

Srei Infrastructure Finance Limited vs State Of U.P. And 4 Others on 25 October, 2024

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:172226

Reserved on: 22.10.2024

Delivered on: 25.10.2024

Court No. - 72

Case :- APPLICATION U/S 482 No. - 13646 of 2024

Applicant :- Srei Infrastructure Finance Limited

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Tanmay Sadh

Counsel for Opposite Party :- G.A., Sanjay Kumar Yadav, Ashutosh Vaish

Connected with

Case :- APPLICATION U/S 482 No. - 13643 of 2024

Applicant :- Srei Equipment Finance Limited

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Tanmay Sadh

Counsel for Opposite Party :- G.A., Sanjay Kumar Yadav, Ashutosh Vaish

Hon'ble Rajeev Misra,J.

1. This application under Section 482 Cr.P.C. has been filed by accused-applicant-Srei Infrastructure Finance Limited challenging the police report/charge sheet no. 13 of 2023 dated 30.12.2023 submitted by the CBI in Case Crime No./FIR No. RCB12021E0001, under Sections 120-B r/w Section 409, 420 IPC and Sections 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988, Police Station-CBI, BSFB, New Delhi, the Cognizance Taking Order/Summoning Order dated 14.03.2024 passed by Special Judicial Magistrate (CBI), Ghaziabad in consequential Criminal Case No. 12 of 2024/Registration No. 14248 of 2024 (CBI Vs. M/s SVOGL Oil and Gas Energy Limited and Others), under Section 120-B IPC read with Sections 420, 471 IPC read with 468 IPC and substantive offence under Section 420 IPC, Police Station-CBI, BSFB, New Delhi as well as the entire proceedings of aforementioned criminal case.

2. Affidavits have been exchanged between the parties. Counsel for the parties agreed that the matter be decided finally at the admission stage on the basis of pleadings of the parties without formally admitting the present application. In view of above and as provided under the Rules of the Court, the present application is being disposed of finally at the admission stage itself. Criminal Misc. Application 13646 of 2024 (Srei Infrastructure Finance Limited Vs. State of U.P. and 4 Others) shall be treated as the leading petition. The facts pleaded in the aforesaid petition shall alone be referred to for the sake of convenience.

3. I have heard Mr. Anirban Bhattacharya, Advocate assisted by Mr. Tanmay Sadh, the learned counsel for applicant, the learned A.G.A. representing State-opposite party-1, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned Standing Counsel for CBI representing opposite parties 2, 3 and 4 and Mr. Ashutosh Vaish, the learned counsel representing opposite party-5.

4. Perused the record.

5. Record shows that an FIR dated 10.03.2021 was lodged by first informant-opposite party-5 Ms. Mausumi Majundar, DGM, Punjab National Bank, LCB, NOIDA, Branch, U.P. and was registered as FIR No. RCB12021E0001, under Sections 120-B r/w Section 409, 420 IPC and Sections 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988, Police Station-CBI, BSFB, New Delhi. In the aforesaid FIR, the following have been nominated as named accused;-

(I). M/s SVOGL Oil Gas & Energy Limited, Registered Office at Tower-1, Fifth Floor, NBCC Plaza, Sector V, Pushp Vihar, New Delhi-110017 (Accused No. 1).

(II). Mr. Padam Singhee, S/o Mr. Chimanlal Singhee, Managing Director of SVOGL, resident of House No. 4A, Street C-1, Sainik Farms, New Delhi-110062 also at House No. J-238/3, Lane W-15J, Western Avenue, Sainik Farm, New Delhi-110062 (Accused No.-2).

(III). Mr. Prem Chimanlal Singhee S/o Mr. Chimanlal Singhee, Director of SVOGL, resident of House No. 4A, Street C-1, Sainik Farms, New Delhi-110062 also at House No. J-238/3, Lane W-15J,

Western Avenue, Sainik Farm, New Delhi-110062.

Apart from above, the following have also been arraigned as accused (IV) Unknown public servants and others.

It is thus apparent that applicant- SREI Infrastructure Finance Limited has not been nominated as a named accused in the aforesaid FIR.

6. After aforementioned FIR was lodged, the CBI proceeded with statutory investigation of aforementioned FIR in terms of Chapter-XII Cr.P.C. On the basis of material collected by CBI, during course of investigation, it came to the conclusion that complicity of various persons is prima-facie apparent in the crime in question. It, accordingly, submitted the police report/charge sheet no. 13 of 2023 dated 30.12.2023 in terms of Section 173(2) Cr.P.C., whereby the following have been charge sheeted;-

I. M/s SVOGL Gas & Oil Exploration Services Ltd., U/s 120-B, r/w 420, 471 IPC r/w 468 IPC & Substantive Offence u/s 420 IPC.

II. Shri Prem Singhee, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

III. Shri Padam Singhee, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC and 471 IPC r/w 468 IPC.

IV. Shri Rajan Gupta, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

V. Shri Anuj Chandra, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

VI. Shri Sunil Kanoria, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

VII. Shri Hemant Kanoria, U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

VIII. M/s SREI Infrastructure Finance Ltd. (M/s SIFL), U/s 120-B r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

IX. M/s SREI Equipment Finance Ltd. (M/s SEFL), U/s 120-B, r/w 420, 471 IPC r/w 468 IPC & substantive offence u/s 420 IPC.

7. Upon submission of aforementioned police report/charge sheet, the jurisdictional Magistrate, vide order dated 14.03.2024 passed in Consequential Criminal Case No. 12 of 2024/Registration No. 14248 of 2024 (CBI Vs. M/s SVOGL Oil and Gas Enegry Limited and Others), under Section 120-B IPC read with Sections 420, 471 IPC read with 468 IPC and substantive offence under Section 420 IPC, Police Station-CBI, BSFB, New Delhi took cognizance upon aforesaid charge sheet in exercise

of his jurisdiction under Section 190(1)(b) Cr.P.C. and simultaneously summoned the charge sheeted accused to face trial in aforementioned criminal case.

8. Thus feeling aggrieved by the police report/charge sheet, the Consequential Cognizance Taking Order/Summoning Order passed by the jurisdictional Magistrate as well as the entire proceedings of aforementioned criminal case now pending in the Court of Special Judicial Magistrate (CBI), Ghaziabad, applicant, who is a charge sheeted accused, has approached this Court by means of present application under Section 482 Cr.P.C.

9. Since the basis of challenge to the criminal proceedings impugned in present application is the orders passed by the National Company Law Tribunal, Calcutta Bench in proceedings under the Insolvency and Bankruptcy Code, 2016, therefore, it is appropriate to mention the events that have occurred in aforementioned proceeding in a chronological order;-

9.1. Applicant M/s SREI Infrastructure Finance Limited is a Non Banking Financial Company.

9.2. The Reserve Bank of India in exercise of it's power under Section 45-1E(1) of the Reserve Bank of India Act, 1934 issued a press release dated 14.01.2021, which is titled as "Supersession of the Board of Directors and Appointment of Administrator - SREI Infrastructure Finance Limited and SREI Equipment Finance Limited", whereby the Reserve Bank of India superseded the Board of Directors of SREI Infrastructure Finance Limited (SIFL). Further one Rajneesh Sharma, Ex-Chief General Manager, Bank of Baroda was appointed as the Administrator of the aforesaid company under Section 45-1E(2) of the Reserve Bank of India Act.

9.3. Subsequent to above, the Reserve Bank of India filed an application before the National Company Law Tribunal, Calcutta Bench, under Section 227 read with Clause (zk) of Sub-Section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority), Rules, 2019 seeking initiation of Corporate Insolvency Resolution Process of the applicant. The same was registered as CP(IB) No. 295/KB/2021. In the matter of Reserve Bank of India Vs. SREI Infrastructure Finance Limited.

9.4. The National Company Law Tribunal Calcutta Bench, vide order dated 08.10.2021 admitted the aforesaid application and further appointed one Mr. Rajneesh Sharma as the Administrator of applicant. For ready reference, the order dated 08.10.2021 is reproduced herein below;-

"ORDER Per: Rajasekhar V.K., Member (Judicial)

1. The Court convened via video conferencing.

2. This is an application filed by the Reserve Bank of India (Appropriate Regulator) under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 (in short "IBC") for initiations of Corporate Insolvency Resolution Process (in short "CIRP") against Srei Infrastructure Finance Limited (in short

"SIFL"), the Financial Service Provider.

3. The respondent/Financial Service Providers (in short "FSP") is a company registered under the Companies Act, 1956, having CIN: L29219WB1985PLC- 055352, and registered with the Registrar of Companies, West Bengal, Kolkata. Therefore, this Bench has jurisdiction to deal with the present petition.

4. Mr. Sudipto Sarkar, Learned Senior Counsel appearing on behalf of the Petitioner/Appropriate Regulator submits as follows :-

(a) On the basis of credit information available to it, the Reserve Bank of India (in short "RBI") came to the conclusion that SIFL has committed defaults of significant amount in relation to the financial debt availed by it from various financial creditors;

(b) In particular, UCO Bank has intimated vide its letter dated 07/10/2021 that the amount claimed to be in default in relation to working capital demand loan facility is 165,56,30,967.99. Of this the principal amount due is to the tune of 150.00 crore and the interest amount due is to the tune of 15,56,30,967.99.

(c) Date of default with reference to repayment of principal sum is stated to be 13/02/2021. The default with reference to the interest amount is stated to be 01/11/2020. During the course of hearing, Mr. Sudipto Sarkar, Learned Senior Counsel submitted that this was the earliest date of default, and that there are continuing defaults since then.

5. The supporting documents submitted by the UCO Bank to RBI have been made part of the record as Annexure "B" to the petition at pages 21-101 of the petition. The communication dated 07/10/2021 from UCO Bank contains the following:

- various sanctioned letters starting from 25/10/2018
- the Working Capital Consortium Agreement dated 30/11/2018;
- UCO Bank Account Classification Ledger Statement as of 05/10/2021;
- Central Repository of Information on Large Credits (CRILC) Report as of 06/10/2021.

These documents demonstrate that the account is in default with the status of "SMA-2", which means that the interest of principal has been overdue and remains unpaid for a period in excess of 60 days calculated in accordance with the RBI Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to advances. E-mail communication evidencing classification of SIFL as a Red Flag Account by UCO Bank. The Certificate under the Bankers' Book

Evidence Act, 1891 is also attached.

6. The RBI vide its notification dated 04/10/2021, in exercise of its powers under section 45-IE of the Reserve Bank of India Act, 1934 has superseded the Board of Directors of SIFL and appointed Mr. Rajneesh Sharma as the Administrator. It has also constituted a three-member Advisory Committee to assist the Administrator of SIFL in the discharge of its duties. The RBI has proposed the same person to be appointed as the Administrator of the Corporate Debtor.

7. Mr. Sudipto Sarkar, Learned Senior Counsel appearing for the Petitioner/ Appropriate Regulator submits that in view of the huge default committed by the respondent/FSP, there is a need to initiate CIRP against the respondents with speed. He, therefore, urged this Adjudicating Authority to pass appropriate orders expeditiously keeping in view the public interest in the matter.

8. Mr. Sudipto Sarkar, Learned Counsel, further submitted that the challenge to the notification dated 04/10/2021 issued by the RBI, in Writ Petition (Lodging) No. 22872/2021, was dismissed by the Hon'ble Bombay High Court vide order dated 07/10/2021.

9. Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 mandates that no CIRP shall be initiated against an FSP which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6. Sub-clause (ii) thereof which specifies that an application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7.

10. Therefore, the first requisite to be seen is whether present petition satisfies the ingredients of section 7 of the Code. For this the existence of debt and default are required to be proved to the satisfaction of the Adjudicating Authority. At page 22 against Sl. No. 2 it has been claimed that the date of default of interest payment in respect of the working capital facility is 01/11/2020 and in respect of principal sum it is 13/02/2021. The amount stated to be in default in respect of the principal sum is 150 crores and 15.56 crore towards interest. Therefore, the total amount in default is in excess of limits prescribed under section 4 of the Code, which is at present is One Crore Rupees. The present petition is also not hit by limitation.

11. We have heard Mr. Sudipto Sarkar, Learned Senior Counsel appearing for the Petitioner/Appropriate Regulator and perused the records.

12. The documents placed on records prima facie prove that there has been a default and that the sum involved in such default is in excess of the threshold limit of one crore rupees prescribed at present under section 4(1) of the Code. Moreover, since the sanction letters are in the year 2018 onwards and date of default from November 2021, the petition is not hit by limitation.

13. We are, therefore, satisfied that this is a fit case for initiation proceedings under section 227 read with rule 5 of the Rules *ibid*, since the debt in question qualifies as financial debt under section 5(8) read with section 3(11) of the Code

14. The RBI vide its notification dated 04/10/2021 has superseded the Board of S.IFL and appointed Mr. Rajneesh Sharma, ex-Chief General Manager, Bank of Baroda as the Administrator. The RBI has proposed the name of Mr. Rajneesh Sharma as the Administrator of the Corporate Debtor. He has also filed his written consent in Form 2 to act as such Administrator, which has been placed on record at pages 10-11 of the petition. The Form-2 appears to have been amplified by the Administrator by including certain caveats. Therefore, we were constrained to ask the Administrator whether he was willing to give his consent to act the Administrator unconditionally. Mr Rajneesh Sharma confirmed that he would do so. He is, therefore, hereby directed to file a fresh Form 2 with his unconditional consent to act as Administrator.

15. The Petition made by the Reserve Bank of India is complete in all respects as required by law. It clearly shows that the Respondent/FSP is in default of a debt due and payable, and the default is more than the minimum amount as stipulated under section 4(1) of the Code. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Therefore, this Adjudicating Authority hereby admits this Petition and orders as follows:

a. The Petition bearing CP (IB) No.295/KB/2021 filed by the Reserve Bank of India, the Appropriate Regulator, under section 227 of the Code read with rule 5 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for initiating Corporate Insolvency Resolution Process against Srei Infrastructure Finance Limited [CIN:L29219WB1985- PLC055352], the Financial Service Provider, is hereby admitted.

b. There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider under section 33 of the Code, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code.

e. In terms of rule 5(a)(iii) of the Rules *ibid*, Mr. Rajneesh Sharma, 17-B, Shanaz Apartments, 90 Napean Sea Road, Mumbai 400006, e-mail id: sreiaadministrator@srei.com; rajneesh 1961@yahoo.co.in, is hereby appointed as Administrator of the Financial Service Provider to carry out the functions as per the Code, subject to his filing his unconditional consent in Form 2 to act as such Administrator. The Administrator shall carry out his functions as contemplated by sections 15, 17, 18, 19 and 20 of the Code.

f. During the CIRP period, the management of the Financial Service Provider shall vest in the Administrator. The officers and managers of the Financial Service Provider shall provide all documents in their possession and furnish every information in their knowledge to the Administrator within one week from the date of receipt of this Order, failing which coercive steps will follow.

g. The Registry is hereby directed to communicate this Order to the Petitioner/ Reserve Bank of India and the Administrator by Speed Post, e-mail immediately.

h. Additionally, the Administrator shall serve a copy of this Order on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Financial Service Provider. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. CP (IB) No. 295/KB/2021 to come up on 22.12.2021 for filing the progress report.

17. Certified copy of this order be issued, if applied for, upon compliance with all requisite formalities."

9.5. That subsequent to above order, a resolution plan dated 18.01.2023 was submitted by National Asset Reconstruction Company Limited (NARCL), a Government entity, which was incorporated on 7th July, 2021 with majority stake held by Public Sector Banks and balance by Private Banks with Canara Bank being the Sponsor Bank. NARCL is registred with the Reserved Bank of India as an Asset Reconstruction Company under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for revival of a company. The copy of the resolution plan as approved by the National Company Law Tribunal, Calcutta Bench in aforementioned petition has been brought on record as Annexure-6 to the affidavit filed in support of present application.

9.6. Thereafter, the National Company Law Tribunal, Calcutta Bench, vide it's order dated 11.08.2023 passed in aforementioned petition approved the aforementioned resolution plan. The copy of the said order is also on record as Annexure-5 to the affidavit filed in support of present application.

9.7. At this stage, it would be apt to reproduce the relief that was sought by the National Asset Reconstruction Company Limited (NARCL) in the resolution plan so submitted by it before the National Company Law Tribunal Calcutta in above-mentioned proceedings. The same is, accordingly, extracted herein under:-

"The Hon'ble NCLT be pleased to give or issue necessary directions that the Corporate Debtors or the Resolution Applicants shall not be liable for an offence committed between NCLT Approval Date and Closing Date, and neither the Corporate Debtors nor the Resolution Applicant shall be prosecuted for any such offence on and from the NCLT Approval Date to the Closing Date. If a prosecution

has been instituted during this period against the Corporate Debtors or the Resolution Applicants, the same shall be extinguished and the Corporate Debtors and the Resolution Applicants shall stand discharged from the same."

9.8. Paragraph 120 of the order dated 11.08.2023 passed by the National Company Law Tribunal, Calcutta Bench specifically dealt with the relief prayed for in the resolution plan so submitted before the National Company Law Tribunal, Calcutta. Since the said adjudication has a material bearing on the present criminal proceedings against applicant, therefore, for ready reference, the same is also extracted herein below:-

"Paragraph-120:-

With respect to the reliefs and waivers sought for all inquires, litigations, investigations and proceedings shall be granted strictly as per the Section 32A of the Code and the provisions of the law as may be applicable"

10. Section 32-A of the Insolvency and Bankruptcy Code, 2016 is relevant for the issue involved in present application inasmuch as, it is the case of the applicant that by virtue of the provisions contained in Section 32-A, no criminal prosecution of the company i.e. the applicant can now be sustained as the company has now acquired a new entity on account of the acceptance of the resolution plan and the new entity, therefore, cannot be prosecuted. In view of above, it is desirable to reproduce Section 32-A of the Insolvency and Bankruptcy Code, 2016. The same reads as under:-

"[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.]

11. The immunity granted under Section 32-A of Insolvency and Bankruptcy Code, 2016 is not absolute but stands qualified by the restrictions contained in Sub-Sub-Sections (a) & (b) with its proviso to Sub-Sub-Section (b) of Section 32-A(1) of Insolvency and Bankruptcy Code, 2016,

12. Therefore, what follows from above is that criminal prosecution of the erstwhile Corporate Debtor can be maintained, if any of the circumstances mentioned in Sub-Sub-Sections (a) & (b) with its proviso to Sub-Sub-Section (b) of Section 32-A(1) of the Insolvency and Bankruptcy Code, 2016 exists.

13. Learned counsel for applicant submits that no criminal prosecution of the applicant for an offence committed prior to the commencement of the CIRP i.e. Corporate Insolvency Resolution Process or during the CIRP can be sustained as the company namely M/s SREI Infrastructure Finance Limited (the applicant herein) is now a new entity inasmuch as, a new Board of Directors is to be appointed upon approval of the resolution plan by the National Company Law Tribunal, Calcutta Bench.

14. It is then contended by the learned counsel for applicant that during pendency of CIRP i.e. Corporate Insolvency Resolution Process, a resolution plan dated 18.01.2023 was submitted by the National Asset Reconstruction Company Limited (NARCL), a government company, which was accepted and approved by the National Company Law Tribunal, Calcutta Bench, vide its order dated 11.08.2023.

15. Learned counsel for applicant has further submitted that there is no such material on record up to this stage so as to attract the provisions of Sub-Sub-Sections (a) & (b) with its proviso to Sub-Section (b) of Section 32A(1) of the Insolvency and Bankruptcy Code, 2016.

16. According to the learned counsel for applicant, the dominant objective of the Insolvency and Bankruptcy Code, 2016 is to allow the successful resolution applicant to revive and start the Corporate Debtor with fresh slate on the basis of the resolution plan approved so as to make it a running concern. Thus, in order to aid this objective, Section 32-A of the Insolvency and Bankruptcy Code, 2016 aims to give a clean break to the successful resolution applicant from the erstwhile management by shielding them and statutorily immunizing them from prosecution and liabilities for offences that may have been committed prior to the commencement of CIRP i.e. Corporate Insolvency Resolution Process. The said extinguishment of the criminal liability of the corporate debtor allows the new management to make a clean break with the past and start on a clean slate.

17. To buttress his submissions, the learned counsel for applicant has placed reliance upon the judgment of Supreme Court in Manish Kumar Vs. Union of India, (2021) 5 SCC 1. He has referred to paragraphs 316.1, 316.3, 316.5, 317, 317.1, 317.2, 317.3, 317.4, 319, 326 and 327. For ready reference, the same are reproduced herein under:-

"316.1. Section 32-A provides immunity to the corporate debtor and its property when there is approval of the resolution plan resulting in the change of management of control of corporate debtor. This is subject to the successful resolution applicant

being not involved in the commission of the offence. Statutory basis has now given under Section 32A to the law laid down by this Court in the decision of Committee of Creditors of Essar Steel(supra). This Court took the view therein that successful resolution applicant cannot be faced with undecided claim after its resolution plan has been accepted. The object is to ensure that a successful resolution applicant starts of on a fresh slate.

316.3. Reliance is also placed on the report of the Insolvency Law Committee. Relevant extracts which have been relied on are as follows:

"PREFACE v. Liability of corporate debtor for offences committed prior to initiation of CIRP- in order to address the issue of liability that fall upon the resolution applicant for offences committed prior to commencement of CIRP, it has been recommended that a new section should be inserted which provides that when the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or 70 otherwise. The newly inserted section as mentioned above shall also include protection of property from enforcement action when taken by successful resolution applicant. Also, it was recommended that cooperation and assistance to authorities investigating the offences committed prior to commencement of CIRP shall be continued by any person who is required to provide such assistance under the applicable law.

Chapter 1: Recommendations regarding the Corporate Insolvency Resolution Process

17. Liability of corporate debtor for offences committed prior to initiation of CIRP [Recommendations contained herein have been implemented pursuant to Section 10 of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019.] 17.1. Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29A, read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from proposing a resolution plan and purchasing the property of the corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the

property of the corporate debtor may also change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

17.2. However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedings related to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its 71 properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been Approved 17.3. It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalize the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced. 17.5. The Committee noted that the proceedings under the Code, which are designed to ensure maximization of value, generally require transfer of the corporate debtor to bona fide persons. In fact, Section 29A casts a wide net that disallows any undesirable person, related party or defaulting entity from acquiring a corporate debtor. Further, the Code provides for an open process, in which transfers either require approval of the Adjudicating Authority, or can be challenged before it. Thus, the CIRP typically culminates in a change of control to 72 resolution applicants who are unrelated to the old management of the corporate debtor and step in to resolve the insolvency of the corporate debtor following the approval of a resolution plan by the Adjudicating Authority.

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 29A.

17.7. Thus, the Committee agreed that a new Section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence.

17.8. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased.

Actions against the Property of the Corporate Debtor 17.9. The Committee also noted that in furtherance of a criminal investigation and prosecution, the property of a company, which continues to exist after the resolution or liquidation of a corporate debtor, may have been liable to be attached, seized or confiscated. For instance, the property of a corporate debtor may have been at risk of attachment, seizure or confiscation where there was any suspicion that such property was derived out of proceeds of crime in an offence of money laundering. It was felt that taking actions against such property, after it is acquired by a resolution applicant, or a bidder in liquidation, could be contrary to the interest of value maximisation of the corporate debtor's assets, by substantially reducing the chances of finding a willing resolution applicant or bidder in liquidation, or lowering the price of bids, as discussed above.

17.10. Thus, the Committee agreed that the property of a corporate debtor, when taken over by a successful resolution applicant, or when sold to a bona fide bidder in liquidation under the Code, should be protected from such enforcement action, and the new Section discussed in paragraph 17.7 should provide for the same. Here too, the Committee agreed that the protection given to the corporate debtor's assets should in no way prevent the relevant investigating authorities from taking action

against the property of persons in the erstwhile management of the corporate debtor, that may have been involved in the commission of such criminal offence.

17.11. By way of abundant caution, the Committee also recognised and agreed that in all such cases where the resolution plan is approved, or where the assets of the corporate debtor are sold under liquidation, such approved resolution plan or liquidation sale of the assets of the corporate debtor's assets would have to result in a change in control of the corporate debtor to a person who was not a related party of the corporate debtor at the time of commission of the offence, and was not involved in the commission of such criminal offence along with the corporate debtor.

Cooperation in Investigation 17.12. While the Committee felt that the corporate debtor and bona fide purchasers of the corporate debtor or its property should not be held liable for offences committed prior to the commencement of insolvency, the Committee agreed that the corporate debtor and any person who may be required to provide assistance under the applicable law should continue to provide assistance and cooperation to the authorities investigating an offence committed prior to the commencement of the CIRP. Consequently, the Committee recommended the new Section should provide for such continued cooperation and assistance."

(emphasis supplied) 316.5. Apart from the fact that it is intended to give a clean break to the successful resolution applicant, it is pointed out that it is hedged in with ample safeguards to avoid any exploitation. The same are as follows:

"106. Section 32A was inserted to give a clean break to successful resolution applicants from the erstwhile management by shielding them and immunizing them from prosecution and liabilities for offences that may have been committed prior to the commencement of the CIRP. Further, ample safeguards have been incorporated in the said provision to prevent any exploitation, namely:

(i). The immunity is attracted only when a resolution plan is approved by the Adjudicating Authority under section 31 and the resolution plan results in the change in management or control of the corporate debtor.

(ii). The immunity is granted only to the corporate debtor and its property, where such property is covered under the resolution plan approved by the Adjudicating Authority under section 31, from any liability or prosecution with regard to offences committed prior to the commencement of the corporate insolvency resolution process.

(iii). Any person who was a promoter or in the management or control of the corporate debtor or a related party or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business 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 corporate debtor notwithstanding that the corporate debtor's liability has ceased.

(iv). Section 32A does not bar an action against the property of any person other than the corporate debtor against whom such an action may be taken under such law as may be applicable.

(v). Notwithstanding the immunity given under Section 32A, 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."

317. Section 32A has been divided into three parts consisting of sub-Sections (1) to (3). Under sub-Section (1), notwithstanding anything contained, either in the Code or in any other law, liability of a corporate debtor, for an offence committed prior to the commencement of the CIRP, shall cease. Further, the corporate debtor shall not be liable to be prosecuted for such an offence. Both, these immunities are subject to the following conditions:

317.1. A Resolution Plan, in regard to the corporate debtor, must be approved by the Adjudicating Authority under Section 31 of the Code;

317.2. The Resolution Plan, so approved, must result in the change in the management or control of the corporate debtor;

317.3. The change in the management or control, under the approved Resolution Plan, must not be in favour of a person, who was a promoter, or in the management and control of the corporate debtor, or in favour of a related party of the corporate debtor;

317.4. The change in the management or control of the corporate debtor must not be in favour of a person, with regard to whom the relevant Investigating Authority has material which leads it to entertain the reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a Report before the relevant Authority or the Court. This last limb may require a little more demystification. The person, who comes to acquire the management and control of the corporate person, must not be a person who has abetted or conspired for the commission of the offence committed by the corporate debtor prior to the commencement of the CIRP. Therefore, abetting or conspiracy by the person, who acquires management and control of the corporate debtor, under a Resolution Plan, which is approved under Section 31 of the Code and the filing of the report, would remove the protective umbrella or immunity erected by Section 32A in regard to an offence committed by the corporate debtor before the commencement of the CIRP. To make it even more clear, if either of the conditions, namely abetting or conspiring

followed by the report, which have been mentioned as aforesaid, are present, then, the liability of the corporate debtor, for an offence committed prior to the commencement of the CIRP, will remain unaffected.;

319. Thus, the combined reading of the various limbs of sub-Section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in in-charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence, and they will continue to be liable.

326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. 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 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 the 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.

327. It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. The new management cannot be the subject matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto. These ingredients are also insisted upon for claiming exemption of the bar from actions

against the property. Significantly every person who was associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor."

18. Attention of the Court was further invited to the order dated 11.08.2023 passed by the National Company Law Tribunal, Calcutta Bench. On the basis of above, the learned counsel for applicant submits that under Step XIII of the Reconstitution Plan dated 18.01.2023, reconstitution of the Board of Directors has been provided. As such, the management of the company i.e. applicant is now to be taken over by a new Board of Directors. He, therefore, submits that in view of above and the underlying scheme of Section 32-A of the Insolvency and Bankruptcy Code, 2016, no criminal proceedings can now be maintained against the erstwhile company i.e. the applicant herein.

19. On the edifice of above, the learned counsel for applicant would submit that the impugned criminal proceedings against the company are not only illegal but also an abuse of the process of Court inasmuch as, by virtue of the embargo contained in Section 32-A of the Insolvency and Bankruptcy Code, 2016, no criminal proceedings, which were pending prior to the acceptance of CIRP i.e. Corporate Insolvency Resolution Process can continue. As such, the present application is liable to be allowed.

20. Per contra, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing CBI has opposed the present application. In opposition to the present application, the learned counsel representing CBI has submitted as follows in the written arguments filed by him. The same is reproduced with minor modifications herein below;

20.1. That an FIR dated 10.03.2021 was registered for offences U/s 120-B I.P.C. r/w Sections 409, 420 I.P.C. and Section 13(2) r/w Section 13(1)(d) of P.C. Act, 1988 on the complaint of Ms. Mousumi Majumdar, DGM, PNB, LCB, Noida Branch, U.P. on behalf of consortium of banks against M/s. SVOGL Oil Gas & Energy Ltd. (Earlier known as M/s Shiv-Vani Oil and Gas Exploration Services Ltd.), New Delhi (A-1), Padam Singhee, S/O Sh. Chiman Lal Singhee, Managing Director of A-1 company (A-2), Prem Singhee, S/o Sh. Chiman Lal Singhee, Director of A-1 company Servants (A-3) and Unknown Public Others, and for causing wrongful loss to PNB to the tune of Rs. 252.61 Cr. and corresponding wrongful gain to themselves and others.

20.2. That, after filing of complaint by PNB, C.B.I. also received complaints/ mandates for investigation from various other lenders of consortium namely, ICICI Bank, SBI, Bank of Maharashtra (BOM), PNB (e-OBC), PNB (e-UNI), Bank of India, Indian Overseas Bank, EXIM Bank, UCO Bank, Central Bank of India, IndusInd Bank, Union Bank of India, Yes Bank and M/s IFCI Ltd. which were clubbed in the

ongoing investigation after approval of competent authority as all complainant Banks have made same /similar allegations on the basis of findings of Forensic Audit conducted by M/s Pipara & Co., LLP on behalf of SBI, the then lead Bank of Consortium.

20.3. That, the above noted banks sanctioned credit facilities during different periods, hence, investigation was conducted on bank to bank basis and total three (03) charge sheets were filed respectively on 17.01.2024, one each in respect of Exim Bank, Indian Overseas Bank and another charge sheet was filed in respect the defrauding of Bank of Maharashtra and PNB (erstwhile Oriental Bank of Commerce collectively by the Commerce, e-OBC) accused persons. Presently, the case is under further investigation regarding allegations of defrauding rest of the banks.

20.4. That, the captioned case is pending in the Court of Special Judicial Magistrate, CBI Court, Ghaziabad and cognizance was taken by the Court concerned on 14.03.2024. In all three charge sheets were filed by CBI in respect of Exim Bank, Indian Overseas Bank and Bank of Maharashtra & PNB (e-OBC) and accused including M/s SREI Infrastructure Finance Ltd. (SIFL) and M/s SREI Equipment Finance Ltd. (SEFL) were summoned for appearance.

20.5. That M/s SREI Infrastructure Finance Ltd. (SIFL), earlier known as M/s SREI International Finance Ltd., is a Non Banking Financial Company promoted by Hemant Kanoria and Sunil Kanoria. Further, M/s SREI Infrastructure Finance Ltd. (SIFL) entered into a partnership with the promoter also a Non Banking Financial Company i.e. BNP Lease Group in a joint venture, which later became M/s SREI Equipment Finance Ltd. (SEFL), which is 100% subsidiary of M/s SREI Infrastructure Finance Ltd. (SIFL). Hemant Kanoria was the then Vice Chairman and Managing Director, whereas Sunil Kanoria was the Joint Managing Director of M/s SEFL. SIFL is a listed company in stock exchange whereas SEFL is an unlisted company. SIFL provided finance towards project loans whereas; SEFL provided finance for construction related equipments, (both new and old).

20.6. That, after investigation, M/s SREI Infrastructure Finance Ltd. (SIFL) and M/s SREI Equipment Finance Ltd. (SEFL) have been charge sheeted as accused for offences U/s 120-B I.P.C. r/w & 420, 471 I.P.C. r/w 468 substantive offence u/s 420 I.P.C.. It is alleged in the charge sheet that the company M/s SREI Infrastructure Finance Ltd. through its officials/promoters in conspiracy with the promoters of M/s SVOGL fraudulently provided false/forged documents to avail credit facilities from Bank of Maharashtra & e-OBC. Further, an amount of Rs. 200 crores received from Bank of Maharashtra was dishonestly transferred to M/S SEFL without any confirmation from Bank of Maharashtra which was later adjusted into the old loan accounts of M/s SVOGL maintained in M/s SREI Equipments Finance Ltd. (SEFL).

20.7. That, Reserve Bank of India (RBI) on 04.10.2021 superseded the erstwhile boards of SIFL and SEFL and filed a Company Petition No. 295 and 294 of 2021 on 08.10.2021 against SIFL and SEFL respectively. Further, Corporate Insolvency Resolution Process (CIRP) was initiated against the company M/s SIFL vide order dated 08.10.2021 by Hon'ble National Company Law Tribunal, Kolkata and Rajneesh Sharma appointed as company Administrator of was the 20.8. That, a Resolution Plan dated 18.01.2023 alongwith an addendum dated 24.01.2023 was submitted by National Asset Reconstruction Company (NARCL), a Government Company and registered with the Reserve Bank of India as an Asset Reconstruction Company under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

20.9. That, vide order dated 11.08.2023, the National Company Law Tribunal, Calcutta Bench approved the above resolution plan submitted by NARCL and granted various reliefs, Exemptions and waivers sought by the Resolution Applicant i.e. NARCL including relief under Section 32-A of the Insolvency and Bankruptcy Code were also granted.

20.10. That, Section 32A of the Insolvency and Bankruptcy Code, 2016 provides immunity from prosecution to the corporate debtor for such an offence from the date, the resolution plan has been approved. However, it further provides that the person's then incharge of or responsible to the corporate debtors i.e. Company for the conduct of its business with the corporate debtor shall continue to be liable to be prosecuted and punished associated (company) to be for such an offence committed by the corporate debtor.

20.11. On the above premise, the learned Deputy Solicitor General of India would submit that this Hon'ble Court may kindly be pleased to pass an appropriate order in the facts and circumstances of the present case.

21. Mr. Ashutosh Vaish, the learned counsel representing opposite party-5 (first informant) submitted that he has nothing to add in the matter.

22. Having heard, the learned counsel for applicant, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing CBI, Mr. Ashutosh Vaish, the learned counsel representing opposite party-5 (first informant) and upon perusal of record, this Court finds that the only issue that has emerged for consideration in present application under Section 482 Cr.P.C. is whether on account of acceptance of the resolution plan submitted pursuant to the Corporate Insolvency Resolution Process (CIRP) initiated by the National Company Law Tribunal, Calcutta Bench, a new entity has emerged inasmuch as, a new Board of Directors is now to be constituted to manage the affairs of the applicant company, therefore, the benefit/privilege granted under Section 32-A of the Insolvency and Bankruptcy Code, 2016 is available to the erstwhile company

i.e. the applicant herein or not.

23. From the facts of the case as noted herein above, the following facts stand crystallized;-

23.1. That the applicant i.e. M/s SREI Infrastructure Finance Limited is a Non Banking Financial Company, which is listed company in the Stock Exchange.

23.2. That the Reserve Bank of India in exercise of its power under Section 45-1E(1) of the Reserve Bank of India Act, 1934 issued a press release dated 14.01.2021, whereby the Board of Directors of the company i.e. M/s SREI Infrastructure Finance Limited and SREI Equipment Finance Limited, which is a joint venture of SIFL (SREI International Finance Limited) and M/s SREI Equipment Finance Limited.

23.3. Proceedings under the Insolvency and Bankruptcy Code, 2016 were initiated by the Reserve Bank of India. Accordingly, an application under Section 227 read with Clause (zk) of Sub-Section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority), Rules, 2019 seeking initiation of Corporate Insolvency Resolution Process of the applicant. The same was registered as CP(IB) No. 295/KB/2021.

23.4. The National Company Law Tribunal, Calcutta Bench, vide order dated 08.10.2021 admitted the aforesaid application and further appointed Mr. Rajneesh Sharma as the Administrator of the applicant company i.e. M/s SREI Equipment Finance Limited.

23.5. The National Asset Reconstruction Company Limited (NARCL), a government entity submitted the resolution plan dated 18.01.2023 before the National Company Law Tribunal in the proceedings referred to above.

23.6. The National Company Law Tribunal, Calcutta Bench, vide order dated 11.08.2023 approved the resolution plan dated 18.01.2023.

23.7. In Paragraph 120 of order dated 11.08.2023 passed by the National Company Law Tribunal, it was observed as follows;-

"Paragraph-120:-

With respect to the reliefs and waivers sought for all inquires, litigations, investigations and proceedings shall be granted strictly as per the Section 32A of the Code and the provisions of the law as may be applicable"

24. On the above conspectus, it is thus apparent that a new Board of Directors is to take over the management of the applicant company and the same is, therefore, now a new entity.

25. By reason of above, the immunity granted to the new entity under Section 32-A of the Insolvency and Bankruptcy Code, 2016 is clearly attracted.

26. Even though a detailed counter affidavit has been filed by the CBI, no pleadings have been raised by the CBI so as to attract the provisions of Sub-Sub-Sections (a) & (b) with its proviso to Sub-Sub-Section (b) of Section 32-A(1) of Insolvency and Bankruptcy Code, 2016, which deny immunity to the Corporate Debtor from criminal prosecution.

27. It is, thus, apparent that the company namely M/s SREI Infrastructure Finance Limited i.e. the applicant herein is now a new entity. A new Board of Directors has been constituted as per the resolution plan dated 18.01.2023. It is nobody's case that the Board of Directors constituted subsequent to the resolution plan dated 18.01.2023 as accepted by the National Company Law Tribunal, Calcutta Bench, vide its order dated 11.08.2023 is such that it attracts the provisions of Sub-Sub-Sections (a) & (b) with its proviso to Sub-Sub-Section (b) of Section 32-A(1) of the Insolvency and Bankruptcy Code, 2016.

28. The Code i.e. the Insolvency and Bankruptcy Code, 2016 is a special statute, as held by the Apex Court in Innoventive Industries Limited V. ICICI bank Limited, AIR 2017 SC 4084. The Code is a complete Code. As such, no exception can be carved out to the non obstante clause occurring in Section 32-A of the Code.

29. In view of the discussions made above, the present applications succeed and are liable to be allowed.

30. They are, accordingly, allowed.

31. The impugned police report/charge sheet no. 13 of 2023 dated 30.12.2023 submitted by the CBI in Case Crime No./FIR No. RCBD12021E0001, the Cognizance Taking Order/Summoning Order dated 14.03.2024 passed by Special Judicial Magistrate (CBI), Ghaziabad in Criminal Case No. 12 of 2024/Registration No. 14248 of 2024 (CBI Vs. M/s SVOGL Oil and Gas Enegry Limited and Others), under Section 120-B IPC read with Sections 420, 471 IPC read with 468 IPC and substantive offence under Section 420 IPC, Police Station-CBI, BSFB, New Delhi as well as the entire proceedings of aforementioned criminal case now pending in the Court of Special Judicial Magistrate (CBI), Ghaziabad insofar as they relate to the present applicants are, hereby, quashed.

32. In the facts and circumstances of the case, the parties shall bear their own costs.

Order Date :- 25.10.2024 Vinay