

Gangakhed Sugar And Energy Ltd. vs Central Bureau Of Investigation & Ors. on 23 December, 2024

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on : 5th November, 2024
Pronounced on: 23rd December, 2024

+ CRL.M.C. 2881/2023 & CRL.M.A. 32691/2023 & CRL.M.A. 30178/2024
GANGAKHED SUGAR AND ENERGY LTD.Petitioner
Through: Mr. Mohit Mathur, Senior Advocate with Mr. Varun Kalra, Mr. Samir Malik, Ms. Honey Satpal and Mr. Krishan Kumar, Advocates.
versus

CENTRAL BUREAU OF INVESTIGATION & ORS.Respondents
Through: Mr. Rajesh Kumar SPP with Ms Mishika Pandita and Mohd. Changez Ali Khan, Advocate for R-1along with Inspector Dhan Singh.
Mr. Sarfaraz Khan, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the petitioner seeking quashing of the FIR No. RC074023E0001, dated 7th February, 2023, registered at Police Station - BS&FB, Delhi for the offences punishable under Section 120B read with Section 420 of the Indian Penal Code, 1860 (hereinafter "IPC") and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act") and also the proceedings initiated consequent thereto for the commission of the aforesaid offences qua the petitioner (i.e., accused no.1).

2. M/s Gangakhed Sugar and Energy Ltd., the petitioner herein, is a company involved in the business of Integrated Cane Processing Plant with the manufacturing facilities of sugar, distillery and power in Maharashtra.
3. The respondent no. 1 is the Superintendent of the Banking and Securities Fraud Cell of the Central Bureau of Investigation that has registered the aforesaid FIR.
4. The respondent no. 2 is the Joint Director (Policy) of the Banking and Securities Fraud Section of the Central Bureau of Investigation to whom the complaint was addressed.
5. The respondent no. 3 is an Indian Public Sector bank and the complainant in the present case.
6. The petitioner, when managed and controlled by its erstwhile directors/management, availed credit facilities by the consortium of lenders which was led by UCO Bank (respondent no. 3). The banks sanctioned a term loan with a limit of Rs. 100 Crore and working capital limit of Rs. 15 Crores on 16th September, 2008 against the principal security and collateral security. The said loan facilities were renewed several times and the last deed sanctioning the renewed limit was extended on 28th September, 2015.
7. On 31st January, 2017, the account of the petitioner was classified as Non-Performing Asset (hereinafter "NPA") by the respondent no. 3 pursuant to which an application, bearing CP 500(IB)/MB/2019 was filed by the respondent no. 3 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC") before the learned National Company Law Tribunal, Mumbai Bench (hereinafter "NCLT") for initiating corporate insolvency resolution process (hereinafter "CIRP") against the petitioner. The said application was admitted by the learned NCLT vide order dated 10th October, 2019.
8. Thereafter, on 27th November, 2020, the respondent no. 2 filed a complaint bearing complaint no. Nzo/Vig/14/2020-21 with the respondent no. 1 against the petitioner, its erstwhile directors and guarantors. The complaint, inter alia, stated that the petitioner and its directors/guarantors defrauded the consortium of six banks by availing the term loan, working capital facility and other non-fund-based facilities to build an Integrated Cane Processing Plant having manufacturing facility for sugar, ethanol and green power. As per the complaint, the last sanction/documents executed by consortium of lenders which was led by UCO Bank was as far back as in the year 2015 and the alleged fraud was reported by the respondent no. 2 to RBI on 11th May, 2020. Further, the complaint was based on the forensic audit conducted by one GD Apte & Co. for a period of 1st April, 2011 to 31st March, 2017.
9. Pursuant to the above, on 7th February, 2023, an FIR was registered at Police Station-BS&FB, Delhi against the petitioner and its directors/management/guarantors for the offences punishable under Section 120B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

10. Subsequently, on 17th February, 2023, the learned NCLT approved the resolution plan of one M/s Six Sigma Investment Fund.

11. Hence, the present petition has been filed seeking quashing of the aforesaid FIR to the extent of the petitioner.

PLEADINGS BEFORE THIS COURT

12. The petitioner has sought quashing of the impugned FIR on the following grounds:

"...A BECAUSE the Complaint and FIR, to the extent of implication of the Petitioner is totally illegal, arbitrary and bad in the eyes of law and therefore, the same deserve to be quashed.

B. BECAUSE a bare perusal of the Complaint and FIR does not disclose any act of the Petitioner or its participation in commission of the alleged crime. In this regard, the Petitioner seeks to rely on the observations of the Hon'ble Supreme Court in State of Haryana and Others v. Bhajan Lal and Other, 1992 Suppl. (1) 335 wherein the Hon'ble Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein power under Section 482 of the CrPC ought to be exercised. In particular, the Hon'ble Supreme Court, among others, held as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-

cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis supplied) C.BECAUSE admittedly the purported fraud is alleged to have been committed by the erstwhile directors and management of the Petitioner. A perusal of Complaint filed by Respondent No. 3 would indicate that:

a) The complaint pertains to the dealings between the Petitioner and the Complainant since November, 2008;

b) The credit facilities were availed in August, 2008;

c) On 30.09.2015, the last credit facilities sanctioned/documents were executed by the consortium of lenders which was led by UCO Bank;

d) On 31.10.2017, the account of the Petitioner was declared an NPA by UCO Bank;

(v) Forensic audit was conducted for a period of 01.04.2011 to 31.03.2017 which purportedly revealed that funds were diverted;

e) Instances indicating the purported violations, as highlighted in the complaint, were committed in Financial Years such as 2013-2014, 2014-2015, 2016-2017; and (vii) On 11.05.2020, the bank reported the aforesaid account of the Petitioner as fraud to RBI basis the aforesaid forensic report, which was submitted on 31.10.2019.

It is therefore submitted that a perusal of the Complaint would indicate that the alleged fraud was committed approximately from a period of 2008 to 2015 i.e., the period before the new management had taken over and became the new Directors of the Petitioner Company.

D.BECAUSE the Corporate Debtor (i.e., the Petitioner company herein) cannot be prosecuted for the alleged offences committed by the erstwhile Management and Directors of the Petitioner from the date the Resolution Plan has been approved by the Tribunal under Section 31 of IBC if the

Resolution Plan results in the change of management or control of the Corporate Debtor, subject to certain conditions.

Moreover, Section 32A of IBC grants immunity to the Corporate Debtor, even if it is found that there was any misconduct in the affairs of the Corporate Debtor prior to the commencement of CIRP.

For the sake of clarity, the relevant portions of S.32A of IBC is extracted hereunder:

"32A. Liability for prior offences, etc.-

1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:."

E. BECAUSE, the Ld. Tribunal accepted the Resolution Plan of Six Sigma Investment Fund vide order dated 17.02.2023. Accordingly, the Corporate Debtor (i.e., the Petitioner herein), which has been taken over by the Resolution Applicant, will be immune from any prosecution or punishment in relation to the same and investigation, if any, with respect to the same will have no bearing on the Resolution Applicant.

In this regard, the Petitioner seeks to place reliance on the following observations of the Hon'ble Supreme Court in *Ebix Singapore Private Ltd. v. Committee of Creditors of Educomp Solutions Limited & Anr.*, 2021 SCC OnLine SC 707:

"199. Ebix was responsible for conducting their own due diligence of Educomp and could not use that as a reason to revise/modify their approved resolution plan. In any

event, Section 32-A IBC grants immunity to the corporate debtor for offences committed prior to the commencement of CIRP and it cannot be prosecuted for such offences from the date the resolution plan has been approved by the adjudicating authority under Section 31, if the resolution plan results in a change of management or control of the corporate debtor subject to certain conditions. ...

Thus, in any case even if it is found that there was any misconduct in the affairs of Educomp prior the commencement of the CIRP, Ebix will be immune from any prosecution or punishment in relation to the same. The submission that Ebix has been placed in a prejudicial position due to the initiation of investigation into the affairs of Educomp by CBI and SFIO is nothing but a red herring since such investigations have no bearing on Ebix...."

F.BECAUSE the Section 32A of IBC protects the Corporate Debtor (Petitioner herein) and leads to extinguishment of criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management. In this regard, the Petitioner seeks to rely on the observations of the Hon'ble Supreme Court in *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd.*, 2023 SCC OnLine SC 266 wherein, the Hon'ble Supreme Court, among others, terminated the criminal proceedings under Section 138 of the Negotiable Instrument Act, 1881 against the Corporate Debtor, as the same was taken over by the Successful Resolution Applicant. In particular, the Hon'ble Court, among others, held as under:

"64. In *P. Mohanraj* (supra), this Court in clear terms held that Section 32A only protects the corporate debtor and not the signatories/directors etc.

65. While dealing with the issue of Section 14, IBC, this Court had the occasion to deal in detail with Section 32A also. The 2nd proviso to Section 32A(1) is a complete answer to the issue in question. The said provision is discussed in detail from Paras 39-43 in *P. Mohanraj*'s case. Paras 39 to 43 read thus:

"39. The *raison d'être* for the enactment of Section 32- A has been stated by the Report of the Insolvency Law Committee of February 2020, which is as follows: 17.6. Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liability must be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the

time of or any time following the commission of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29-A. [For example, where the exemption under Section 240-A is applicable.] ***

67. Thus, Section 32A broadly leads to:

a. Extinguishment of the criminal liability of the corporate debtor, if the control of the corporate debtor goes in the hands of the new management which is different from the original old management.

107. I may draw my final conclusions as under:

(a) After passing of the resolution plan under Section 31 of the IBC by the adjudicating authority & in the light of the provisions of Section 32A of the IBC, the criminal proceedings under Section 138 of the NI Act will stand terminated only in relation to the corporate debtor if the same is taken over by a new management...."

G.BECAUSE the Hon'ble National Company Law Appellate Tribunal (NCLAT) in JSW Steel Limited v. Mahender Kumar Khandelwal & Ors., Company Appeal (AT) (Insolvency) No. 957 of 2019 held the attachment of assets of Corporate Debtor by the Enforcement Directorate to be illegal and without jurisdiction. While doing so, the Hon'ble Tribunal took note of the following submissions made, on Affidavit, by the Ministry of Corporate Affairs:

"5. It is submitted that if any Corporate Debtor is undergoing investigation by the Central Bureau of Investigation ("CBI"), Serious Fraud Investigation Office ("SFIO") and/ or the Directorate of Enforcement ("ED"), such investigations are separate and independent of the Corporate Insolvency Resolution Process ("CIR Process") under the IBC and both can run simultaneously and independent of each other. It is further submitted that the erstwhile management of a company would be held responsible for the crimes, if any, committed under their regime and the new management taking over the company after going through the IBC process cannot be held responsible for the acts of omission and commission of the previous management. In other words, no criminal liability can be fixed on the successful Resolution Applicant or its officials.

6) In so far as the corporate debtor or its assets are concerned, after the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan.

7. ... The purpose and scheme of the CIR process is to hand over the company of the corporate debtor to a bona fide new resolution applicant. Any threat of attachment of the assets of the corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for

wrong doing of the previous management will defeat the very purpose and scheme of CIR process, which inter-alia includes resolution of insolvency and revival of the company, and the efforts of the bank to realise dues from their NPAs would get derailed.

8) In light of the above, it is respectfully submitted that the ED while conducting investigation under PMLA is free to deal with or attach the personal assets of the erstwhile promoters and other accused Company Appeal (AT) (Insol.) Nos. 957, 1034, 1035, 1055, 1074, 1126, 1461 of 2019 persons, acquired through crime proceeds and not the assets of the Corporate Debtor which have been financed by creditors and acquired by a bona fide third party Resolution Applicant through the statutory process supervised and approved by the Adjudicating Authority under the IBC.

(emphasis supplied) H.BECAUSE Hon'ble Supreme Court in Manish Kumar vs. Union of India, 2021 SCC OnLine SC 30, while dealing with the challenge to constitutional validity of S.32A of IBC, was pleased to, among others, observe as under:

"257.... Having regard to the object of the Code, the experience of working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate..."

I.BECAUSE Section 32A of IBC grants immunity to the Corporate Debtor (after the approval of the Resolution Plan) from any offences committed by the Corporate Debtor, prior to the commencement of CRIP. In this regard, the Petitioner seeks to place reliance on the Statement of Objects of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 whereby Section 32A was incorporated in IBC. It, among others, states that "A need was felt to to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions"

J.BECAUSE the FIR and Complaint are liable to be quashed as it does not disclose any allegations against the new management/directors of the Corporate Debtor/ Petitioner herein. In this regard, the Petitioner seeks to place reliance on the observations of the Hon'ble High Court of Bombay in Dewan Housing Finance Corporation Limited v. Union of India, 2021 SCC OnLine Bom 3926 wherein the Hon'ble Court quashed the order declining to discharge the Corporate Debtor from a CBI case and permitting prosecution of the Corporate Debtor. In particular, the following observations may be of relevance:

"17. Facts of the case and in particular subsequent events (stated above), has indisputably established, change in management of a Corporate Debtor..."

20. Herein, subsequent events indisputably caused change in management and control of Corporate Debtor. The immunities sought by the Corporate Debtor though conditional; yet all these conditions have been fulfilled and satisfied; viz (i) Resolution Plan in regard to Corporate Debtor has been approved by the Adjudicating Authority under Section 31 IBC. (ii) Resolution Plan approved caused and resulted in change in management of Corporate Debtor. (iii) change in management is in favour of persons who were not related to party of Corporate Debtor.

21. Thus, in my view, immunities under 32A of IBC, cannot be denied to Corporate Debtor. 22. For these reasons, I hold that, the petitioner-DHFL, stands discharged from the CBI Special Case No. 830 of 2021 pending before the CBI Cases Sessions Court, Mumbai."

K.BECAUSE the forensic audit report, which forms the very basis of the Complaint filed against the Petitioner and subsequent registration of FIR, was never shown to the Petitioner, its directors/management. Resultantly, the Petitioner was never given an opportunity to submit a representation before classifying its account as fraud. It is therefore submitted that classification of fraud, based on the forensic audit report, by the Respondent Bank is in violation of the Principles of Natural Justice. In this regard, the Petitioner seeks to rely on the following observations passed by the Hon'ble Supreme Court in State Bank of India & Ors. v. Rajesh Agarwal & Ors. , Civil Appeal. No. 7300 of 2022:

"79. ... Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem.

81.The conclusions are summarized below:

...

(v) The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to

the borrowers before classifying their account as fraud; vi. The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order..."

L. BECAUSE it is respectfully submitted that the FIR is liable to quashed as it lacks territorial jurisdiction as all material and integral causes of action lie in the State of Maharashtra. It is submitted that the Petitioner conducts its affairs in the State of Maharashtra; the purported fraud is with respect to the affairs and functioning of the Petitioner company in State of Maharashtra; the Respondent bank sanctioned loan for activities of the Petitioner carried out in the State of Maharashtra; and all integral transactions on the basis of which the alleged fraud/forensic audit report and registration of FIR are concerned, arises in the State of Maharashtra.

M. BECAUSE the FIR and the complaint ought to be quashed as it is being used as a tool of harassing and victimizing the Petitioner company and its new management and director as they have not been involved in any offence muchless the offences punishable under aforesaid sections. It is respectfully submitted that the Respondents have registered the FIR by abusing their official position which is quite apparent and evident from the perusal of the Complaint and FIR.."

13. The respondent/CBI has filed its reply opposing the present petition on following grounds:

"..4. That in reply to the averments made in Para-7 (L) of the petition, it is submitted that as per the RBI Guidelines,"

All cases involving more than Rs.25 crore be forwarded to Banking Security and Brand. Cell of the respective centres, which is specialized cell of the Economic Offences Wing of the CBI for major bank fraud cases'. In the instant matter, case is registered on the basis of complaint of UCO Bank as Lead Bank of Consortium in the Banking Security Fraud Branch, New Delhi and there is no lack of territorial jurisdiction as CBI is a central agency.

5. That, in reply to the averments made in Para-7 (M) to (O') of the petition, it is submitted that CBI registered the case on the basis of complaint dated 27.11.2020 filed by the UCO Bank as lead bank on behalf of the consortium, which prima facie discloses the commission of offences punishable under relevant sections of IPC and PC Act. 1988. It is further submitted that it is alleged in the FIR that the fraud period is 2008 to 2017 and the company and its Directors, Guarantors during the relevant period and other unknown persons, are responsible for doing fraud. It is also submitted that FIR is just a document by which process of law comes into motion. The allegations mentioned in the FIR are not the conclusion of investigation. Further, investigation of any case is not to harass or victimize any innocent but to unearth the truth and to file all the evidences acquired/collected during investigation before the Court of Law. Therefore, the averments made in the corresponding paras are baseless and thus vehemently denied.

6. That the averments made in Para 8- 11 of the petition need no comments..."

14. Written submissions dated 15th November, 2024 and 4th November, 2024, filed by the petitioner and the respondent/CBI respectively is also available on record.

SUBMISSIONS (on behalf of the petitioner)

15. Mr. Mohit Mathur, learned senior counsel appearing on behalf of the petitioner submitted that the complaint and FIR is totally illegal, arbitrary and bad in the eyes of law, and therefore, the same is liable to be quashed to the extent of implication of the petitioner.

16. It is submitted that a bare perusal of the FIR reveals that the same does not disclose any act of the petitioner or its participation in commission of the alleged crime. In order to strengthen his arguments, learned senior counsel relies upon the judgment passed by the Hon'ble Supreme Court in State of Haryana & Ors. v. Bhajan Lal & Ors.¹, wherein, the Hon'ble Court has defined sufficiently channelized guidelines to give an exhaustive list of myriad kinds of cases, wherein, power under Section 482 of the CrPC ought to be exercised.

17. It is submitted that admittedly the purported fraud is alleged to have been committed by the erstwhile directors and management of the petitioner. It is therefore submitted that a perusal of the complaint would indicate that the alleged fraud was committed approximately from a period of 2008 to 2015, i.e., the period before the new management had taken over the petitioner company.

18. It is submitted that Section 32A of the IBC grants immunity to the Corporate Debtor (hereinafter "CD") (after the approval of the resolution plan) from any offences committed by the CD, prior to the commencement of CIRP. In this regard, the learned senior counsel for the petitioner placed reliance on the Statement of Objects of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, whereby, Section 32A was incorporated in the IBC. It, inter alia, states that "A need was felt to to provide immunity against prosecution of the corporate debtor and 1992. Suppl. (1) 335 action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions".

19. It is submitted that the CD i.e., the petitioner herein, cannot be prosecuted for the alleged offences committed by the erstwhile management and directors of the petitioner from the date the resolution plan has been approved by the learned NCLT under Section 31 of the IBC if the resolution plan results in the change of management or control of the CD, subject to certain conditions. Moreover, Section 32A of the IBC grants immunity to the CD, even if it is found that there was any misconduct in the affairs of the CD prior to the commencement of CIRP.

20. It is submitted that the learned NCLT accepted the resolution plan of M/s Six Sigma Investment Fund vide order dated 17th February, 2023. Accordingly, the CD, which has been taken over by the resolution applicant, will be immune from any prosecution or punishment in relation to the same and investigation, if any, with respect to the same will have no bearing on the resolution applicant. Reliance in this regard has been placed on paragraph no. 199 of the judgment passed by the

Hon ble Supreme Court in Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions 2.

21. It is submitted that Section 32A of the IBC protects the CD and leads to extinguishment of any criminal liability of the corporate debtor/petitioner, if the control of the said CD goes in the hands of the new management which is different from the original old management. In this regard, the learned senior counsel for the petitioner relies upon the observations of the Hon ble Supreme Court in Ajay Kumar 2021 SCC OnLine SC 707 Radheyshyam Goenka v. Tourism Finance Corpn. of India Ltd.³ wherein, the Hon ble Supreme Court terminated the criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the CD therein, as the same was taken over by the successful resolution applicant.

22. It is submitted that the forensic audit report, which forms the very basis of the complaint filed against the petitioner and subsequent registration of FIR, was never shown to the petitioner, its directors/management. Resultantly, the petitioner was never given an opportunity to submit a representation before classifying its account as fraud. It is therefore submitted that classification of fraud, based on the forensic audit report by the respondent bank is in violation of the principles of natural justice.

23. It is submitted that the FIR is liable to quashed as it lacks territorial jurisdiction as all material and integral causes of action lie in the State of Maharashtra. It is submitted that the petitioner conducts its affairs in the State of Maharashtra; the purported fraud is with respect to the affairs and functioning of the petitioner company in State of Maharashtra; the respondent bank sanctioned loan for activities of the petitioner carried out in the State of Maharashtra; and all integral transactions on the basis of which the alleged fraud/forensic audit report and registration of FIR are concerned, arises in the State of Maharashtra.

24. It is submitted that the FIR and the complaint ought to be quashed as it is being used as a tool of harassing and victimizing the petitioner company and its new management and director as they have not been (2023) 10 SCC 545 involved in any offence much less the offences punishable under aforesaid sections. It is submitted that the respondents have registered the FIR by abusing their official position which is quite apparent and evident from the perusal of the Complaint and FIR.

25. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.

(on behalf of the respondent/CBI)

26. Per Contra, Mr. Rajesh Kumar, learned SPP appearing on behalf of the respondent CBI vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

27. It is submitted that from the bare perusal of Section 32A of the IBC, it is clear that the immunity is granted only against the prosecution but no immunity is granted against the continuance of the

investigation.

28. It is further submitted that as per the mandate of Section 32A of IBC, a duty is casted upon a CD to provide assistance and cooperation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

29. It is submitted that the case is at the investigation stage and the new management of the company is not cooperating in the investigation and is avoiding the notices/emails sent by respondent/CBI on 15th May, 2024, 20th May, 2024 and 28th August, 2024 which is against the spirit and mandate of section 32A (3) of the IBC.

30. It is submitted that the investigation conducted so far had already revealed that the accused company through erstwhile directors/ guarantors cheated the consortium of banks by way of submitting inflated stock and debtor statements, got issued LC s in favour of various paper companies, diverted substantial amount of loan funds through these paper companies, inflation of turnover in the balance sheets by rotating funds through paper companies etc.

31. It is submitted that the a Coordinate Bench of this Court, vide order dated 9th August, 2023, in WP (C) No. 10522/2023, has stayed the decision of declaring the petitioner s account as „fraud relying on the decision of the Hon ble Supreme Court in State Bank of India & Ors. v. Rajesh Agarwal & Ors.⁴. It can thus be said that if the complaint discloses any cognizable offence, the investigating agency is bound to register the FIR and investigate the same as per provisions laid down by law. It is further submitted that to claim immunity under section 32A of the IBC, the new management cannot be in anyway be the disguised avatar of the old management which can be ascertained only during the course of investigation.

32. It is submitted that although the powers of this Court under Section 482 of the CrPC (now Section 528 of the BNSS) is wide, however, the said powers are to be exercised cautiously and sparingly. To support his arguments, learned counsel relied upon the judgment of the Hon ble Supreme Court passed in Neeharika Infrastructure (P) Ltd. v. State of Maharashtra⁵.

2023 SCC OnLine SC 34 (2021) 19 SCC 401

33. Therefore, in view of the foregoing submissions, it is prayed that the instant petition is not a fit case to exercise the inherent powers and the petition may be dismissed.

ANALYSIS AND FINDINGS

34. This Court has heard the parties at length and perused the material available on record including the complaint, FIR, order dated 17 th February, 2023 vide which the resolution plan of the CD was approved by the learned NCLT, written submissions of the parties and the compilation of judgments relied upon by the parties.

35. Before delving into the facts of the matter in hand, at the threshold, this Court also deems it appropriate to discuss the extent of exercise of inherent powers of this Court under Section 482 of the CrPC (now Section 528 of the BNSS). The Hon ble Supreme Court, in Neeharika Infrastructure (Supra)6, reiterated the principles to be followed while quashing an FIR and held as under:

"10.3. Then comes the celebrated decision of this Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . In the said decision, this Court considered in detail the scope of the High Court powers under Section 482CrPC and/or Article 226 of the Constitution of India to quash the FIR and referred to several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at (2021) 19 SCC 401 their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18] , the following principles of law emerge:

13.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on. 13.4. The power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.) 13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

13.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

13.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

13.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court. 13.14. However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-

restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

14. Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482CrPC before it and in what circumstances the High Court would be justified is a further core question to be considered..."

36. Perusal of the aforesaid extracts shows that in terms of the settled position of law, an FIR can be quashed by the High Court - where the allegations made in the FIR do not prima facie constitute any offence or make out a case against the accused, where the uncontroverted allegations made in the FIR do not disclose the commission of any offence, where the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge etc.

37. Furthermore, the Hon ble Supreme Court has time and again reiterated that the power of quashing should be exercised sparingly with circumspection, in the "rarest of rare cases". Additionally, while examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

38. Thus, ordinarily, the Courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities, however, the inherent power of the Court is to secure the ends of justice or prevent the abuse of the process of law.

39. As per the law, to invoke its inherent jurisdiction under Section 482 of the CrPC, the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that the defence is based on sound, reasonable and indubitable facts, and that the material so produced is such as would clearly defeat or negate the allegations contained in the FIR without conducting trial. Further, as per *Rajiv Thapar v. Madan Lal Kapoor*⁷, the material placed on record has to be of such impeccable quality that would persuade a reasonable person to dismiss and condemn the accusations as false. Therefore, in order to meet the ends of justice, the High Court may be persuaded by its judicial conscience to prevent the abuse of the process of law.

40. Now adverting to the merits of the instant case.

41. It is the case of the petitioner that the impugned FIR is liable to be quashed on merits as the same cannot exist qua the petitioner in view of Section 32A of the IBC.

42. It has been contended that an application under Section 7 of the IBC was filed against the petitioner before the learned NCLT and vide order dated 17th February, 2023, the learned NCLT approved the resolution plan by virtue of which a new management has taken over the control of the petitioner company.

43. Taking support of the same, it has been argued by the learned senior counsel for the petitioner that since new management has taken over the control of the petitioner/CD, the petitioner company cannot be (2013) 3 SCC 330 prosecuted any more under the aforesaid FIR in light of Section 32A of the IBC which prohibits and bars prosecution of the corporate debtor for the offences which have been committed prior to the approval of the resolution plan.

44. In support of his arguments, the learned senior counsel appearing on behalf of the petitioner relied upon various judgments of the Hon ble Supreme Court as well as this Court to contend that the position of law has been settled and there is no dispute regarding the same. While relying upon the judgment passed by a Coordinate Bench of this Court in *Tata Steel BSL Ltd. & Anr. v. Union of India & Anr.*⁸, the learned senior counsel argued that in the said case, the complaint filed by the Serious Fraud Investigation Office was quashed. It has been submitted that in the said case as well, a new management of the petitioner company therein had taken over who were not connected with the previous management, and the Court, bearing in mind the provisions of Section 32A of the IBC, quashed the complaint impugned therein. Therefore, it has been prayed that the instant petition

may be allowed.

45. In rival submissions, it has been argued on behalf of the respondent CBI that on the basis of a complaint dated 27 th November, 2020 by the UCO Bank/respondent no. 3, an FIR was registered against the petitioner company, its directors/promoters/guarantors and several unknown public servants and private persons, thereby, alleging that the said accused persons, in pursuance of criminal conspiracy among themselves, have defrauded the consortium of six banks by way of cheating and committing criminal misconduct with the help of public servants and 2020 SCC OnLine Del 1985 have thereby caused wrongful pecuniary loss of Rs. 409.26 Crores to the complainant bank and other consortium banks.

46. It has been submitted that it is alleged in the FIR that the accused borrower company, i.e., M/s Gangakhed Sugar & Energy Ltd., in connivance with other accused persons, availed various credit facilities from the consortium led by the UCO Bank to the tune of Rs. 577.16 Crores in the form of term loan, working capital and other non-fund based facilities from the consortium led by the UCO Bank along with Union Bank of India, Bank of India, Oriental Bank of Commerce (merged with Punjab National Bank), IDBI Bank Ltd. and Indian Renewable Energy Development Agency to establish Integrated Cane Processing Plant with the manufacturing facilities of sugar, distillery and power. The financial facilities were sanctioned to the petitioner from the year 2008 to 2015. The account became irregular and was declared NPA on 31st January, 2017. In April 2018, the respondent no. 3 UCO Bank assigned the account for forensic audit and on the basis of the said forensic audit report dated 31st October, 2019, the petitioner's loan was declared fraud on 11th May, 2020.

47. It has been contended that the present petition is against the spirit and mandate of the law laid down in various judgments of the Hon'ble Supreme Court. Relying upon the judgment of Neeharika Infrastructure (Supra), it has been argued that the investigating agency has the statutory right and duty under the CrPC (now BNSS) to investigate into a cognizable offence and the Courts should not thwart any investigation into cognizable offences. Moreover, quashing of complaint/FIR should be an exception rather than an ordinary rule.

48. The learned counsel for the respondent CBI has further argued that in terms of *Satvinder Kaur v. State (Govt. of NCT of Delhi)*⁹, the legal position is well settled that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. It has been submitted that if the FIR, prima facie, discloses the commission of an offence, the Court should not normally stop the investigation as the same would amount to misuse of the process of law.

49. At last, it has been contended by the respondent CBI that from the bare perusal of Section 32A of the IBC, it is clear that the immunity is granted only against the prosecution but no immunity is granted against the continuance of the investigation. Further, as per the mandate of the said provision, a duty is cast upon a CD to provide assistance and cooperation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process. Additionally, it has also been argued that an FIR is just a document by which

process of law comes into motion and the allegations mentioned in the FIR are not the conclusion of investigation. Moreover, the case is at the stage of investigation and final report in the case would be filed in the Court as per law. Therefore, it has been prayed that the instant petition may be dismissed.

50. At the outset, it is noted that the petitioner's contentions with respect to quashing of the impugned FIR is based on multiple grounds which are as follows:

(1999) 8 SCC 728 a. Immunity from prosecution in terms of Section 32A of the IBC.

b. Lack of territorial jurisdiction.

c. No offence alleged in the FIR is made out against the petitioner.

51. Since the petitioner has contended that a statutory restriction is imposed upon the respondent CBI under Section 32A of the IBC to prosecute the petitioner as a ground for quashing of the impugned FIR, this Court deems it appropriate to adjudicate the present petition qua the said ground first.

52. Before advertng to the issue, relevant portion of Section 32A of the IBC is reproduced herein for reference:

"...[32A. Liability for prior offences, etc.--(1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not--

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not--

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.--For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.].."

53. Perusal of the aforesaid extracts shows that the liability of a corporate debtor for an offence committed prior to the commencement of the CIRP shall cease and the corporate debtor shall not be prosecuted for such an offence from the date of approval of the resolution plan by the NCLT under Section 31 of the IBC, if the resolution plan results in the change of the management or control of the CD to a person who was not a promoter or in the management or control of the CD or a related party or a person against whom the investigating agency has reason to believe that he had conspired or abetted the commission of the offence.

54. The said provision also states that if a prosecution had been instituted during the CIRP against such CD, it shall stand discharged from the date of approval of the resolution plan.

55. Further, every person who was a „designated partner” in terms of Limited Liability Partnership Act, 2008 or an „officer who is in default” under the Companies Act, 2013, or any person who was responsible to the CD and who was directly or indirectly involved in the commission of such offence, shall continue to be liable to be prosecuted and punished for such an offence committed by the CD, notwithstanding that the CD’s liability has ceased.

56. It is further stated in the said provision that no action shall be taken against the property of the CD in relation to an offence committed prior to the commencement of the CIRP where such property is covered under a resolution plan which has resulted in change in control of the CD.

57. Lastly, Section 32A(3) of the IBC states that notwithstanding the immunity given in this Section, the CD and any person who may be required to provide assistance shall extend all assistance and cooperation to any investigating authority investigating an offence committed prior to the commencement of the CIRP.

58. Insofar as the law is concerned, the above narrated statutory provisions are self explanatory and there is no need for any further discussion thereto. However, for the sake of better understanding, this Court has referred to the judgment of the Hon’ble Supreme Court passed in Ebix Singapore Pvt. Ltd. (Supra), wherein, the Hon’ble Court enunciated and discussed the principle, applicability and limitations of Section 32A of the IBC in terms of the immunity of a corporate debtor. The relevant paragraph of the same is as under:

“..199. Ebix was responsible for conducting their own due diligence of Educomp and could not use that as a reason to revise/modify their approved resolution plan. In any event, Section 32-A IBC grants immunity to the corporate debtor for offences committed prior to the commencement of CRIP and it cannot be prosecuted for such offences from the date the resolution plan has been approved by the adjudicating authority under Section 31, if the resolution plan results in a change of management or control of the corporate debtor subject to certain conditions. Section 32-A reads as follows:.....

Thus, in any case even if it is found that there was any misconduct in the affairs of Educomp prior the commencement of the CIRP, Ebix will be immune from any

prosecution or punishment in relation to the same. The submission that Ebix has been placed in a prejudicial position due to the initiation of investigation into the affairs of Educomp by CBI and SFIO is nothing but a red herring since such investigations have no bearing on Ebix..."

59. In the aforesaid judgment, Ebix Singapore Pvt. Ltd. submitted a resolution plan for Educomp Solutions Ltd., a CD undergoing the CIRP under the IBC. While dealing with various legal issues, the Hon ble Supreme Court observed that Section 32A of the IBC was introduced to provide immunity to the CD and its assets from liabilities arising out of past offenses once the resolution plan is approved. It was also observed that the said provision ensures the clean slate principle, shielding the CD and its assets from past liabilities once a resolution plan is implemented. It was further clarified that this immunity is crucial for the successful implementation of resolution plans and encourages resolution applicants to participate in the CIRP.

60. Further, in Ajay Kumar Radheyshyam Goenka (Supra), the Hon ble Supreme Court while upholding the settled position of law observed that Section 32A of the IBC ensures that the corporate debtor is freed from the past liabilities under the approved resolution plan in the event the new control is with the person/management which is not related to the person/management related to the commission of such offence. However, while stating the effect of Section 32A of the IBC on the directors of the company, it was made clear by the Hon ble Court that the criminal liability of directors and officers of the concerned corporate debtor is not absolved and the IBC does not shield individuals from personal criminal liabilities under the Negotiable Instruments Act, 1881. The relevant paragraphs of the same are as under:

"...64.P. Mohanraj [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818] has harmoniously construed Section 32-A with Section 14 IBC so as to apply to Section 138 NI Act proceedings. Section 32-A(1) is very crucial and hence, is quoted below:.....

65. Section 32-A IBC has been upheld by this Court in Manish Kumar v. Union of India [Manish Kumar v. Union of India, (2021) 5 SCC 1 : (2021) 3 SCC (Civ) 50] . This Court has held that the said section does not permit the wrongdoer to get away. Thus, if the argument of allowing the signatory/Director to go scot-free after the approval of the resolution plan is accepted the same would run contrary to the legislative intent of Section 32-A which has been upheld by this Court as under : (SCC pp. 170-71, para 326) "326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32-A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the Code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are

allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the interim resolution professional and thereafter into the hands of the resolution professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision."

(emphasis supplied)

66. In P. Mohanraj [P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258 : (2021) 3 SCC (Civ) 427 : (2021) 2 SCC (Cri) 818] , this Court in clear terms held that Section 32-A only protects the corporate debtor and not the signatories/Directors, etc. The prosecution against the signatories/Directors would continue..."

61. Therefore, it is settled that once a company, against whom an FIR is registered, undergoes CIRP and a resolution plan gets duly approved by the NCLT, whereby, the control of the affairs of the concerned CD is taken over by a new management which is not related to the CD's erstwhile directors/promoters who are related to the allegations of commission of such offence, the said company's liability for an offence committed prior to the commencement of CIRP ceases and the concerned CD shall not be prosecuted for such an offence from the date the resolution plan has been approved.

62. This Court has taken into consideration the entire material placed on record and has discussed the settled position of law in order to understand the immunity granted to a corporate debtor taken over by a new management and the scope of inherent powers of this Court to quash an FIR.

63. In the instant case, it is an admitted position of fact that the impugned FIR pertains to the allegations of commission of fraud and diversion of funds by the petitioner and its erstwhile directors/promoters during the period 2008 to 2017 which is apparent from the bare reading of the complaint and FIR.

64. However, prior to the registration of the FIR in the year 2023, the petitioner company's CIRP commenced vide order dated 10th October, 2019 passed by the learned NCLT. Thereafter, during the pendency of the investigation in the said FIR, the resolution plan submitted by the resolution applicant namely M/s Six Sigma Investment Fund was approved vide order dated 17th February, 2023. The relevant extract from the order dated 17th February, 2023 is as follows:

"..6. ... The Resolution Plan submitted by Six Sigma Investment Funds is hereby approved. It shall become effective from this date and shall form part of this order. It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force is due, guarantors and other stakeholders involved in the Resolution Plan. ..."

65. It is to be noted that in order to invoke Section 32A of the IBC, this Court has to take the following points into consideration:

- a. The offence alleged against the CD has to be committed prior to the commencement of CIRP.
- b. The resolution plan of the company/accused/CD has been approved.
- c. The control of the affairs of the CD has been taken over by new management/resolution applicant. d. The resolution applicant is not the person or not related to the persons accused of committing such offence.

66. Therefore, keeping in mind the settled position of law, the admitted position of facts that the offences alleged in the complaint and the FIR pertain to the period 2008-2017, i.e., before the commencement of the CIRP; resolution plan has been approved by the learned NCLT and there has been no objection/appeal against the same; the respondent CBI has not objected or brought on record any contention to submit to the effect that the resolution applicant is related to the persons accused of commission of offences, this Court is of the view that there are cogent grounds to invoke Section 32A of the IBC.

67. This Court is of the view that the CD, i.e., the petitioner herein cannot be prosecuted for the alleged offences committed by the erstwhile management and directors of the petitioner from the date the resolution plan was approved by the learned NCLT under Section 31 of the IBC as the resolution plan has resulted in the change of management/control of the CD.

68. It has been ascertained that Section 32A of the IBC protects a CD and leads to extinguishment of any criminal liability of the CD if the control of the said CD goes in the hands of the new management which is different from the original/old management.

69. Thus, the petitioner company is duly entitled to the grant of immunity from any prosecution or punishment in relation to the impugned FIR and investigation thereto under Section 32A of the IBC. In light of the same, this Court finds merit in the instant petition and is of the considered view that the impugned FIR is liable to be quashed.

70. At last, this Court also deems it apposite to state that the present petition has been adjudicated only with respect to the contention of immunity from the prosecution of the CD/petitioner under

Section 32A of the IBC and has neither dealt with the issues on merits of the allegations levelled in the impugned FIR nor with the issue of territorial jurisdiction. CONCLUSION

71. Summarily stated, the observations made hereinabove reveal that in view of the undisputed fact that the CIRP in regard to the petitioner company commenced on 10th October, 2019 whereas the FIR was registered on 7th February, 2023 in regard to the alleged offences committed between the year 2008 to 2017, and that the resolution plan of the CD has been approved on 17th February, 2023 by virtue of which a new management has taken over the control of the petitioner/CD; any liability for such offences shall cease against the petitioner/CD and the petitioner cannot be prosecuted for the said offences as the same were committed prior to the approval of the resolution plan. Therefore, the impugned FIR is liable to be quashed qua the petitioner.

72. In light of the above discussions on facts and law, this Court is inclined to exercise its inherent powers under Section 482 of the CrPC (now Section 528 of the BNSS) and quash the impugned FIR. In view of the same, the instant petition is allowed and the FIR No. RC074023E0001, dated 7th February, 2023, registered at Police Station - BS&FB, Delhi for the offences punishable under Section 120B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act and also the consequential proceedings emanating therefrom are quashed with respect to the petitioner herein (i.e., accused no.1).

73. It is made clear that this Court has not restricted the learned Trial Court from proceeding further with the matter against the other accused persons. The aforesaid direction of quashing is restricted only to the petitioner/corporate debtor and not to its erstwhile directors/guarantors who are accused in the instant FIR.

74. As per the statutory requirement, it is made clear that the petitioner shall, in terms of provisions of Section 32A(3) of the IBC shall assist the concerned investigating agency for the purpose of investigation, if any required, in accordance with the law. However, the same shall not be taken as an expression of this Court to prosecute the petitioner at any given stage.

75. It is further made clear that this Court has not gone into merits of the allegations made in the FIR.

76. Accordingly, the instant petition stands disposed of along with the pending applications, if any.

77. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH) JUDGE DECEMBER 23, 2024 na/RYP/av Click here to check corrigendum, if any