

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) Insolvency No. 846 of 2023

IN THE MATTER OF:

Vinay Jain,

Successful Resolution Applicant (SRA)/ Suspended
Director AVJ Developers (India) Pvt. Ltd.
S/o Bal Mukund Jain, R/o D-230, Vivek Vihar,
New Delhi - 110095

...Appellant

Versus

AVJ Developers (India) Pvt. Ltd.

Corporate Debtor, Through its Resolution Professional,
Mr. Vivek Kumar, R/o C-604, Rosewood Apartments,
Mayur Vihar –I, Extension,
New Delhi, Delhi, 110091

...Respondent

Present:

For Appellant : Mr. Ambuj Tiwari, Advocate.

For Respondents : Mr. Amit Chdha, Sr. Advocate, Mr. Suresh Dobhal, Mr. Shikhar Kumar, Advocates for IIFL Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Vaibhav Mendiratta, Mr. Lubanshi Rai, Advocates. Ms. Mani Gupta, Ms. Sonali Jain, Ms. Sreemantini Mukherjee, Advocates for RP. Mr. Shashank Agarwal, Advocate for AVJ

J U D G M E N T

ASHOK BHUSHAN, J:

1. This Appeal by a Successful Resolution Applicant/Suspended Director of the Corporate Debtor has been filed challenging the Order dated 12th April, 2023 passed in I.B.-654(PB)/2019.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

(i) The adjudicating Authority vide its Order dated 21.09.2019 initiated ‘Corporate Insolvency Resolution Process’ (CIRP in short) against the

Corporate Debtor-M/s. AVJ Developers (India) Pvt. Ltd. on an Application filed by the Financial Creditor-Mr.Vishal Fabrics & Ors.

(ii) Corporate Debtor was involved in the real estate project of project namely AVJ Heights by the AVJ Group. Although construction of 10 towers were made but construction of one tower being incomplete, several home-buyers filed First Information Reports (FIR in short) against the Appellant alleging various offences in the State of NCT of Delhi and Uttar Pradesh.

(iii) The Appellant was arrested on 24.12.2019. Bail Application of the Appellant was rejected by Allahabad High Court against which the Appellant filed SLP (Crl.) No. 175/2021 titled as “Vinay Jain Vs. State & Anr.”. In the SLP (Crl) filed by the Appellant, Hon’ble Supreme Court issued notices and asked the Petitioner to file Affidavit stating the complete list of his movable and immovable assets. Hon’ble Supreme Court on 08.02.2021 after considering the Affidavit filed in response to the Court order noted the submission of the Appellant that the existing area over which no construction has taken place is capable of construction of approximately five lakh square feet, which can take care of the interests of all the flat buyers who have not got their flats.

(iv) Hon’ble Supreme Court vide Order dated 26.02.2021 granted Interim Bail to the Appellant for six months. Hon’ble Supreme Court observed in the Order that in order to facilitate the construction of the remaining flats so that the requirements of the remaining flats buyers can be met, we are inclined to grant interim bail to the

petitioner, initially for a period of six months. The Court also directed the Appellant to file progress report in the case. The Appellant filed progress report in the Bail Application and after being released from jail, Appellant met officials of Greater NOIDA Authority.

(v) On 06.04.2021, Erstwhile Resolution Professional of the Corporate Debtor filed I.A. No. 1690 of 2021 alleging preferential, undervalued and fraudulent transactions by the Appellant.

(vi) The Appellant requesting the erstwhile RP to allow the Appellant to register the Respondent Company as an MSME under the MSME Act, 2006 which was considered by the Committee of Creditors (CoC in short) in its 10th CoC Meeting held on 17.06.2021 and approved by 74.3% vote. The Resolution Professional was permitted to register the Company as MSME. On 3rd July, 2021, MSME Certificate was granted to the Corporate Debtor.

(vii) In pursuance of the Form-G issued by the Resolution Professional, Appellant submitted an Expression of Interest. Affidavit was filed by the Appellant before the Hon'ble Supreme Court showing the progress in the AVJ Heights Project. Hon'ble Supreme Court vide its Order dated 29.09.2021 made the interim bail of the Appellant absolute and enlarged the Appellant on regular bail.

(viii) CoC in its 13th Meeting held on 30.09.2021 accepted the Appellant as provisional resolution applicant. On 14th CoC Meeting held on 11.10.2021, Resolution Plan of the Appellant was placed before the CoC Which was approved with 72.666% Vote share.

Erstwhile Resolution Professional on 09.11.2021 filed I.A. No. 5385 of 2021 praying for approval of Resolution Plan of the Appellant.

(ix) The Adjudicating Authority directed issue of notice on I.A. No. 5385 of 2021. An Application was filed by the Appellant being I.A. No. 1153 of 2022 praying for liberty to start construction work/maintenance/CC/OC/registration of all 11 towers of project including tower B as per Resolution Plan. Erstwhile RP was removed by the IBBI and by Order dated 04.10.2022, Mr. Vivek Kumar new Resolution Professional was appointed. On 06.02.2023, the Adjudicating Authority noticing the fact that erstwhile Resolution Professional has filed I.A. No. 5385 of 2021 seeking approval of the plan on the basis of MSME Certificate, an I.A. No. 1690 of 2021 is pending where application was filed under Section 43, 44, 45 and 66 of the Code. Resolution Professional was given time to get instruction from the CoC on the Application of the avoidance PUFÉ in relation to plan approval application. The CoC after the Order of the Hon'ble Adjudicating Authority dated 06.02.2023 considered the PUFÉ Transaction Application as well as Resolution Plan approval application and in 17th Meeting of CoC held on 27.02.2023 resolved that Application for approval of Resolution Plan be first considered by the Adjudicating Authority.

(x) The Resolution Professional filed a compliance affidavit before the Adjudicating Authority. The Adjudicating Authority on 12th April, 2023 passed the Impugned Order directing PUFÉ Transaction

Application being I.A. No. 1960 of 2021 shall be heard first and Plan Approval Application I.A. No. 5385 of 2021 shall be heard thereafter.

(xi) The Appellant aggrieved by the Order dated 12th April, 2023 has come up in this Appeal.

3. Learned Counsel for the Appellant submits that the Adjudicating Authority ought to have considered the Application I.A. No. 5385 of 2021 filed for approval of Resolution Plan which is pending for more than one and half year. It is submitted that the Committee of Creditors also resolved on 27.02.2023 that Resolution Plan Approval Application should be heard first, the Adjudicating Authority ought not to have postponed the hearing of Plan Approval Application. It is submitted that majority of Financial Creditors are creditors in a class i.e. Home-Buyers who are awaiting that the allotted homes should be handed over to them. It is submitted that the Application I.A. No. 1960 of 2021 has to be heard and prosecuted by Successful Resolution Applicant as per clause itself. It is submitted that as per the provision of the statute, pendency of PUFEE Application does not prohibit the insolvency resolution process to proceed and the Adjudicating Authority committed error in directing the consideration of PUFEE Application first.

4. Learned Counsel for the Resolution Professional referring to Reply filed in the Appeal submits that Plan Approval of CoC contemplates that SRA pursue the PUFEE Transaction Application. It was submitted that Adjudicating Authority is well within its right to conduct procedure in a manner in which the Adjudicating Authority decides. It is submitted that Appellant want to delay the adjudication of avoidance application.

5. I.A. No. 3555 of 2023 has been filed before this Tribunal by the IIFL Finance Limited which is a financial creditor. The Applicant-IIFL has been permitted to intervene in the matter. We have heard Mr. Amit Chadha, Sr. Advocate appearing for the IIFL Finance Limited. Mr. Chadha in support of Intervention Application submits that Applicant is a financial Creditor and be permitted to oppose the Appeal. It is submitted that Avoidance Application has to be heard first which decision shall make the Appellant ineligible to submit a Plan. Learned Sr. Counsel has referred to Section 29A (g) of IBC. It is submitted that Appellant has indulged in several preferential, undervalued and fraudulent transactions which need to be decided first. It is submitted that Appellant has siphoned huge fund. It is submitted that Applicant ought to have been impleaded by the Appellant. It is submitted that Appellant is not eligible to submit a Resolution Plan. MSME Certificate was obtained after commencement of the CIRP. Applicant has filed an Application before the Adjudicating Authority. Erstwhile Resolution Professional Mr. Anil Tayal was suspended by IBBI on 28th July, 2022 because of his illegal activities contrary to the provisions of IBC. It is submitted that the Adjudicating Authority has also issued notice on the PUFEE Transaction Application filed by the RP. The RP on 14th April, 2023 has filed separate PUFEE/Avoidance Applications bearing I.A. No. 2521/2023, I.A. No. 2386/2023, I.A. No. 2388/2023 & I.A. No. 2390/2023.

6. We have considered the submissions of parties and perused the record.

7. The question to be answered in this Appeal is as to whether the Adjudicating Authority by the Impugned Order committed error in directing

for consideration of PUF Transaction Applications first and adjourning the Application for approval of Resolution Plan to be heard later.

8. Learned Counsel for the Appellant has referred to the Orders passed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 175/2021 which was filed by the Appellant challenging the denial of bail to the Appellant. The FIRs as noted above which were filed in the State of UP numbering 37 FIRs and 8 FIRs in the State of Delhi arises out of tripartite agreement under which the Corporate Debtor had agreed to handover possession to the home-buyers. The First Information Reports were registered against the Appellant alleging various offences arising out of three tripartite agreements where Hon'ble Supreme Court while hearing SLP (CrI) No. 175 of 2021 in order dated 08.02.2021 noted following:

“We would also like to know as to what action is being taken for consideration of the one tower which has given rise to all these FIRs and what is the solution being offered by the petitioner.

Learned Counsel further submits that the existing area over which no construction has taken place is capable of construction of approximately five lakh square feet, which can take care of the interests of all the flats buyers who have not got their flats including any alleged double sale. The valuation of this unconstructed area is stated to be about Rs. 150 crores.

The affidavit be filed within two weeks, as prayed for”

9. By order dated 26.02.2021, Hon'ble Supreme Court granted Interim Bail to the Appellant. While granting the Interim Bail, following observations were made in the Order dated 26.02.2021:

“In order to facilitate the construction of the remaining flats so that the requirements of the remaining flats can be met, we are inclined to grant interim bail to the petitioner, initially for a period of six months.

We are told that the passport of the petitioner already stands deposited.

The petitioner will file a progress report of what steps he has taken during this period of time and we make it clear that unless he shows sufficient progress, his continued enlargement will be in peril.”

10. In pursuance of the Order of Hon’ble Supreme Court, the Appellant has filed the progress report before the Hon’ble Supreme Court from time to time and ultimately Hon’ble Supreme Court vide Order dated 29.09.2021 noticed developments in the CIRP Process of the Corporate Debtor and has also noted the approval of the Resolution Plan in 10th CoC Meeting. Following relevant observations to be noticed:

“We may notice that since a Resolution Professional had been appointed, the said Resolution Professional was joined in in the present proceedings.

We have perused the comprehensive affidavit of compliance filed by the appellant. The various facets are as under.

Greater Noida Industrial Development Authority (GNIDA) claims certain amounts in relation to the project. It is the say of the appellant that out of the total amount towards lease rent of Rs.51.5 crores, the company had already deposited a sum of Rs.44 crores leaving a balance of Rs.7.5 crores. However, that amount is stated to have escalated into a figure of over Rs.50 crores on account of compound interest etc. and that claim was rejected by the Resolution Professional

but the Greater Noida Industrial Development Authority (GNIDA) has filed an appeal before the National Company Law Tribunal (NCLT) which is pending consideration. Thus, that aspect has to be determined in those proceedings.

The appellant has also stated that he is exploring the possibility of an OTS settlement with the various Banks from which loan has been availed off even though his status is of a suspended Director of AVJ Developers India Private Ltd. In the meantime, the appellant interacted with the Resolution Professional to allow him to register the company as a MSME under the Micro, Small and Medium Enterprises Development Act, 2006 (MSME Act, 2006) and the same was approved by the Committee of Creditors (COC) in the 10th meeting by a 74.3 per cent votes in favour and the company has since been registered as an MSME on 03.07.2021 and would thus, be entitled to certain benefits. According to India Infoline Finance Ltd.(IIFL-applicant), this aspect has been assailed before the National Company Law Tribunal (NCLT).

In the Committee of Creditors' 11th and 12th meeting, a new Resolution Plan was allowed to be submitted by the appellant who gave in his expression of interest and in the 13th meeting of Committee of Creditors gave the approval to the appellant to be the Provisional Resolution applicant with 68.95 per cent votes in favour of the same by the home buyers. In fact, he is the only resolution applicant and has now submitted a draft Resolution Plan for consideration of the Resolution Professional for settlement of all disputes with financial creditors, registration of units sold and selling of unsold units in a draft plan on how

to finance the construction of the remaining portion of the 11th tower.

The dispute with the IIFL has some other ramifications as undisputedly three loans were availed off by the Company but according to the IIFL, there is a fourth loan of Rs.85 crores which is seriously disputed by the appellant. That aspect is being resolved in appropriate legal proceedings.

We have also perused the additional affidavit filed by the Resolution Professional.

We have only noticed the aforesaid issues to record that there is progress in seeking to resolve the issues of the home buyers in which the home buyers have a participation and appear to be approving number of acts which the appellant has taken. The Resolution Professional is performing its role.

In view of the aforesaid and taking into consideration the different forums which will have to go into the issues put forth before us, we find it is not possible to resolve all the issues here in the present proceedings which really arise only out of the grant of interim bail vide an order dated 26.02.2021.

We are, thus, of the view that the present appeal can be disposed of by making the interim bail order dated 26.02.2021 absolute subject to the condition that the appellant will continue to abide by the undertaking/assurances given to this Court in the various proceedings and will continue to cooperate with the investigation in respect of the FIRs registered against him and on other terms and conditions as may be specified by the trial Court.

The appeal accordingly stands disposed of.”

11. Hon'ble Supreme Court in the aforesaid order observed that it is not possible for the Court to resolve all the issues in the present proceedings which really arose only out of grant of interim bail and by making the interim bail absolute with the condition that Appellant shall continue to abide by the undertaking given to the court in the various proceedings and shall continue to cooperate with the investigation in respect of the FIRs.

12. We are conscious that Order passed by the Hon'ble Supreme Court relates to grant of the Bail of the Appellant and Hon'ble Supreme Court has clearly observed that it is not possible to resolve all the issues raised and it is the Adjudicating Authority where Insolvency Resolution Process is pending which has to be considered and decided on all other issues raised before it.

13. Before we come to the Order dated 12th April, 2023 we may also notice the earlier order passed by the Adjudicating Authority on 06.02.2023 where the Adjudicating Authority noticed the Application filed by the Erstwhile RP being I.A. No. 5385 of 2021 for approval of the plan as well as PUFÉ Application I.A. No. 1690 of 2021, following observations were made by the Adjudicating Authority vide Order dated 06.02.2023:

“In the meantime, there is also an application filed by the erstwhile RP in I.A-5385/2021 seeking approval of the resolution plan approved by the CoC. This plan proposed is by the Suspended Management on the basis of MSME Registration Certificate. So, if I.A-1690/2021 is allowed for one or the other reason then the eligibility of the SRA to defend the plan or support the plan would become irrelevant. As a result, the CoC members also need to be aware of the peculiar circumstances of the present case.

At this juncture, Ms. Maini, Ld. Counsel for the RP sought time to get instructions from the CoC members on the implication of the avoidance PUFÉ transaction application in relation to the plan approval application and thereafter she stated that she will submit before this Tribunal. We granted time as per her request. List the matter on 07.03.2023 for physical hearing.”

14. After the Order of the Adjudicating Authority dated 06.02.2023, the Resolution Professional placed the order and other relevant material before the CoC and CoC in its 17th Meeting held on 27.02.2023 approved the resolution with effect that Application filed by the Resolution Professional for approval of the Resolution Plan being I.A. No. 5385 of 2021 be heard and decided. Resolution Professional filed a compliance affidavit before the Adjudicating Authority. Minutes of the meeting as well as the result of the voting was placed before the Adjudicating Authority. It is also relevant to notice that IIFL Finance Limited has also filed an Application before the Adjudicating Authority being 5580 of 2021 where it prayed that I.A. No. 1690 of 2021 filed by the RP be decided first before proceeding to consider the Application for Approval of Resolution Plan. It was also prayed that issue of disqualification of Appellant be decided before deciding I.A. No. 5385 of 2021. The Adjudicating Authority after hearing the parties by the Impugned Order took decision to take up PUFÉ Transaction Application first. Following observations were made by the Adjudicating Authority in this regard:

“Today, she submitted before us that the CoC resolution is that the Resolution Plan application should go ahead

and the PUFÉ transaction applications will be taken up at the subsequent stage.

We find it untenable as of now because if the PUFÉ transaction is taken up later and a case of the preferential transaction is established against the SRA, then the fate of this project will be in jeopardy.

Therefore, we are inclined to take up the PUFÉ transaction application first.”

15. What appears to be reason which persuaded the Adjudicating Authority to decide the PUFÉ Transaction Application first is that if the preferential transaction are established against the Appellant, the fate of the project will be in jeopardy.

16. Learned counsel for the Intervener i.e. IIFL Finance Limited has contended that decision of the Application of PUFÉ Transaction has to be first decided in event the Application is allowed the Appellant shall be ineligible under Section 29A (g) to submit a Resolution Plan, it is necessary to consider the Application PUFÉ first and Resolution Plan Application has to be taken thereafter.

17. Learned Counsel for the RP has filed Affidavit in this Appeal and has referred to Clause 9.16 of the Resolution Plan in paragraph 3(c) of Affidavit of Resolution Professional. Following has been pleaded:

“c. The Resolution Plan approved by the CoC specifically contemplates that the SRA would pursue the PUFÉ Transactions’ Application. Hence, the Appellant cannot be permitted to circumvent the provisions of the approved by CoC Resolution Plan by means of the present appeal. Clause 9.16 of the Resolution Plan states as follows:

“TREATMENT OF AMOUNT CLAIMED UNDER ONGOING LITIGATIONS

i. Any amount realised on account of a transaction application in pursuant to section 43,45, 49, 50, 66 filed with the NCLT will be to the account of the all the creditors of the corporate debtor to be distributed on Pro-rate basis on their admitted principal amount after adjusting the legal expenses incurred by the Resolution Applicant to recover the said amount. That the resolution applicant after the approval of the Resolution Plan undertakes to pursue all the Avoidance Applications filed by the Resolution Professionals.”

A true copy of the Resolution Plan as approved by the CoC is annexed herewith as Annexure R-1.”

18. The Resolution Plan thus clearly contemplates that transaction application PUFE have to be pursued by SRA. Section 26 of the Code provides as follows:

“26. Application for avoidance of transactions not to affect proceedings.-

The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.”

19. In the present case, avoidance application has been filed which are pending consideration. There can be no quarrel to the preposition that avoidance application has to be decided by the Adjudicating Authority which shall not affect the proceedings of the CIRP. The legislative intent is very clear that avoidance application is not to affect the proceedings in the CIRP. The proceeding in CIRP i.e. the Resolution of the Corporate Debtor is the objective of IBC and the Resolution Plan has been approved by the CoC
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and Application for approval is pending before the Adjudicating Authority since 09.11.2021, there is no reason for adjourning consideration of the said application to await the decision of PUFÉ Application. PUFÉ Applications are a different scheme of proceedings which has to be concluded to its logical act which shall have its consequences as contemplated in the statute. When the CoC approved the Resolution Plan and has also reiterated that Application for Resolution Plan be considered by tis 17th CoC Meeting dated 27.02.2023, we do not find any reason not to consider the said application merely on the ground that PUFÉ Applications are pending. The Adjudicating Authority is well within jurisdiction to consider both the Resolution Plan Approval Application as well as PUFÉ Application but the Adjudicating Authority erred in observing that the consideration of Plan Approval Application has to be deferred and can be taken only after PUFÉ Applications are decided.

20. Learned Counsel for the Intervener IIFL Finance Limited has especially contended that PUFÉ Application has to be decided first which will dispose eligibility of the Appellant to submit a resolution plan. There can be no doubt that while considering the Plan Approval Application, it is always open for the Adjudicating Authority to consider the question of ineligibility of the Resolution Applicant if the objections are raised. There is no impediment in considering the Plan Approval Application as well as PUFÉ Application together. Apprehension of Intervener that in event plan approval application is decided first, it is the resolution applicant who has to pursue the PUFÉ Application which can not be pursued since the interest of the Resolution Applicant not to pursue PUFÉ Application. To

allay such apprehension it is always open for the Intervener or Resolution Professional to make an appropriate application to the Adjudicating Authority seeking leave of the Resolution Professional to pursue the PUF Application in accordance with law.

21. Learned Counsel for the Intervener submitted that ex-promoters are not eligible to submit a Resolution Plan. He has referred to the Judgments of the Hon'ble Supreme Court in **"Chitra Sharma & Ors. Vs. Union of India & Ors."** (2018) 18 scc 575 and **"Arun Kumar Jagatramak Vs. Jindal Steel and Power Ltd. & Anr., (2021 7 SCC 474).**

22. In **Chitra Sharma**, Hon'ble Supreme Court had occasion to consider the object and purpose for introduction of Section 29A in IBC. In paragraph 38 and 39, following was stated:

"38 Parliament has introduced Section 29 A into the IBC with a specific purpose. The provisions of Section 29 A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process. The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill 2017, which was ultimately enacted as Act 8 of 2018, states thus:

"2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of 30 liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions

to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.”

(emphasis supplied)

Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of bidder companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. It was in this background that Section 29 A has now specified a list of persons who are not eligible to be resolution applicants.

39. 32 Clauses (c) and (g) of Section 29 A would operate as a bar to the promoters of JAL/JIL participating in the resolution process. Under clause (c), a person who at the time of the submission of the resolution plan has an account which has been classified a Non-Performing Asset under the guidelines of the RBI or of a financial regulator is subject to a bar on participation for a stipulated period. Under clause (g), a person who has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction

has taken place and in respect of which an order has been made by 31 the adjudicating authority under the IBC is prohibited from participating. The Court must bear in mind that Section 29 A has been enacted in the larger public interest and to facilitate effective corporate governance. Parliament rectified a loophole in the Act which allowed a back-door entry to erstwhile managements in the CIRP. Section 30 of the IBC, as amended, also clarifies that a resolution plan of a person who is ineligible under Section 29 A will not be considered by the CoC :

“30. Submission of resolution plan. ...

(4) The committee of creditors may approve a resolution plan by a vote of not less than 4[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:

Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that subsection];

Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.”

23. Hon’ble Supreme Court in **Arun Kumar Jagatramka** had occasion to notice the object and purpose of amendment by which Section 29A was sought to be introduced in IBC. In paragraph 44, 45 and 46, following has been stated:

“44. The Statement of Objects and Reasons accompanying the introduction of the Bill proposing the amendment dated 23 November 2017, elucidates the purpose of introducing the new provisions:

“2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain

control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.”

45. During the course of the debate in the Lok Sabha on 29 December 2017, the Finance Minister noted that the IBC had been in operation for about a year. The new legislation had been a “learning experience”. The Ordinance was promulgated since a large number of cases were “already pending resolution mechanism itself” and there was a danger that if the amendment was not immediately brought in, persons who were “ineligible” would have started applying as resolution applicants. The Finance Minister in the course of his speech highlighted the reason for the amendments when he observed as follows:

“...What do you do with promoters who are themselves responsible for these NPAs, that is clause C. Every creditor takes his haircut and there is an equitable distribution in the case of dissolution. In the case of resolution also, all type of creditors may take some haircut and the man who created the insolvency pays a fraction of the amount and comes back into management. Should we allow that to continue? The overwhelming view, as expressed by the Members, is that it should not be allowed. This was a gap which was there in the original Bill and by bringing in 29(a) we have tried to fill in that gap. That is the objective. In order that this provision must apply to all existing cases

of resolution which are pending, that is the case for urgency. If we had not done this, then all such defaulters would have rejoiced because they would have merely walked back into these companies by paying only a fraction of these amounts. That is something which besides being commercially imprudent would also be morally unacceptable. That is the real rationale behind this particular Bill:.”

(emphasis supplied)

46. The Report of the Insolvency Law Committee dated 3 March 2018 states that the intent behind introducing Section 29A was to prevent unscrupulous persons from gaining control over the affairs of the company. These persons included those who by their misconduct have contributed to the defaults of the company or are otherwise undesirable. The Committee observed:

“14.1. Section 29A was added to the Code by the Amendment Act. Owing to this provision, persons, who by their misconduct contributed to the defaults of the corporate debtor or are otherwise undesirable, are prevented from gaining or regaining control of the corporate debtor. This provision protects creditors of the company by preventing unscrupulous persons from rewarding themselves at the expense of creditors and undermining the processes laid down in the Code.”

24. Taking into consideration the overall facts and circumstances of the present case, ends of justice will be served in disposing of this Appeal with following directions:

- i. The Adjudicating Authority shall proceed to consider the Resolution Plan Application being I.A. No. 5385 of 2021 and not to await the decision in PUFE Applications.
- ii. The Adjudicating Authority shall decide the Plan Approval Application and shall also consider the eligibility of the Resolution Applicant which is an issue raised by the Intervener (IIFL Finance Limited).
- iii. It is open for the Adjudicating Authority to hear and decide Plan Approval Application i.e. 5385 of 2021 and PUFE Application 1690 of 2021 (I.A. No. 2521/2023, I.A. No. 2386/2023, I.A. No. 2388/2023 & I.A. No. 2390/2023), simultaneously.
- iv. In event, the Resolution Plan Application is decided, it shall be open for the RP to file an I.A. seeking liberty of the Adjudicating Authority to prosecute the PUFE Applications by RP instead of SRA looking to the facts of the present case.
- v. The Adjudicating Authority shall endeavour to decide the Applications at an early date.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
23rd August, 2023
Basant B