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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 430/2022  
CRL.M.A. 1959/2022  
CRL.M.A. 1960/2022  
CRL.M.A. 1961/2022

**KRISH STEEL AND TRADING PRIVATE LIMITED & ORS.**  
..... Petitioner

Represented by: Mr.Siddharth Aggarwal,  
Sr.Advocate with Mr.Rohitt  
Kumar Yadav, Mr.Gaurav  
Sarkar, Mr.Ankit Rao and  
Mr.Ankit Sibbal, Advocates.

Versus

**STATE OF NCT OF DELHI & ANR.** .... Respondents  
Represented by: Mr.G.M.Farooqui, APP for the  
R-1/State.  
Mr.Abhishek Kumar, Advocate  
for R-2/Insolvency and  
Bankruptcy Board of India.

**CORAM:**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

% **ORDER**  
**01.02.2022**

The hearing has been conducted through video conferencing.

CRL.M.A. 1961/2022 (for exemption)

1. Exemption allowed subject to just exceptions.
2. Application is disposed of.

CRL.M.C. 430/2022

CRL.M.A. 1959/2022 (for stay of order dated 30.10.2021)

CRL.M.A.1960/2022 (for stay of the proceedings in complaint case)

1. In this petition, the petitioners seek quashing of the complaint filed by the respondent No. 2 and the order dated 30<sup>th</sup> October 2021 passed by the learned Special Judge summoning the petitioners for offences punishable under Sections 31(1), 74(3) and 235A of the Insolvency and Bankruptcy Code, 2016 (in short I.B.C.).

2. Briefly, case of the petitioners is that the petitioner No. 1 filed an application in insolvency proceedings before the NCLT, wherein the Resolution Plan was approved in favour of the petitioner No. 1. However, thereafter the petitioner No.1 could not comply with the terms of the Resolution Plan and could not deposit the money as per the time prescribed. Petitioner No.1 filed necessary applications before the NCLT, NCLAT and the Hon'ble Supreme Court, wherein, various orders were passed in favour of the petitioners. Though the petitioners made an effort and went beyond the Resolution Plan in respect to their application which was allowed by the NCLT and even offered to pay a sum of ₹20 Crores, however, the Special Leave Petition sought from the Hon'ble Supreme Court was finally dismissed. Thereafter, the respondent No. 2 filed a complaint in terms of Section 74(3) of the I.B.C. and the learned Special Judge vide the impugned order dated 30<sup>th</sup> October, 2021, summoned not only the company i.e. the petitioner No. 1 but also petitioners No. 2, 3 and 4 who are the Promoters and Directors of petitioner No.1, despite the

fact that the respondent No. 2 had filed a complaint seeking summoning of the petitioner No.1 only through petitioner Nos. 2 to 4.

3. Learned Senior Counsel appearing on behalf of the petitioners contends that the NCLAT in the matter of 'Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatasubramanian & Ors.', laid down the procedure for taking cognizance for an offence punishable under Section 74(3) of Chapter VII of Part II of the I.B.C. on a complaint filed under sub-section (2) of Section 236 of the I.B.C. In the aforesaid decision, the NCLAT noted that in the proceedings while approving the Resolution Plan, neither the Insolvency and Bankruptcy Board of India nor the Central Government are made parties to any of the corporate insolvency resolution process and hence, it would violate the principles of natural justice if no opportunity is given to the successful corporate resolution applicant to explain the reasons of its failure to comply with the terms it was required to abide, before launching the prosecution. It is further stated that the decision in the case of Committee of Creditors of Amtek Auto Ltd. (supra) was challenged in a Special Leave Petition before the Hon'ble Supreme Court, where this portion of the direction that a hearing has to be provided by NCLAT before any recommendation is made for filing of the complaint by the Insolvency and Bankruptcy Board of India or the Central Government or the person authorised in this regard was not modified and the time for complying with the Resolution Plan was extended.

4. Learned Senior counsel for the petitioners further contends that Section 74 of the I.B.C. does not contemplate vicarious liability and

in the present case, complaint was filed by the respondent No. 2 only against the petitioner No. 1. However, the learned Special Judge by the impugned order dated 30<sup>th</sup> October 2021 not only summoned the petitioner No. 1 company but also summoned petitioners No. 2, 3 and 4 without noting any reasons.

5. Notice. Learned counsel for the respondent No. 2 accepts notice. He states that against the decision of the NCLAT in the case of Committee of Creditors of Amtek Auto Ltd. (supra), the Insolvency and Bankruptcy Board of India filed Civil Appeal Diary No. 32731/2019 wherein, vide order dated 23<sup>rd</sup> September 2019, the Hon'ble Supreme Court stayed the impugned judgment and held that the order dated 23<sup>rd</sup> September 2019 will not affect the progress of the other criminal cases and they shall proceed uninfluenced by the impugned order. Vide order dated 23<sup>rd</sup> September 2019, the Hon'ble Supreme Court in Civil Appeal Diary No. 32731/2019 filed by the Insolvency and Bankruptcy Board of India also directed the same to be tagged with Civil Appeal No. 6707/2019 which was filed by the Committee of Creditors of Amtek Auto Ltd., as noted above. However, it appears that the decision of the Hon'ble Supreme Court was rendered only in Civil Appeal filed by the Committee of Creditors of Amtek Auto Ltd. and not in the Civil Appeal filed by the Insolvency and Bankruptcy Board of India, which issue is pending before the Hon'ble Supreme Court.

6. As regards the second issue taken up by the learned Senior Counsel for the petitioners that the petitioner Nos. 2, 3 and 4 could not have been summoned in their individual capacity by the learned

Special Judge when the complaint was filed only against the company through petitioner Nos. 2, 3 and 4, prima facie, there appears to be merit as Section 74(3) of the I.B.C. does not impose a vicarious liability.

7. Reply affidavit be filed by the respondent No. 2 within four weeks.
8. Rejoinder affidavit within four weeks thereafter.
9. List on 13<sup>th</sup> April 2022.
10. Till the next date of hearing, the petitioners No. 2, 3 and 4 are exempted from appearing before the learned Trial Court through the learned counsel.
11. Order be uploaded on the website of this Court.

**MUKTA GUPTA, J.**

**FEBRUARY 01, 2022/akb**