section (1), the majority of persons representing 3/4th in value of the creditors or class of creditors or members or class of members agree to a compromise or arrangement and upon its sanction by the Tribunal, it shall be binding on the company and all the creditors or class of creditors or members or class of members and the contributories of the company. Section 230 of the Companies Act provides for the manner in which dissenting or abstaining creditors within a class of creditors of the company (such as debenture- holders) can be bound by the terms of the compromise or arrangement upon approval by a special majority and by the NCLT. 6.7.4. By relying on the above judgment he submits that the majority of the persons representing 3/4th of the value of the creditors or class of creditors have agreed to the compromise or arrangement in

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NC: 2024:KHC:17765 pursuance of which a new purchaser has purchased a company as a going concern and as such the respondent would also be bound by the said resolution and no amount is owed or is due to the respondent.

6.7.5. Shiv Shakti Inter Globe Exports Pvt.

Ltd. Vs. KTC Foods Private Limited3, more particularly para no.23 thereof, which is reproduced hereunder for easy reference;

23. Adverting to the contention of the Learned Counsel for the Appellant that the Adjudicating Authority has erred in denying the sale of the 'Corporate Debtor' as a 'going concern' to the Appellant without including any contingent liabilities, we hold that it is a settled law that when the sale proceeds of a 'Corporate Debtor' are duly distributed in the Order of priority and in the manner prescribed under Section 53 of the Code, claims of any other Creditor cannot be entertained contrary to the provisions entailed under Section 53; subsequent to the distribution of sale proceeds under Section 53 no other entity including any Government 2022 SCC Online NCLAT 85

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NC: 2024:KHC:17765 entity can claim any past unpaid or outstanding dues against the Appellant who has purchased the 'Corporate Debtor Company' as a 'going concern'. It is significant to mention

that the second Respondent/Liquidator has specifically submitted that even these claims by the Uttar Haryana Bijili Vitran Nigam were not submitted in the prescribed form either during the CIRP Process or at the Liquidation stage. We are of the considered view that at this stage subsequent to the sale of the 'Corporate Debtor Company' as a 'going concern', these claims cannot be foisted upon the Appellant. The scope and objective of the Code is to extinguish all claims specifically the ones which were not even made during the CIRP or in the Liquidation stage, to aid the purchaser of the Company as a 'going concern' to start on a 'clean slate'. The Hon'ble Supreme Court in 'Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.', Civil Appeal No. 8129 of 2019 and in 'CoC of Essar Steel India Ltd. v. Satish Gupta' (2020) 8 SCC 531 has laid down the proposition that the purchaser of the Company even in the Liquidation stage cannot be burdened with past liabilities when it is not mentioned in the 'Sale Notice'.

6.7.6. By relying on the above judgment he submits that, since the respondent did not furnish the relevant details in the prescribed format at the liquidation stage to the liquidator subsequent to the sale of the Corporate Debtor Company as a going

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NC: 2024:KHC:17765 concern those claims cannot be foisted upon the purchaser and as such the Execution Proceedings in the present matter would amount to foisting of the liability and the said proceeding are required to be quashed.

6.7.7. A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd.,4 more particularly para nos.16, 25 and 29 thereof, which are reproduced hereunder for easy reference;

16. Having heard the learned counsel for all the parties, it is important to restate a few fundamentals. Given the object of the IBC as delineated in paras 25 to 28 of Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] ["Swiss Ribbons"], it is clear that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail. Vis-à-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red, the IBC is not only a special statute which must prevail in the event of conflict, (2021) 4 SCC 435

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NC: 2024:KHC:17765 but has a non obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail.

25. A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by winding-up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate

the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC. While it is true that Sections 391 to 393 of the Companies Act, 1956 may, in a given factual circumstance, be availed of to pull the company out of the red, Section 230(1) of the Companies Act, 2013 is instructive and provides as follows:

> "230. Power to compromise or make arrangements with creditors and members.--
>
> (1) Where a compromise or arrangement is proposed--
>
> (a) between a company and its creditors or any class of them; or

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(b) between a company and its members or any class of them, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. Explanation.--For the purposes of this sub- section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods."

What is clear by this Section is that a compromise or arrangement can also be entered into in an IBC proceeding if liquidation is ordered. However, what is of importance is that under the Companies Act, it is only winding up that can be ordered, whereas under the IBC, the primary emphasis is on revival of the corporate debtor through infusion of a new management.

29. Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding-up proceeding. These arguments do not avail the appellant for the simple reason that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any "suppression" of the winding-up proceeding

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NC: 2024:KHC:17765 would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim order that has been passed by this Court on 18-12-2020 [A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd., 2020 SCC OnLine SC 1141] shall stand immediately vacated. 6.7.8. By relying on the above judgment he submits that the proceeding under Section 7 of the IBC and that under Section 434 of the Companies Act 2013 are different in as much as even if a proceedings under Section 434 were to be pending that would not deprive the NCLT of its jurisdiction to exercise its powers under Section 7, so long as all the requirements are fulfilled. He further submits that it should always be the aim and intention of

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NC: 2024:KHC:17765 the Court to try and revive the company rather than wind up the company.

6.7.9. State of Punjab v. Jalour Singh,5 more particularly para no.8 thereof, which is reproduced hereunder for easy reference;

8. It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to "hear" parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to "determination" by the Lok Adalat and "award" by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The "award" of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decision-making (2008) 2 SCC 660

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NC: 2024:KHC:17765 process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat. 6.7.10. By relying on the Jalour Singh case he submits that a Lok Adalat cannot perform adjudicatory functions it can only record the terms of settlement or compromise agreed between the parties.

6.7.11. He relies on the decision of this this court in Akkubai v. Venkatrao6 more particularly para no.11 thereof, which is reproduced hereunder for easy reference;

11. I really wonder, whether the Learned Judge who has entertained this matter was aware of the elementary aspects of judicial functioning and the Lok Adalath. A common order-sheet cannot be maintained by the Court as well as the Lok Adalath. A Court cannot be converted into a Lok Adalath. In the order-sheet maintained by the Court, a portion of the proceedings is referable to the Court proceedings and another portion refers to the proceedings of the Lok Adalath. The Conciliator has no place inside the Court. The very object of accepting this Lok Adalath as 2014 SCC OnLine Kar 10110

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NC: 2024:KHC:17765 an alternative mode of resolution of dispute is that, all matters do not need adjudication. The matter which could be resolved by persuasion, negotiation and understanding should be taken out of adjudication process and should be resolved by means of LokAdalath satisfactorily, so that the cases are disposed of expeditiously and the Courts will be saving the time of adjudicatory process, and they can utilize that time which is saved, in adjudicating the cases. If on the day the plaint is presented, the parties are also present before the Court, they are ready with the compromise petition and when they are filing an application under Order 23 Rule 3 CPC, when they are admitting the terms of the compromise and execution of the terms and condition, then the Court before which it is presented, is the competent Court to record the compromise and dispose of the suit in terms of the compromise. The question of referring the said dispute to the Lok Adalath would notarise. If it is referred, it is a farce. If this is accepted and encouraged, both the judicial system and this alternative dispute resolution mechanism gets a bad name and would be subjected to redicule in the eyes of public. All persons who are indulging in this process would be doing great injustice and dis-service to the judicial system. They are not conscious of their action and its repercussions and the image of the Judiciary, which would create in the mind of the public. That is not the object with which neither Legal Services Authority Act of 1987 is passed by the Parliament providing for the institution of Lok Adalath nor Section 89 was introduced by the Parliament amending CPC. The essence of these provisions is neither understood by the Learned Judge nor by the Learned Counsels who are appearing for the parties.

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NC: 2024:KHC:17765 6.7.12. By relying on Akkubai's case he again submits that there cannot be a common order sheet maintained before the Lok Adalat as also before the Court, the order sheet has to be different. In the present case the same order sheet having been maintained, the settlement recorded by the Lok Adalat is not proper 6.7.13. He submits that the respondent not having substantiated its claim before the liquidator the claim not having been considered and a purchaser having come forward to purchase the Petitioner No.1 as a going concern with all assets and liabilities, the Respondent cannot continue with the execution proceedings. The execution proceedings initiated in terms of the alleged compromise before the Lok Adalat cannot be continued, as such the

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NC: 2024:KHC:17765 petition needs to be allowed and the reliefs granted.

7. Sri.M.C.Ravikumar., learned counsel appearing for respondent would submit that;

7.1. The petitioners-company is notorious for having defaulted as regards the payments due, there are innumerable cases which have been filed against respondent-company before various Courts both civil and criminal.

7.2. The petitioners are abusing the process of Court by filing present petition which is not sustainable.

7.3. The petitioners having agreed for a settlement before the Lok Adalat, the settlement having been recorded in writing is an executable decree in terms of Section 21 of the Legal Services Authorities Act, 1987. 7.4. The Liquidator could only adjudicate claims which have not already been adjudicated, in the present case a settlement having been arrived

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NC: 2024:KHC:17765 at, the petitioners having agreed to make payment of monies, in furtherance of which an order has been passed by the Lok Adalat, the same is a Decree, once a decree is passed there is no further adjudication required to be made by the Liquidator.

7.5. The execution proceedings having been filed on the basis of the settlement which has been arrived upon in a Criminal proceeding in CC No.24453/2011 arising out of PCR No.16559/2011, the respondent is entitled to execute the decree.

7.6. No suitable resolution plan was forthcoming, hence NCLT ordered liquidation of petitioner No.1 and one Sri.Balady Shekar Shetty was appointed as a liquidator. At that stage, the scheme of compromise submitted by Suresh Productions having been accepted by NCLT on 8.1.2021. The said acceptance cannot negate the execution proceedings already filed by

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NC: 2024:KHC:17765 respondent, whether respondent had knowledge of the NCLT proceedings or not, the execution proceedings are in furtherance of a decree which respondent is entitled to maintain. 7.7. The respondent is not concerned with the arrangement made before the NCLT by Suresh Productions and entertainment LLP, that would only be between the parties to the said arrangement, the Respondent cannot be deprived of its rights.

7.8. He submits that the settlement that has been reached has been partly complied with. Payments were made during the pendency of the execution proceedings after the trial Court had held the execution petition maintainable vide its order dated 14.2.2014.

7.9. His further submission is that petitioner No.1- company's name has been changed to Vels Studio and Entertainment Private Limited, respondent No.2 is no longer a director or

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NC: 2024:KHC:17765 Managing Director of petitioner No.1-Company, and as such, the continuation of the proceedings by petitioner No.2 without being a director or the managing director of the company is a fraudulent act on part of petitioner No.2. Winding up having been ordered and subsequently a settlement having been arrived at, there is no sustainable ground for the respondent to continue the execution proceedings. On this basis, he submits that the above petition is required to be dismissed.

8. On the basis of the submissions made by both the counsels, the points that would arise for consideration are:

> 1. Whether the settlement arrived at between the petitioners and respondent in CC No.24453/2011 arising out of PCR No.16559/2011 is valid and executable in a execution proceedings?
>
> 2. Whether the non-inclusion of the claim of respondent in the settlement proposal made by Sri.Balady Shekar Shetty and approved by the NCLT would disentitle respondent from continuing the execution proceedings?

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3. Whether any grounds have been made out for interference at the hands of this Court?

4. What order?

9. I answer the above points as under

10. Answer to point No.1:Whether the settlement arrived at between the petitioners and respondent in CC No.24453/2011 arising out of PCR No.16559/2011 is valid and executable in a execution proceedings?

10.1. As is clear from the order sheet in CC No.24453/2011, the matter was referred to Lok Adalat and before the Lok Adalat held on 22.12.2011, the settlement arrived at was recorded on the basis of the joint memo filed by the parties. A perusal of the order sheet indicates that the order sheet is one maintained by Lok Adalat and not by the Court. Thus, the contention of the learned counsel for the petitioner that the Court converted itself to the Lok Adalat is not sustainable. A perusal of the

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NC: 2024:KHC:17765 order sheet indicates that a conciliator was also present and who has signed the order sheet, the advocate for accused and accused have also signed the order sheet. Thereafter the matter came to be closed and in pursuance of the compromise arrived at not being satisfied, the Execution Proceedings were filed by respondent. 10.2. A perusal of the order sheet indicates that the matter was referred by the Court to the Lok Adalat and in the Lok Adalat not only was a judge present but a conciliator was also present. The reference order is a separate order, the settlement order is a separate order. Thus, both the orders being different the decision in Jalour Singh case or Akkubai's case would not be applicable to the present matter. 10.3. There is a distinct settlement which has been arrived at between the parties which has been recorded by the conciliator and the judge who was also part of the Lok Adalat. Merely a judge who

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NC: 2024:KHC:17765 had referred the matter to the Lok Adalat being a member of Lok Adalat would not vitiate the proceeding before the Lok Adalat. In the present case, before the Lok Adalat both the judge and the conciliator were present, the matter was negotiated between the parties a settlement was arrived at and settlement recorded. 10.4. Hence, I answer point No.1 by holding that the settlement arrived at between the petitioner and the respondents in CC No.24453/2011 arising out of PCR No.16559/2011 is valid and executable in an Execution Proceedings, since the settlement recorded is a decree in terms of Section 21 of the Legal Services Authorities Act, 1987.

11. Answer to point No.2: Whether the non- inclusion of the claim of respondent in the settlement proposal made by Sri.Balady Shekar Shetty and approved by the NCLT would disentitle respondent from continuing the execution proceedings?

11.1. The submission of Sri.Rohan Tigadi., learned counsel for the petitioner is that the matter

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NC: 2024:KHC:17765 relating to the petitioner No.1-Company had been referred to the NCLT. The IRP having been appointed, the resolution process did not end in the positive manner and as such liquidation of the company being recommended Sri.Balady Shekar Shetty, had been appointed as a liquidator.

11.2. The liquidator having called for claims of third parties as against the company, claims were received by the liquidator from various persons one such claimant was with respondent, the respondent having submitted the claim but same not being in the proper format and not accompanied by the relevant documents, the liquidator had called upon the respondent to furnish those documents for the purpose of consideration. The respondent not having submitted those documents the liquidator could not adjudicate the claim of the respondent.

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NC: 2024:KHC:17765 11.3. In the meanwhile, the liquidator had recommended a scheme of arrangement which came to be approved by the Board and by the NCLT. The NCLT having approved the settlement, the amounts due by the company being frozen in terms of the said order and as such the Execution Proceedings cannot continue and in this regard he has relied upon the decision in Arun Kumar Jagatramka case, Rajkumar Nagpal case, KTC Foods Private Limited case and A. Navinchandra Steels (P) Ltd case.

11.4. Arun Kumar Jagatramka case was one where a successful resolution happen under a scheme of compromise or arrangement was entered into as regards the claims of the creditors. What would have to be understood is the context of the matter in as much as what was

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NC: 2024:KHC:17765 agreed upon was as regards the claim of the creditors. Claims remain to be claims until they are adjudicated. A mere claim is one made by the creditor as against the company claiming certain amounts to be due or otherwise. 11.5. In the present case it is not a claim made by respondent, the respondent had initiated the proceedings for a dishonour of a cheque which ended up on the compromise before the Lok Adalat. In pursuance of which the settlement was recorded and order passed which is a decree in terms of Section 21 of the Legal Services Authorities Act, 1987. Once an order is passed it no longer remains a claim but would fructify and crystalize into decree which could be executed. Thus, a decree would have to be treated in a different manner than a claim which was a subject matter for consideration by the Apex Court in Arun Kumar Jagatramka's

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NC: 2024:KHC:17765 case and as such the said decision would not be applicable to the present matter. 11.6. In so far as the decision of the Rajkumar Nagpal's case is concerned that again was as regards a compromise in terms of Section 230 of the Companies Act, once again as regards the claims of the creditors. This again would not be of relevance in the present matter since as afore stated what has occurred here is a adjudication and/or a settlement which has ended up in a decree.

11.7. The decision in KTC Foods Private Limited case would also not be applicable in the present case since in that matter the corporate debtor was purchased as a going concern without including contingent liabilities as such it was held that no further claim including that of the Government could be lodged or pursued. In

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NC: 2024:KHC:17765 that case the claim initiated by the Uttar Haryana Bijili Vitran Nigam for electricity dues i.e., say the claim for electricity dues was for power consumed without an adjudication or a settlement in the matter. As the Uttar Haryana Bijili Vitran Nigam had only sought to assert a claim which had not fructified into a decree which is also not the case here and as such the decision would also not apply.

11.8. Similarly in A. Navinchandra Steels (P) Ltd case which dealt with the distinction between the Section 7 of the IBC and Section 434(1)(c) of the Companies Act, 2013 the Hon'ble Apex Court held that at even if a proceeding under Section 434 was filed and pending, once proceedings are filed under Section 7, the NCLT would have jurisdiction as an independent proceeding to assess whether the company can be revived or not. The said decision would also

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NC: 2024:KHC:17765 not apply in as much as the Section 434 proceeding is a claim for an admitted amount (admitted or not to be decided in the proceedings) and not a decree for an admitted amount. In the present case there is a decree which has been passed and as such the said decision would also not apply.

11.9. Hence, looked at from all angles and perspectives the respondents claim is not just a claim but it is based on a decree which executable in terms of Section 21 of the Legal Services Authorities Act, 1987. Once a decree has been passed by the Lok Adalat and an execution proceedings had been filed the respondent having brought it to the notice of the liquidator, the liquidator ought to have taken cognizance of the matter since the decree has not been set aside by any Court. Instead of doing so the liquidator called upon the

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NC: 2024:KHC:17765 respondent to furnish details of the so called claim when in fact the liquidator ought to have tread it as a decree and not a mere claim. The liquidator has erred in regarding the claim of the respondent as a mere claim and not as a decree and not included it in the amounts due by the respondent No.1-company. The same in my considered opinion cannot be held to be binding on respondent No.1 who has already initiated proceeding for execution, the Execution Proceedings pending had been challenged in these proceedings. 11.10. Thus, I answer point No.2 by holding that the alleged non-inclusion of the claim of the respondent in the settlement proposal made by the liquidator and approved by NCLT would not disentitle the respondent from continuing the Execution Proceedings which has already been

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NC: 2024:KHC:17765 initiated pursuant to a decree passed by the Lok Adalat.

12. Answer to point No.3: Whether any grounds have been made out for interference at the hands of this Court?

12.1. In view of my answers to point No.1 and 2, a settlement arrived at between the parties being a decree and executable under Section 21 of the Legal Services Authorities Act, 1987 and my answer to point No.2 that non-inclusion would not disentitle the respondent from continuing the Execution Proceedings and also for the reason that the petitioner is seeking to abuse the process of Court, I am of the considered opinion that the petitioner would not be entitled for any reliefs at the hands of this

Court. 12.2. The contention of Sri.Rohan Tigadi., that the father of a Director of the respondent had represented the petitioner in another proceeding without letting them known that he

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NC: 2024:KHC:17765 was a interested party, he has been dealt with by me in another matter in WP No. 6468 of 2013 dated 27.03.2024, wherein I have come to the categorical conclusion that the respondent-Company was abusing the process of Court by taking up such a contention and the Managing Director of the petitioner-Company was very much aware of the relationship of the lawyer with the director of respondent in that matter.

12.3. A settlement having been arrived at between the parties there being amounts due by the petitioner No.1 to respondent, which was accepted before the Lok Adalat, the petitioner agreed to make payments of the amounts to the petitioner and on which basis the criminal proceedings for dishonour of the cheque came to be closed, recording the settlement. The respondent who had been prosecuting the criminal proceedings on the basis of promises

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NC: 2024:KHC:17765 held out by petitioner No.1 and its director including petitioner No.2 acceded to the request to receive the monies and execute the same as a decree i.e., by way of civil proceedings is now sought to be defrauded by taking up the untenantable contentions which have been raised in the present matter which has been dealt with above.

12.4. The petitioner admittedly owes money to the respondent, the respondent agreed to receive the said monies and the settlement was arrived at before the Lok Adalat. It was incumbent on the petitioner to make payment of said monies, a plethora of documents which have been produced by respondent indicates a catena of matters which are pending against the petitioners before the Magistrate court and the session courts as also this court many of them relating to dishonour of cheques.

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NC: 2024:KHC:17765 12.5. The present proceeding has been pending since 2014 and arises out of a PCR filed in 2011, which arises out of a transaction between the petitioner and respondent of much earlier vintage. The petitioner has successfully prevented the respondent from receiving the fruits of the compromise arrived at between the petitioner and respondent for nearly 14 years. 12.6. The petitioner having agreed for settlement in December 2011 the amounts are yet to be paid by the petitioner to the respondent based on the false frivolous and ex-facie fraudulent an dishonest contention which has been taken up by the petitioner.

12.7. A Lok Adalat having passed an order which amounts to a decree for the amounts due instead of making payment of the amount the judgment debtor i.e., the petitioners had unsuccessfully contested the same before the Execution Court, the Execution Court by its

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NC: 2024:KHC:17765 order dated 14.2.2014 had held the execution proceeding to be maintainable which has been challenged in the present matter. While the matter was pending certain subsequent events having occurred as regards the purchase of the petitioner No.1-Company as a going concern all these contention were raised which have been answered in point No.2 above.

12.8. The manner in which the petitioner has sought to abuse the process of Court leaves much to be desired and requires this Court to impose costs on the petitioner payable to the respondent more so since the respondent has been deprived of the amounts from the year 2011 till date despite the respondent having accepted the compromise proposed by the petitioner. The respondents have also been constrained to defend the present frivolous proceedings, which are an abuse of the court.

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NC: 2024:KHC:17765 12.9. In that view of the matter, I am of the considered opinion that no grounds have been made out by the petitioner for interference with the impugned orders and that the petitioner is not entitled for any reliefs and further that the petition as filed would be required to be dismissed and as such is dismissed by imposing exemplary cost against the petitioner.

13. Answer to point No.4: What order?

The above petition is dismissed by imposing exemplary cost of Rs.5,00,000/- on the petitioner which shall be paid by the petitioners jointly or severally to the Respondent within period of eight weeks from the date of receipt of a copy of this order. If the said amount is not paid, recover of the costs shall be made as arrears of land revenue as expeditiously as possible.

Sd/-

JUDGE