Srei Infrastructure Finance Limited vs State Of Tripura Represented By ... on 25 September, 2024

Author: Arindam Lodh

Bench: Arindam Lodh

HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 260 of 2024

SREI Infrastructure Finance Limited, having its registered office at "Viswakarma", 86C, Topsia Road (South), Kolkata-700046 and its corporate office at Room No. 12 & 13, 6A, Kiran Shankar Roy Road, Kolkata - 700001; being represented by Mr. Sohan Kumar Jha being the Authorized Signatory as per resolution taken by Board of Directors dated 26.02.2024

..... Petitioner(s)

VERSUS

1. State of Tripura represented by Director, Urban Development Department, Government of Tripura, 5th Floor, UD Bhawan, Sakuntala Road, near Rabindra Bhawan, Agartala, Tripura (W) PIN: 799001.

2. Chief Engineer, Urban Development Department, Government of Tripura, 5th Floor, UD Bhawan, Sakuntala Road, near Rabindra Bhawan, Agartala, Tripura (W) PIN : 799001

..... Respondent(s)

For petitioner(s)	:	Mr. Jishnu Saha, Sr. Advocate Mr. RG Chakraborty, Advocate Ms Suprana Sardar, Advocate
For Respondent(s)	:	Mr. SS Dey, Advocate General Mr. Kohinoor N Bhattacharyya, GA Mr. Raju Datta, Advocate Ms. A Chakraborty, Advocate
Date of hearing	:	18.09.2024
Date of pronouncement	:	25.09.2024
Whether fit for reporting	:	YES

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT AND ORDER

This writ petition seeks quashing of the order dated 5 th October, 2023 issued by the respondents whereby the petitioner has been blacklisted for a period of three years and debarred from participating in the tender process for any work advertised by the Government of Tripura (Annexure-1 to the writ petition).

2. The order of blacklisting has been passed after approval of the resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 on 11th August, 2023 by the learned NCLT, Kolkata whereby the petitioner's management has been transferred to a new management. Earlier the petitioner was blacklisted vide order dated 6th March, 2023 and debarred from participating in any tender process for any work of the Government of Tripura. This was the subject matter of challenge in WP(C) No.271 of 2023 wherein this court vide order dated 29th May, 2023 quashed the blacklisting order dated 6th March, 2023. Thereafter, the impugned order of blacklisting has been passed.

3. The genesis of the dispute is the allotment of work for providing consultancy services for the Geographic Information System (GIS) based Master Plan Formulation for 20 cities in the State of Tripura under Tripura Town and Country Planning Act, 1975 as per the Request for Proposal issued on 23rd August, 2017 by the respondent.

4. As per the averments of the petitioner, the work was awarded after opening of price bids vide letter of acceptance dated 29 th November, 2018 for a sum of Rs.4,77,90,000/- (Rupees Four Crore Seventy Seven Lakh and Ninety Thousand only). The petitioner furnished a Performance Bank Guarantee of Rs. 95,58,000/- (Rupees Ninety Five Lakhs and Fifty Eight thousand only) on 14th December, 2018. Parties entered into an agreement on 7th January, 2019 wherein the petitioner was engaged to provide consultancy services for the above work. The petitioner was asked to complete the work within 345 days from the date of signing of the contract vide letter dated 8 th January, 2019. He submitted an inception report on 25th January, 2019. In the first meeting of the Consultancy Evaluation and Review Committee of the AMRUT sub-scheme for formulation of Master Plan held on 26th March, 2019 it was decided that the petitioner would finalize the planning areas of 20 towns. The first installment of consultancy fee was also recommended for release. Thereafter, the petitioner submitted the base map of the master plan for the city of Agartala and 19 towns in Tripura on 15 th November, 2019. A sum of Rs. 95,58,000/- (Rupees Ninety Five Lakhs and Fifty Eight thousand only) was sanctioned towards 20% of the consultancy fee on approval of the base map on 25th November, 2019. On 13th December, 2019 a cheque of Rs.84,11,040/- (Rupees Eighty Four Lakhs Eleven Thousand and Forty only) was issued in favour of the petitioner. The respondents granted extension of time for completion of the project on 21st December, 2019.

5. The respondents further issued a memorandum for sanction of Rs.9,58,443/- (Rupees Nine Lakhs Fifty Eight thousand Four hundred and Forty Three only) towards payment of income tax. The petitioner submitted the Differential Global Positioning System Survey Report for remaining three towns in Tripura on 5th February, 2020. On 7th February, 2020 the petitioner submitted the Revised Socio-Economic Report for 20 towns in the State of Tripura. On 17th February, 2020 it

submitted the Secondary Data Collection Report which included the crime report for the last three years, education data, tourism data and industry data for 20 cities in Tripura for the project of Preparation of GIS based Master plan for Agartala and 19 cities in Tripura.

6. On 24th March, 2020 a nationwide lockdown was imposed by the Central Government to restrict the spread of Novel Corona Virus. This, according to the petitioner, brought the entire system to a standstill. Petitioner sought extension of timeline vide letter dated 14 th August, 2020. The petitioner also informed that the planning area had increased by three-folds which is not as per the agreement and requested the respondent to increase the consultancy fee proportionately and also the timeline for the period on 25 th August, 2020.

7. On 24th December, 2020 the respondents granted time extension for completion of the project work till 30th June, 2021. Petitioner again sought extension of timeline vide letter dated 19th July, 2021. He submitted GIS data for Agartala & Khowai to the respondents on 4th August, 2021. The respondents further granted extension of time for completion of project till 31st December, 2021 vide letter dated 1st September, 2021. On 8th October, 2021 the petitioner was admitted into Corporate Insolvency Resolution Process (CIRP) by the National Company Law Tribunal, Kolkata Bench in CP (IB No. 295/KB/2021) under the Insolvency and Bankruptcy Code, 2016.

8. Further, correspondences ensued between the parties and the respondents provided time extension till 22nd July, 2022 vide letter dated 21st January, 2022. On 1st August, 2022 the respondents issued a communication to the petitioner granting extension of time regarding formulation of master plan for Agartala and 19 towns of Tripura up to 30th June, 2023. Thereafter, the Tripura Urban Planning and Development Authority (TUDA) vide letter dated 22nd September, 2022 expressed its dis-satisfaction with the progress and delay in the completion of project work despite extension of time granted to the petitioner. The petitioner replied on 22nd July, 2022.

9. On 15th December, 2022 a show cause notice was issued to the petitioner regarding termination of the contract under clause 2.9 of the Agreement. The petitioner furnished reply on 21st December, 2022. Again on 23rd December, 2022 the respondents issued another notice to the petitioner as to why punitive action be not taken against it. Thereafter, on 27th December, 2022 the bank performance guarantee of Rs. 95,58,000/- (Rupees Ninety Five Lakhs and Fifty Eight thousand only) submitted by the petitioner was forfeited by the respondents. Petitioner submitted his reply to the 2nd Show cause notice on 28th December, 2022 reiterating his stand in the reply dated 21st December, 2022.

10. On 6th March, 2023 the notice of termination was issued in view of clause 2.9.1(a), 2.9.1(b), 2.9.1(g) and 2.9.1(h) of the agreement dated 7 th January, 2019. The petitioner requested the respondents to withdraw the notice dated 14th March, 2023 vide letter dated 22nd March, 2023. Thereafter, the petitioner approached this court on 26th April, 2023 for quashing the letter dated 6th March, 2023 whereby the contract was terminated and the performance security of Rs. 95,58,000/- (Rupees Ninety Five Lakhs and Fifty Eight thousand only) was forfeited and also challenged the blacklisting and debarment of the petitioner.

11. This court vide order dated 29th May, 2023 passed in WP(C)271/2023 quashed the letter dated 6th March, 2023 in the following terms:

> "[6] Learned Advocate General submits that having regard to the limited issue at hand it would be proper that the matter may be remitted to the competent authority to take a fresh decision as regards the issue of blacklisting.
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> [7] We have considered the submissions of learned counsel for the parties and taken note of the limited gamut of facts in connection with the impugned order of blacklisting contained in the letter dated 06.03.2023 [Annexure-44]. It appears from a bare perusal of the two show-cause notices at Annexure-37 and Annexure-39 dated 15.12.2023 and dated 23.12.2022 that no notice in the eye of law had been issued upon the petitioner proposing to blacklist him and also indicating the proposed quantum of penalty of blacklisting. In this regard, it is apposite to quote the ratio rendered by the Apex Court in case of Gorkha Security Services versus Government (NCT of Delhi) and others reported in (2014) 9 SCC 105, paragraphs 21 and 22 of which are reproduced hereunder :
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> "21.The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the notice understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.
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> 22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the notice to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:
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> (i) The material/grounds to be stated which according to the department necessitates an action;
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> (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit. We may hasten to add that

> even if it is not specifically mentioned in the show- cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

[8] The position in law has been consistently followed thereafter by the Apex Court as held in case of Vetindia Pharmaceuticals Limited versus State of Uttar Pradesh and another reported in (2021) 1 SCC 804. Perusal of the impugned order also shows that there is no reference of any show-cause preceding the order of blacklisting neither any reference to consideration of any reply thereto by the petitioner as there was no show- cause notice for blacklisting. Therefore, order of blacklisting is not only vitiated for lack of compliance of principles of natural justice but also shows complete non-application of mind.

[9] As such, the impugned order of debarment and blacklisting as contained in the letter dated 06.03.2023 is quashed. However, the respondents are at liberty to take a fresh decision, in accordance with law, after a proper show-cause notice within a stipulated time. Let it be made clear that we have not made any comments on merits of the case. [10] The writ petition is allowed in the manner and to the extent indicated above.

Pending application(s), if any, also stands disposed of."

12. This court vide its order dated 15th May, 2023 passed in the same writ petition had clearly indicated that the issue of termination of agreement is not required to be gone into in writ jurisdiction as the petitioner has an alternative remedy through arbitration or before the competent Civil Court, more so, for the reason that the adjudication on the subject may involve determination on disputed questions of fact and evidence as may be required to be adduced by the rival parties.

13. Thereafter, vide letter dated 6th June, 2023 the petitioner invoked the arbitration clause No. 8.2 of the agreement letter dated 7th January, 2019 for reference of the dispute relating to invocation of Performance Bank Guarantee by the respondents of Rs. 95,58,000/- (Rupees Ninety Five Lakhs and Fifty Eight thousand only).

14. The respondents on 10th July, 2023 issued another show cause notice for blacklisting the petitioner for a period of three years. The petitioner submitted its reply vide letter dated 25th July, 2023 and requested for withdrawal of the show cause notice. Thereafter on 11th August, 2023 the learned NCLT, Kolkata approved the resolution plan of the National Asset Reconstruction Company Ltd. (hereinafter referred to as "NARCL") of the successful resolution applicant of the petitioner under Section 31 of the IBC. The respondents replied to the letter dated 25th July, 2023 of the petitioner. Further replies were given by the petitioner on 17 th August, 2023 reiterating its stand and refuting the allegations made in the letter dated 11th August, 2023. Finally, the impugned order was passed on 5th October, 2023 blacklisting the petitioner for a period of three years and debarring him from participating in any tender process for the works advertised by the Government of Tripura.

15. Thereafter, an Arbitral Tribunal was constituted on reference of the dispute raised by the petitioner. Petitioner had invoked the arbitration proceeding with a claim for damages due to illegal termination of the agreement and illegal invocation of the bank guarantee along with interest thereupon. However, after filing its claim statement it also sought quashing to the blacklisting order dated 5th October, 2023 and for restraining them from giving effect to the order of blacklisting till disposal of the arbitration proceedings. The learned Arbitral Tribunal by a majority of 2:1 dismissed the application filed under Section 17 of the Act of 1996 and held that the order dated 5th October, 2023 was outside the purview of the arbitration proceedings. Thereafter the present writ petition has been preferred.

16. The following grounds have been raised on behalf of the petitioner to challenge the order of blacklisting dated 5th October, 2023:

17. That with the approval of the resolution plan of the petitioner under Section 31 of the Insolvency and Bankruptcy Code, 2016, all prior liabilities of the petitioner, apart from those provided for in the resolution plan, stood extinguished. The mandate of Section 31 of the Code is aimed at enabling the insolvent corporate debtor to start with a clean slate under the new management. Therefore, there could be no basis or justification for blacklisting the petitioner after approval of the resolution plan transferring the management of the petitioner to an entirely new entity. Reliance has been placed on the case of Ghanashyam Mishra & Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657, paragraphs 61, 65, 93 and 102 in order to submit that one of the dominant objects of the I&B Code is for revival of the corporate debtor in order to make it a growing concern. The further case of the petitioner is that Section 32A of the Code was introduced with an objective that 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 and control of the corporate debtor to a person who was not a promoter or in the management and control of the corporate debtor. The object behind introducing Section 32A in the Code of 2016 has been referred to in the case of Manish Kumar Vs. Union of India & Anr., (2021) 5 SCC 1 paragraphs 317 to 329.

17.1. It is submitted that sub-section (2) of Section 32A declares a bar against taking any action against the property of the corporate debtor. Section 3(27) of the Code defines "property" as including money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest including present or future or vested or contingent interest arising out of, or incidental to, property. Therefore, it is the submission of the petitioner that property of the corporate debtor would include its goodwill and reputation in the play and that any decision against such property of the corporate debtor will be barred. Reliance is also placed on the decision of P. Mohanraj & Ors., Vs Shah Brothers Ispat Private Ltd., (2021) 6 SCC 258, paragraph 41 in support of the aforesaid submission. The new management should be allowed to make a clean break with the past and start with a clean slate as the amended provision has the objective of value maximization and the need to obviate lower recoveries to creditors as a result of corporate debtor continuing to be exposed to criminal liability. It is the submission of the petitioner

that the provisions of this nature should receive purposive construction. Reliance is placed on the case of Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited, (2021) 3 SCC 224, paragraph 31 while interpreting Section 10A of the Code. 17.2 Based upon the aforesaid decision, it is submitted that when a resolution plan takes off and the corporate debtor is brought back into the economic main stream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme, workers are paid, the creditors in the long run will be repaid in full and the shareholders/investors are able to maximize their investment. Petitioner has also referred to the decision in Bank of Baroda & Anr. Vs. MBL Infrastructures Limited & Anr, (2022) 5 SCC 661, paragraph 43 on the purposive interpretation of Section 29A(h) of the Code where the Apex Court has once again relied on the observations in the case of Swiss Ribbons (P) Ltd. Vs. Union of India, (2019) 4 SCC 17. Further reliance has also been placed on the case of Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited & Ors., (2020) 8 SCC 401, paragraphs 28.4, 28.5 and 50.1 on the purposive interpretation of Section 43 of the Code.

18. Based on these submissions, it is urged that the blacklisting order dated 5th October, 2023 if not interfered shall have the effect of impairing the right of the new management of the petitioner to carry on the petitioner's business on a clean slate under the resolution plan. Reference is also made to Section 238 of the Code of 2016 which provides that the provisions of this Code will override other laws.

19. Learned Senior counsel for the petitioner has assailed the order of blacklisting based on the doctrine of proportionality. It has been argued that an order of blacklisting has civil consequences and operates to the prejudice of a commercial person not only in praesenti but also puts a taint which attaches far beyond and may well spell the death knell of the organization/Institution for all times to come. Reliance has been placed on the case of Vetindia pharmaceuticals Ltd. Vs. State of Uttar Pradesh & Anr, (2021) 1 SCC 804, in particular paragraph 12 thereof, to submit that a simplicitor breach of contract cannot justify an order of blacklisting. Reference has also been made to the case of JP Iscon Pvt. Ltd. Vs. State of Gujarat MANU/GJ/1647/2021, paragraph 95 to 99, where the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal & Anr., (1975) 1 SCC 70 has been also relied upon. The Gujarat High Court has held that if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations that is disputed, per se, does not invite any such punitive action.

20. Petitioner has also referred to similar observations made in the case of Medico Remedies Limited through its Director Harsu Mehta Vs. Municipal Corporation of Greater Mumbai and Others, 2020 SCC OnLine Bom 4498, paragraph 25. Petitioner has relied upon a recent decision of the Apex Court in The Blue Dreamz Advertising Pvt. Ltd. & Anr. Vs. Kolkata Municipal Corporation & Ors., 2024 SCC OnLine SC 1896 and submitted that where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to as it tantamounts to civil death for a

certain number of years inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.

21. It is the case of the petitioner that the respondent while passing the blacklisting order on 5th October, 2023 did not take into account that petitioner had been admitted into insolvency on 8 th October, 2021 and its insolvency has been resolved by approval of the resolution plan of the successful resolution applicant on 11th August, 2023 which not only extinguished all liability of the petitioner apart from those provided for in the resolution plan, but also resulted in change of the management of the petitioner in its entirety. The respondents have failed to take into account the fact that the object of extinguishing all liability of the petitioner, apart from those provided for in the resolution plan, and the object of changing the management in its entirety, was to allow the petitioner, under the new management, to start on a clean slate. The impugned order is clearly arbitrary and passed mechanically without any application of mind. It is also in violation of the principles of natural justice as the respondents did not deal with the petitioner's contention in response to the notice of blacklisting dated 10th July, 2023. Petitioner had duly submitted its reply in detail on 25 th July, 2023 and thereafter again on 11th August, 2023 and 17th August, 2023. The order of blacklisting is also bad as there is no finding that the petitioner's conduct was so deviant that it warranted the imposition of the penalty of blacklisting of the petitioner. Further, the respondent proceeded to pass the order of blacklisting notwithstanding the fact that the contract itself provided for furnishing of performance security by the petitioner, which the respondent had already invoked and encashed.

22. In the aforesaid factual background and legal submissions, learned senior counsel Mr. Jishnu Saha has prayed that the order of blacklisting deserves to be quashed as otherwise it would defeat the very object of the revival of the company under the resolution plan approved by the NCLT, Kolkata under Section 31 of the I&B Code, 2016. The order also suffers on grounds of proportionality and violation of principles of natural justice as the grounds raised in the petitioner's reply have not been dealt with.

23. The State has been represented by Mr. SS Dey, learned Advocate General. It is contended that the order of blacklisting is liable to be upheld on the following grounds:

> (i) The agreement was signed between the parties on 7th January, 2019 with full consent of the parties agreeing to all the terms and conditions to complete the work in all respects.

Respondent No.2 extended time on several occasions for completion of the works but each time the duration lapsed. The petitioner never supplied the relevant inputs and deliverables to the respondent No.2.

(ii) The base maps provided by the petitioner failed to meet with the reality when ground checking was done by the respondent No.2 as the base maps did not concede with the satellite images

received from NRSC and the said deviations were not even considered and there were other defects with the base maps submitted by the writ petitioners. The digitization work done by the petitioner was found to be very poor and not considerable, many of the features visible in the satellite images were not digitized at all or wrongly digitized, the draft base maps did not contain the revenue plot boundaries/settlement survey sheets and the classification and attached attributes were found to be not matching with ground reality.

(iii) Similarly, the socio-economic survey submitted by the writ petitioner was not acceptable by the respondent No.2 as the estimated error in the survey was found to be about 74%. An amount of Rs.95,58,000/- was accorded to the petitioner towards the payment of 20% consultancy fee for preparation of the Master Plan of 20 towns of Tripura vide letter dated 25 th November, 2019 and in addition to that, a cheque amounting to Rs.84,11,040/- was also issued in favour of the petitioner but only 1-2% of the work was completed by the petitioner and the documents submitted by the writ petitioner in support of their bill were also found to have errors both in presentation as well as in methodology.

(iv) In the CERC review meeting dated 03.11.2020 which was conducted in presence of the officials of the respondents and the representatives of the writ petitioner it was specifically observed that the progress of the project after 22 months from the date of work order was negligible.

(v) Similarly in the review meting dated 08.12.2020 it was specifically observed that the manpower deployment schedule submitted by the consultant was very sketchy and the deployment period was not clearly mentioned. On-site deployment of experts was negligible looking at the type of work in 20 cities at a time. No approval was sought from the respondents before engaging sub-consultant/Technical professional which attracted Clause No.3.6 of General Conditions of Contract.

(vi) The petitioner through its letter dated 17.11.2022 expressed their inability to carry out the project which is not a formal way to terminate the agreement from their part. The petitioner cannot simply walk away from the execution of the work putting the respondent in uncertainty.

(vii) The writ petitioner company made false statement and did not disclose the fact that CIRP Order was passed on 08.10.2021. Rather, on 17.11.2022 they expressed their inability to further carry on the work after more than 1(one) year from the date of passing of CIRP Order dated 08.10.2021, which showed that the petitioner did not have the intention to execute the work. This hampered the vision and work program of the Government of Tripura to utilize the proposed master plan for different government works for the benefit of the people.

24. Therefore, failure of the petitioner to execute the work and its unprofessional conduct made it liable to be blacklisted and debarred for a period of three years. The impugned order of blacklisting has been passed after a proper show cause asking the writ petitioner as to why it should not be blacklisted for three years and debarred from participating in any such process under the government of Tripura. Only upon consideration of the petitioner's reply on 25th July, 2023, the impugned order dated 5 th October, 2023 has been passed debarring the petitioner from

participating in any tender process under the Government of Tripura for a period of three years. It is submitted that long before the resolution plan was approved by the National Company Law Tribunal, Kolkata vide order dated 11th August, 2023 the process for blacklisting was initiated by the respondent, i.e. vide show cause notice dated 10th July, 2023. The petitioner even did not inform the respondent No.2 regarding the passing of the order dated 11th August, 2023. The blacklisting order is not in contravention of the judgment passed by the NCLT, Kolkata which has been upheld by the Apex Court.

25. It has been argued that both proceedings are independent and separate in nature. Petitioner is vaguely trying to connect two separate issues. There is no bar on the respondent in passing the order of blacklisting on account of approval of the resolution plan by the learned NCLT vide order dated 11th August, 2023.

26. It is submitted that the petitioner has approached the Arbitral Tribunal against the order of blacklisting to which written objection was submitted by the respondents. The learned Arbitral Tribunal has rejected the application of the petitioner by a reasoned order dated 17 th February, 2024. Therefore, there is no right in favour of the petitioner to approach this court challenging the blacklisting order.

27. It is the case of the respondents that the Supreme Court has recognized the power of debarment/blacklisting as an effective method of disciplining deviant suppliers/contractors who have committed acts of omission and commission, in the facts and circumstances of the case.

28. Respondents have placed reliance on the case of State of Odisha & Ors. Vs. Panda Infraproject Limited, (2022) 4 SCC 706 in support of the proposition that the impugned order of blacklisting does not suffer from any violation of principles of natural justice as it has been passed after due show cause notice upon the petitioner. Reliance is also placed on the case of Deep Industries Ltd. Vs. ONGC & Anr., (2020) 15 SCC 706 wherein the Apex Court has observed that the High Court under Article 226 and 227 should be extremely circumspect in interfering with proceedings/orders passed under the Arbitration and Conciliation Act, 1996 and it should interfere only in cases where the orders are patently lacking in inherent jurisdiction. Therefore, once the Arbitral Tribunal has refused to interfere in the blacklisting order this court should not exercise its extra ordinary jurisdiction under Article 226 of the constitution of India.

29. The respondents have also placed reliance on the case of Sukanya Holdings (P) Ltd. Vs. Jayesh H Pandya & Others, (2003) 5 SCC 531, para 16 thereof in order to submit that the splitting of the cause of action on the part of the petitioner by approaching this court against the order of blacklisting is not proper. Reliance is also placed on the case of Rashtriya Ispat Nigam limited & Anr Vs. M/S Verma Transport Company, (2006) 7 SCC 275 para 42 thereof and Sukanya Holdings (P) Ltd.(supra), particularly paragraphs 16 & 17 in support of their submission that the power to blacklist is independent of the power to recover dues. Mere pendency of such proceedings would not bar the exercise of power to blacklist. Permitting such a challenge to be made by in an independent proceeding would only lead to multiplicity of proceedings and conflicting views which are to be best avoided.

30. Learned counsel for the respondents has distinguished the judgments relied upon by the petitioner. While referring to the case of Ghanashyam Mishra & Sons Pvt. Ltd. (supra), it is submitted that the respondents have not initiated any claim against the petitioner and the respondents are not creditors of the petitioner firm. Moreover, the petitioner with mala fide intentions did not inform that they are undergoing resolution process. Therefore, the decision is not applicable. Further, in context of the decision in Vetindia pharmaceuticals Ltd. (supra) relied upon by the petitioner, it is submitted that the impugned order of blacklisting has been passed after due show cause notice upon the petitioner and consideration of his reply. Therefore, this case is also not applicable to the present case. The respondents have further distinguished the case of JP Iscon Pvt. Ltd. (supra) on the ground that the petitioner has not only committed breach of contract but suppressed information about the ongoing resolution process and by supplying faulty base maps whereas they have received more than 20% of the amount in advance but completed only 1.12% of the work even after repeated extension of time.

31. Respondents further contend that the decision in the case of Medico Remedies Limited (supra) rendered by the Bombay High Court does not help the petitioner's case as no liquidated damages have been charged from the petitioner. He has only been blacklisted after following the due process of law. According to the respondents, the case of The Blue Dreamz Advertising Pvt. Ltd. (supra) is also not applicable to the case of the present petitioner as the present case is not of ordinary breach of contract. The order of blacklisting was passed against the petitioner as he was found to be not reliable and trustworthy in the context of a commercial transaction. The respondents have suffered huge financial loss and dereliction in executing the work on the part of the petitioner which deserves exemplary action.

32. Based on these submissions, the respondents have opposed the challenge to the impugned order of blacklisting.

33. On the part of the State, it has also been argued by the learned Advocate General that the revival of the company does not exclude or protect the petitioner from the civil consequences arising from the breach of promise resulting in delay in execution of the work despite several extensions by the petitioner. It is the case of the respondents that while the I&B Code, 2016 provides for revival of the company and waiver from civil liabilities and also prosecution under Section 32A of the I&B Code, the legislature has consciously not provided for waiver of the imposition of penalty of blacklisting or debarment upon an agency like the petitioner for gross mis- conduct and also suppression of facts relating to the NCLT proceedings before the respondents. The order dated 8th October, 2021 passed by the learned NCLT, Kolkata whereby the petitioner was admitted to corporate insolvency resolution process was not even brought to the notice of the respondents.

34. After the earlier order of blacklisting was set aside by this court on the ground of violation of principles of natural justice, the respondents have complied with the requirements of a proper show cause notice containing the ingredients of charge or misconduct and also the proposed penalty upon the petitioner and only after proper consideration of the reply of the petitioner, imposed the penalty of blacklisting which is proportionate to the established misconduct on the part of the petitioner in the execution of the project. The entire process of town planning has suffered because of delay in

finalizing of the master plan due to the acts and omissions of the petitioner who was engaged for providing consultancy services for Geographic Information System for preparation of master plan for 20 cities in the State of Tripura.

35. Both the sides have relied upon decisions on the effect of approval of the resolution plan for the revival of the Company under I&B Code and also on the issue as to the proportionality of the penalty imposed upon the petitioner.

36. We have heard learned counsel for the parties. Upon consideration of the rival submissions of the learned counsel for the parties and the materials placed from record and also the impugned order dated 5th October, 2023 whereby the petitioner has been blacklisted for a period of three years and further debarred from participating in any tender process for works advertised by the Government of Tripura, the following question arises for determination:

> Whether the order of blacklisting dated 5th October, 2023 is proper in the eye of law and on facts?

37. Upon consideration of the rival submission of the parties in the gamut of the facts and circumstances of the case, as noted above, we are of the considered view that the impugned order of blacklisting for a period of three years and debarment of the petitioner from participating in the future tender processes for any work advertised by the Government of Tripura cannot be held to be proper in the eye of law for the reasons recorded hereinafter.

38. The object of revival of a sick company on approval of the resolution plan by the NCLT is intended to provide a clean slate for the company to ensure that the new management makes a clean break from the past. The resolution plan of the successful resolution applicant has been approved under Section 31 of the I&B Code by the learned NCLT vide its order dated 11th August, 2023 which is Annexure-2 to the writ petition. It records that on the date of approval of the resolution plan by the adjudicating authority all such claims which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. It has referred to the decision of the Apex Court in Ghanashyam Mishra & Sons Pvt. Ltd (supra) wherein it has been held that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Govt. any State Govt. or any local authority, guarantors and other stakeholders. The Apex Court also held that all dues including the statutory dues owed to the Central Govt. any State govt. or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued.

39. However, waiver sought in relation to guarantors would not be allowed to operate in view of the judgment of the Apex Court in Lalit Kumar Jain Vs. Union on India & Ors., 2021 SCC OnLine SC 396 as sanction of a resolution plan and finality imparted to it by section 31 does not per se operate

as a discharge of the guarantor's liability. With respect to the relief of waivers sought for all inquiries, litigations, investigations and proceedings the same shall be granted strictly as per the section 32A of the code and the provisions of the law as may be applicable.

40. In case of non-compliance of the order or withdrawal of the resolution plan, the payments already made by the Resolution Applicant shall be liable for forfeiture. The moratorium imposed under Section 14 of the Code shall cease to have effect from the date of the approval of the resolution plan passed by the NCLT. In the present case, the erstwhile management of the corporate debtor i.e. the present company has been replaced by a new management.

41. In the case of Ghanashyam Mishra & Sons Pvt. Ltd (supra) the apex court held that one of dominant objects of the I&B Code is to see that an attempt has to be made for revival of the corporate debtor and make it a running concern. The scheme of the I&B Code is therefore to make an attempt by divesting the erstwhile management of its powers and vesting it in a professional agency to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. The moratorium ceases to operate under Section 14 once the adjudicating authority approves the resolution plan. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the corporate debtor is able to pay back its debts and get back on its feet. At paragraph 93 of the report, the Apex Court has again reiterated that the legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. The apex court held that one of the principal object of the I&B Code is to provide for revival of the corporate debtor and make it a growing concern.

42. In the case of Ghanashyam Mishra & Sons Pvt. Ltd (supra) the issues before the apex court were three-fold:

> "(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the I&B Code")?
>
> (ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/declaratory or substantive in nature?
>
> (iii) As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?"

43. The answer to the aforesaid questions has been provided in paragraph 102 which is extracted hereinunder:

"102. In the result, we answer the questions framed by us as under:

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

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

44. In answering these issues, the Apex Court observed that the dominant purpose of the Code is for providing revival of the corporate debtor and to make it a going concern. At paragraph 93 of the judgment, the Apex Court held as under:

"93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on- going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative

> intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable."

45. It is not in dispute that upon approval of the resolution plan by the NCLT vide order dated 11th August, 2023 (Annexure-2 to the writ petition) the erstwhile management of the company has been replaced by a new management. The entire allegation of the respondents is directed against the delay in execution of work on the part of the company represented through its erstwhile management. A Company, being a juristic person, is managed by a set of promoters/directors. In this context, it is also necessary to look into the provision of Section 32-A of the Code which provides protection from criminal prosecution to the corporate debtor.

46. Section 32A provides for protection from liability of prior offences of a corporate debtor, i.e. offences committed prior to the commencement of the corporate insolvency resolution plan, 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, notwithstanding anything to the contrary contained in this Code or any other law for the time being in force.

47. It provides that 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, and if the resolution plan results in the change in the management or control of the corporate debtor 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.

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.

48. Sub-section (2) of Section 32-A further provides that 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.

49. The explanation to this sub-section clarifies that 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. Sub-clause (ii) of this sub- section further provides that 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.

50. Section 32-A of the I&B Code was introduced w.e.f. 28th December, 2019 by Amendment Act 1 of 2020. The provisions of Section 31 and Section 32-A when read together in the light of the opinion of the apex Court rendered in the case of Ghanashyam Mishra & Sons Pvt. Ltd (supra) and in the case of Swiss Ribbons (P) Ltd. (supra) do give an insight that the entire purpose of the I&B Code is to ensure the revival of the corporate debtor upon approval of the resolution plan by the adjudicating authority in order to ensure a clean slate to the new management of the corporate debtor so that it leads to value maximization of the assets of the company and obviate lower recovery to the creditors as a result of the corporate debtor continuing to be exposed to civil and criminal liability. The same view has been expressed by the apex court in the case of P. Mohanraj & Ors. (supra) at para 41 which is extracted hereunder:

> 41. Section 32-A cannot possibly be said to throw any light on the true interpretation of Section 14(1)(a) as the reason for introducing Section 32-A had nothing whatsoever to do with any moratorium provision. At the heart of the section is the extinguishment of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the adjudicating authority, so that the new management may make a clean break with the past and start on a clean slate. A moratorium provision, on the other hand, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, Section 32-A(1) operates only after the moratorium comes to an end. At the heart of Section 32-A is the IBC's goal of value maximisation and the need to obviate lower recoveries to creditors as a result of the corporate debtor continuing to be exposed to criminal liability.

51. In the case of Bank of Baroda & Anr. (supra) once again while interpreting Section 29A(h) of the I&B Code the supreme court relied upon the observations in Swiss Ribbons (P) Ltd. (supra) and at para 43 observed as under:

> "43. The Code has got its laudable object. The idea is to facilitate a process of rehabilitation and revival of the corporate debtor with the active participation of the

> creditors. Thus, there are two principal actors in the entire process viz. (i) the committee of creditors, and (ii) the corporate debtor. The others are mere facilitators. There can never be any other interest than that of the committee of creditors and the corporate debtor. We do not wish to multiply the rationale behind the enactment except by quoting the decision of this Court in Swiss Ribbons (P) Ltd. v. Union of India [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] , which has also found acceptance by the subsequent decision in Arun Kumar [Arun Kumar Jagatramka v. Jindal Steel & Power Ltd., (2021) 7 SCC 474] : (Swiss Ribbons case [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] , SCC p. 55, paras 27-28) "27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete.

Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme-- workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.""

52. Though the expression "blacklisting" has not been specifically used in the I&B Code but the dominant intent of the legislature is to relieve the corporate debtor and its new management from civil liabilities including taxation and also from criminal prosecution from past offences. It can well be understood that a penalty like blacklisting and debarment from participating in future tender against the revived company would only defeat the dominant object of the I&B Code. As otherwise, the company would not be able to enter into any business on account of the scar and stigma operating due to blacklisting and debarment imposed in respect of a contract which could not been executed allegedly due to the wrong doings or negligence or deliberate misconduct on the part of the erstwhile management of the company.

53. Apart from wrecking vengeance on the corporate debtor operating with a new management which is not responsible for the past misdeeds of the erstwhile management, such an order of blacklisting would not serve any fruitful purpose. Rather it would defeat the corporate debtor from reviving itself after approval of the resolution plan by entering into new business. It is commonly known that nowadays in all such tender documents floated by the state or its instrumentalities or even by private parties, the bidders have to disclose their past history including whether they have been blacklisted or debarred earlier. In such circumstances, the considerations of the bids by the revived company would be vitiated, if its past continues to haunt it.

54. The petitioners have assailed the impugned order of blacklisting on the doctrine of proportionality as well. Relying upon the recent judgment of the apex court in the case of The Blue Dreamz Advertising Pvt. Ltd. (supra) it has been contended that in a ordinary breach of contract where a party raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to as it amounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

55. On the part of the respondent State, detailed justification on merit of the allegations made by the company for the tardy progress and delay in execution in work against the petitioner has been adverted but it is also evident that for such acts of breach the respondents have terminated the agreement and forfeited the performance bank guarantee of the petitioner for Rs.95,58,000/-. The petitioner has claimed damages for illegal termination of the agreement and invocation of bank guarantee which is a subject matter of arbitration proceedings. The Arbitral Tribunal, however, refused to interfere in the order of blacklisting as it was beyond the claim and dispute raised in the arbitration proceeding.

56. From the above stand of the respondents, it can thus be seen that the order of blacklisting has been passed being guided by the past misdeeds or misconducts on the part of the erstwhile management of the Company in execution of the contract. Whether such an action could be justified against the company revived with a new management to start on a clean slate? The objectives of the I&B Code are not only to

protect the interest of the debtors whose claims have been admitted in the resolution plan and the employees but also that the assets of such a corporate debtor are revived so that it does not lead to total waste and a loss to national economy.

57. On this count also, therefore, We are of the considered view that once action in the nature of forfeiture of performance bank guarantee to the tune of Rs.95,58,000/- has been imposed upon the company for the delay in the execution of the work of the contract, the order of blacklisting would not be proper in the eye of law. The penalty of blacklisting for a period of three years and debarment from future contracts with the Government of Tripura would thus be disproportionate as the petitioner would be practically unable to enter into new contracts and undertake business in order to become a growing and running concern.

58. The Apex Court in Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam limited & Ors., (2014) 14 SCC 731 has explained that "debarment" is an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. It has also been held "debarment" is never permanent. It would invariably depend upon the nature of the offence committed by the erring contractor. In the facts and circumstances of the case discussed above such disciplining of the revived company for the past deeds of its erstwhile management would be unwarranted and not serve the purpose and the objectives of the I&B Code.

59. The issue whether the petitioner had duly informed the respondents about its admission in the CIRP or not would not in the ultimate analysis make a difference on propriety of imposing the penalty of blacklisting and debarment once the resolution plan has been approved by the learned NCLT on 11th August, 2023 and the new management has taken over the company to ensure that the company starts on a clean slate.

60. The respondents have also further sought to distinguish the decision in Vetindia pharmaceuticals Ltd. (supra) on the ground that the order of blacklisting was passed after due consideration of his reply to the show cause notice. The interference in the order of blacklisting by this court is not on account of violation of principles of natural justice as the order has been passed after due show cause notice upon the petitioner. Therefore, the decision in the case of Panda Infraproject Limited (supra) relied upon by the respondents is also not applicable for deciding the issue.

61. Further, the respondents have relied upon the case of Deep Industries Ltd. (supra) to submit that the High Court should not interfere under Article 227 of the Constitution of India in such matters. However, in the facts of the said case, the Apex Court had observed that the exercise of jurisdiction of the High Court under Article

227 of the Constitution of India to set aside an interlocutory order passed by an arbitrator when the appeals against the same under Section 37 were dismissed by the subordinate court was not proper. The High court must be extremely circumspect in interfering with the same. In the present case the arbitral tribunal by a majority of 2:1 has refused to interfere with the order of blacklisting as that was not one of the claims raised. As such, no adjudication on the challenge to the order of blacklisting was made by the learned arbitral tribunal. The petitioner thus had to approach this court under Article 226 of the Constitution of India against the impugned order of blacklisting. As such, the present case is also inapplicable to the present case.

62. The decision in Sukanya Holdings (P) Ltd. (supra) cited by the respondents is on the issue that the Arbitration and Conciliation Act does not provide for bifurcating the suit into two parts, one which is referred to the arbitration for adjudication and the other that is referred to the civil court and as such there was no provision for splitting the cause of parties in referring the subject matter of the suit to arbitrators by the Trial Court under Section 8 of the Arbitration and Conciliation Act.

63. The word "a matter" used in Section 8 indicates that the entire subject matter should be subject to arbitration agreement. In the present case, there is no suit pending as such in relation to the dispute between the parties arising out of the agreement though an arbitration proceeding has been commenced. However, the order of blacklisting was not an issue before the learned Arbitral Tribunal. Even otherwise, the order of blacklisting passed by the State or its instrumentality could be amenable to the writ jurisdiction.

Therefore, reliance on the said decision is misplaced.

64. The respondents have taken a stand that challenge to the order of blacklisting in an independent proceeding would lead multiplicity of proceedings and conflicting views which are best avoided. However, as it appears that the learned Arbitral Tribunal has not entertained the plea against the order of blacklisting as no such claim was made before it. In such a case, refusal to entertain a challenge to the order of blacklisting by this Court under Article 226 of the Constitution of India would amount to denying a remedy available in law.

65. Though, the learned counsel for the respondents have sought to distinguish the judgments relied upon by the petitioner, such as Ghanashyam Mishra & Sons Pvt. Ltd. (supra) but such a plea is not tenable for the reasons recorded in the foregoing paragraphs. In the case of Ghanashyam Mishra & Sons Pvt. Ltd. (supra) the Apex Court while examining the dominant object of the I&B Code, 2016 had held that it is intended with an object to provide a clean slate to the company upon its revival. If the company is unable to undertake business only on account of the order of blacklisting and debarment, the object of the resolution plan, as approved by the NCLT, would stand defeated.

66. Though the respondents have sought to distinguish the decision in the case of JP Iscon Pvt. Ltd. (supra) and The Blue Dreamz Advertising Pvt. Ltd.(supra) on the ground that the petitioner had

suppressed information of the ongoing resolution process and was not found to be reliable and trustworthy warranting the blacklisting of the petitioner but as held by us hereinbefore the order of blacklisting if allowed to perpetuate against the revived company with a new management would defeat the very dominant object of the I&B Code, 2016.

67. As noticed earlier, the grounds and the facts and circumstances of the case on which the respondents have justified the order of blacklisting are essentially allegations against the erstwhile management of the company in causing delay and tardy progress of the works allotted to it. However, upon approval of the Resolution Plan and the change in management, if the order of blacklisting is allowed to survive the past misconducts of the erstwhile management would continue to haunt the petitioner company and would not serve the purpose of revival of the company. Moreover, the respondents have already forfeited the performance bank guarantee of the petitioner for Rs.95,58,000/- for breach of terms and conditions of the contract.

68. Therefore, on consideration of the issues involved and the elaborate discussion made hereinbefore, we are persuaded to interfere in the matter on the ground that such order of blacklisting and debarment of the petitioner company after approval of the resolution plan with a new management would defeat the dominant aim and object of the Insolvency and Bankruptcy Code, 2016 and in all likelihood defeat the very purpose of revival of the company.

69. Therefore, the impugned order dated 5th October, 2023 whereby the petitioner was blacklisted for a period of three years and debarred from participating in future contracts with the Government of Tripura is quashed.

70. The writ petition is allowed. No order as to costs.

Pending application(s), if any, stands disposed.

(ARINDAM LODH), J (APARESH KUMAR SINGH), CJ

lodh

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