

Neutral Citation No. - 2024:AHC:132358

Reserved on: 16.05.2024

Delivered on: 09.08.2024

Court No. - 64

Case :- CRIMINAL REVISION No. - 3303 of 2023

Revisionist :- M/S/ Of Jvl Agro Industries Limited

Opposite Party :- City Health Officer and another

Counsel for Revisionist :- Yash Tandon

Counsel for opposite parties :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Yash Tandon, the learned counsel for revisionist and the learned A.G.A. for State opposite parties 1 and 2.

2. Perused the record.

3. This criminal revision has been filed challenging the order dated 18.1.2020 passed by Metropolitan Magistrate, Ist, Kanpur Nagar in Case No. 517 of 2008 (State Vs. Pankaj Tiwari and another) under Sections 7/16 Prevention of Food Adulteration Act, P.S. Bidhnu, District Kanpur Nagar, whereby accused Pankaj Tiwari has been convicted under Sections 7/16 of P.F. Act and consequently sentenced to 6 months simple imprisonment along with fine of Rs. 10,000/- whereas accused Jhunjhunwala Vanaspati Ltd. Through Awadhesh Rai has been fined with Rs. 10,00,000/-. As a consequence of above, accused Pankaj Tiwari and Awadhesh Rai on behalf of the company were taken into custody, in case of default, they were to undergo 3 months additional imprisonment as well as the judgement and order dated 22.02.2022 passed by Additional Sessions Judge Court No. 12, Kanpur Nagar in Criminal Appeal No. 32 of

2001 (M/s Jhunjhunwala Vanaspati Ltd. Vs. State of U.P.), whereby aforementioned Criminal Appeal filed by M/s Jhunjhunwala Vanaspati Ltd. against judgment and order dated 18.01.2020 has been dismissed.

4. Record shows that M/s Jhunjhunwala Vanaspati Ltd. is a company duly incorporated under the Companies Act. Aforementioned Company was re-incorporated as such, it came to be known as J.V.L. Agro Industries Ltd. A copy of the fresh certificate of incorporation of the company, consequent upon change of their name has been brought on record as Annexure-A-1 to the stay application filed along with the memo of present criminal revision.

5. It transpires that on 23.10.2007 at around 5.30 p.m., the Food Inspector namely Shyam Lal Shakya inspected shop No. 106 Sanjai Gandhi Nagar, Kanpur Nagar and purchased three packets of Super Jhula vanaspati of 200 ml, each. He also paid the price of the same. Thereafter, the samples aforementioned were sent for analysis to the Public Analyst, Lucknow. The Public Analyst Lucknow submitted his report dated 1.12.2007 pointing out various deficiencies in the sample so sent for chemical examination.

6. In view of above, the Food Inspector Shyam Lal Shakya filed a complaint in the Court of concerned Magistrate, Kanpur Nagar. The same came to be subsequently registered as Case No. 517 of 2008 (State Vs. Pankaj Tiwari and another).

7. The Metropolitan Magistrate Ist, Kanpur Nagar, vide order dated 18.1.2020 convicted the accused Pankaj Tiwari under Sections 7/16 of Prevention of Food Adulteration Act and consequently, sentenced him to six months simple imprisonment along with fine of Rs. 10,000/-, whereas accused M/s Jhunjhunwala Vanaspati Ltd. has been fined with Rs. 10,00,000/-. Convicted accused Pankaj Tiwari and Awadhesh Rai on behalf of company were taken into custody. It was further provided that in

case of default in payment of fine, they are to undergo three months additional imprisonment.

8. Against judgement and order dated 18.1.2020, two criminal appeals came to be filed before the Appellate Court i.e. District and Sessions Judge, Kanpur Nagar. Criminal Appeal No. 32 of 2021 (M/s Jhunjhunwala Vanaspati Ltd. vs. City Health Officer Kanpur and another). Convicted accused Pankaj Tiwari also filed an appeal. However, he died during the pendency of appeal and therefore, the appeal filed by him stood abated. The Appellate Court i.e. Additional Sessions Judge, Court No. 12, Kanpur Nagar dismissed the Criminal Appeal No. 32 of 2021 (M/s Jhunjhunwala Vanaspati Ltd. Vs. State of U.P), vide judgement and order dated 22.02.2022.

9. Thus feeling aggrieved by aforementioned judgement and order dated 18.1.2020 passed by the Trial Court i.e. Metropolitan Magistrate Ist, Kanpur Nagar as well as the judgement and order dated 22.2.2022 passed by the Appellate Court i.e. Additional Sessions Judge, Court No. 12 Kanpur Nagar, the revisionist, who is a convicted accused, has now approached this Court by means of present criminal revision.

10. Mr. Yash Tandon, the learned counsel for revisionist, in challenge to the judgements and orders impugned in present criminal revision, has raised a solitary submission to the effect that since the company namely M/s J.V.L. Agro Industries Ltd. formerly known as M/s Jhunjhunwala Vanaspati Ltd. is undergoing liquidation, therefore, by virtue of the provisions contained in the Insolvency and Bankruptcy Code, 2016, the judgement and order impugned cannot be sustained and therefore, liable to be made ineffective/set aside. In support of above, he has relied upon the judgment of Supreme Court in **P. Mohanraj and Others Vs. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258.**

11. In order to appreciate the said solitary submission urged by the learned

counsel for revisionist, it is necessary to first refer to the scheme of the Insolvency and Bankruptcy Code, 2016.

12. Section 6 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the Code, 2016) describes the persons, who may initiate corporate insolvency resolution process. Sections 7, 8 and 9 of the the Code, 2016 provides for different types of creditors, who may initiate the corporate insolvency resolution process. Section 11 of the Code, 2016 provides for the class of persons, who are not entitled to make an application regarding corporate insolvency resolution process. Section 12 of the Code, 2016 provides for the time limit for completion of insolvency resolution process.

13. Section 13 of the Code, 2016 provides for declaration of moratorium and public announcement. The same reads as under:-

“Section 13- Declaration of moratorium and public announcement:-

(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order-

(a) declare a moratorium for the purposes referred to in section 14;

(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.”

14. Section 14 of the Code, 2016 provides for moratorium, which reads as under:-

“Section 14 – Moratorium:-

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency

commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

¹*[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted

during moratorium period.

¹*[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified;]*

²*[(3) The provisions of sub-section (1) shall not apply to--*

³*[(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;]*

(b) a surety in a contract of guarantee to a corporate debtor.].

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

15. Section 30 of the Code, 2016 provides for the submission of resolution plan and the powers of the tribunal regarding the same. For ready reference, the same is reproduced herein under:-

“Section 30 - Submission of resolution plan :-

(1) A resolution applicant may submit a resolution plan ¹[along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan--

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the ²[payment] of other debts of the corporate debtor;

³[(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than--

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

Explanation 1.--For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.

Explanation 2.-- For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a

corporate debtor--

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

(ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;]

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

⁴*[Explanation.-- For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law];*

(3) The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

⁵*[(4) The committee of creditors may approve a resolution plan by a vote of not less than ⁶[sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, ⁷[the manner of*

distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor] 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 sub-section.]

⁸*[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.]*

(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered:

Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution

applicant is also a financial creditor.

(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”

16. Section 32-A of the Code, 2016 speaks for liability for prior offences etc. The same reads as under:-

“Section 32-A - Liability for prior offences etc. :-

¹/32A. 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.]”

17. Section 33 of the Code, 2016 provides for liquidation process. The same is reproduced herein under:-

“Section 33 – Initiation of Liquidation :-

(1) Where the Adjudicating Authority,--

(a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or

(b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall--

(i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;

(ii) issue a public announcement stating that the corporate debtor is in liquidation; and

(iii) require such order to be sent to the authority with which the corporate debtor is registered.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors ¹[approved by not less than sixty-six per cent. of the voting share] to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

²[Explanation.-- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]

(3) Where the resolution plan approved by the Adjudicating Authority ³[under section 31 or under sub-section (1) of section 54L,] is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(4) On receipt of an application under sub-section (3), if the Adjudicating Authority determines that the corporate debtor has

contravened the provisions of the resolution plan, it shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

(6) The provisions of sub-section (5) shall not apply to legal proceedings in relation to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.”

18. The facts of the present case have now to be analysed in the light of the statutory provisions noted herein above.

19. Record shows that an application under Section 7 of the Code, 2016 read with Rule 4 of Insolvency and Bankruptcy Rules 2016 was filed by Corporate Creditor namely Standard Chartered Bank praying therein that corporate insolvency resolution process be initiated by bankrupt company JVL Agro Industries Ltd. This application came to be registered as C.P. (IB) 223/ALD/2018 in the matter of Standard Chartered Bank Vs. JVL Agro Industries Ltd. The National Company Law Tribunal, Allahabad Bench passed an order dated 25.7.2018, whereby the Tribunal concluded that as amount of penal, the grant of Rs. 1,00,000/- inasmuch as, which is stated to be 63,77,99,916/- (Indian National Rupees – Sixty Three Crores,

Seventy Seven Lakhs, Ninety Nine Thousands, Nine Hundred and Sixteen) therefore, the application filed by Financial Creditor for want of Corporate Insolvency Resolution Process as per the Insolvency and Bankruptcy Code, 2016 desired admission. Accordingly, the Tribunal issued the following direction:-

“Present petition filed under Section 7 of the I & B Code and rules made thereunder is hereby admitted, with consequential directions given as under:-

I. Mr. Avishek Gupa, Email. ho@optimumresolution.net, Registration No. IBBI/IPA-003/IP-N000135/2017-2018/11499, Address : CK, 104, Sector 2, Salt Lake City, Kolkata, 700091 is appointed as Interim Resolution Professional to carry the functions as mentioned under the Code.

II. That the order of moratorium u/s 14 shall have effect from the date of this order till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.

III. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority, transferring, encumbering alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFESI Act, 2002, the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

IV. That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.

V. That the provisions of Section 14 sub-section (1) shall not apply to such transactions as may be notified by the Central Government or in consultation with any financial sector regulator.

VI. That the public announcement of corporate insolvency resolution process be

made immediately as specified under Section 13 of the Code and calling for submissions of claim under Section 15 of the Code.

VII. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17, 18, 20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I & B Code, 2016.

VIII. The Registry is at this moment directed to communicate this order to the Financial Creditor and the Corporate Debtor and IRP after the completion of necessary formalities.

IX, List this matter on 13.08.2018 for filing progress report by IRP.

20. During the pendency of aforementioned proceedings before the National Company Law Tribunal , Allahabad, two applications came to be filed. The first application under Section 33 (1) of the Insolvency and Bankruptcy Code 2016 was filed by Ramesh Chandra Grarg, Chief Finance Officer of the Corporate Debtor, Mr. Yogesh Singh, the Electrical Engineer (HOD) of the Corporate Debtor and Mr. Prem Nath, the Mechanical Maintenance In-charge of the Corporate Debtor jointly on behalf of employees of JVL Agro Industries Ltd., which culminated into a trust by the name of Employee Welfare Trust of JVL Agro seeking indulgence of this Tribunal to place a resolution paln for consideration and approval under the provisions of IBC and further praying that the liquidation application be dismissed as it is not maintainable under Section 33(1) of IBC. This application came to be registered as Application No. CM 73/ALD2020 and was filed under Section 60 (5) of Insolvency and Bankruptcy Code, 2016. Another application being I.A.

No. 160/2020 was filed on behalf of applicant. Paragraph 12 speaks about the another application filed under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeks liberty to place the expression of interest for onward submission of the resolution plan before the Resolution Professional and Committee of Creditors.

21. All the aforementioned applications came to be decided by the National Company Law Tribunal Allahabad, vide order dated 19.8.2020. The Tribunal concluded as follows:-

"16. Further, with regard to the Liquidation application i.e CA 215/2019, this Tribunal finds that the ex-management has raised the objection that the object of the Code is maximization of value of assets. Therefore, the plan presented before this Adjudicating Authority shall be placed before the CoC instead of liquidating the Corporate Debtor. To this, I do not find any infirmity in the contention raised by the Corporate Debtor. In regard to the CoC, it shows that after the Resolution Plan of SREI was rejected by CoC with required majority and further was also rejected by this Adjudicating Authority vide order dated 5th February, 2020, there was no viable plan put before CoC for consideration and CIRP period has expired long back. Thus, in absence of any approved or viable plan the adjudicating authority has no option but to pass order of liquidation on completion of insolvency period.

17. The Resolution Professional has filed the present application for resolution as statutory period has elapsed from the date of initiation of CIRP and no Resolution Plan has been approved by the CoC.

18. At this juncture, it is pertinent to refer Section 33(1)(a) of the IBC, which mandates that "where the Adjudicating Authority before the expiry of maximum period permitted for completion of the corporate insolvency resolution process under Section 12 or the fast track corporate insolvency resolution process under Section 56, as the case may be, does not receive a resolution plan under sub-section (6) of Section 30, it shall pass an order requiring the Corporate Debtor to be liquidated in the manner as laid down in the manner."

19. Therefore, the Tribunal observes that upon failure of the resolution process and no approved resolution plan and further on completion of statutory CIRP process, there is no alternative left but to order in conformity with the decision of the CoC

liquidation has to follow under Section 33 of the Code. Adherence of the statutory requirement has to be done, as the language of the Code is clear that the adjudicating authority must give effect to it whatever may be consequences.

20. Thus, the application is allowed by ordering liquidation of Corporate Debtor i.e. JVL Agro Industries Ltd. in the manner laid down in Chapter III Part II of IBC, 2016 and further appoint Supriyo Kumar Chaudhari with Registration No. IBBI/IPA-001/IP P00644/2017-2018/11098 as a liquidator in terms of Section 34(1) of the Code, and he is directed to issue public announcement stating that the Corporate Debtor is in liquidation, in terms of Regulation 12 of IBBI (Liquidation Process) Regulations, 2016.

21. The registry is directed to communicate the order to ROC Kanpur and to Insolvency and Bankruptcy Board of India.

22. The order of moratorium passed under Section 14 of IBC, 2016 cease to have its effect and a fresh moratorium under Section 33(5) of IBC shall commence.

23. The Liquidator is directed to proceed with the process of liquidation in the manner laid down and in accordance with the Code and Regulations.

24. The liquidator shall file progress report of every three months.

25. With the aforesaid observation, the CA No. 215/2019 is allowed and accordingly stands disposed of."

22. It is thus evident that the company namely M/s JVL Agro Industries Ltd. is now undergoing liquidation. Therefore, the question that will arise is whether the moratorium granted to the company under liquidation by the National Company Law Tribunal, Allahabad in terms of Sections 13 and 14 of the Code, 2016 shall come to an end with the passing of the order of liquidation dated 19.08.2020 by the National Company Law Tribunal, Allahabad in exercise of its jurisdiction under Section 30(2) (Explanation-2) of the Code, 2016. The consequences contemplated under Sub-Section (5) of Section 33 shall come into play. This means that subject to the provisions of Section 52 of the Code, 2016, when a liquidation order has been passed, no suit or other legal proceedings may

be instituted by or against the Corporator Debtor. It further provides that that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

23. It is thus apparent that the proceedings giving rise to the present criminal revision were in existence prior to the passing of the order of liquidation of the revisionist/company M/s JVL Agro Industries Ltd. Consequently, the benefit of the provisions contained in Section 33(5) of the Code, 2016 shall not come to the aid of revisionist.

24. The moratorium that was granted in favour of the company M/s JVL Agro Industries Ltd. in terms of Sections 13 and 14 of the Code, 2016 came to an end with the passing of order dated 19.08.2020 by the National Company Law Tribunal, Allahabad in terms of Section 33 of the Code, 2016.

25. As such, the solitary submission urged by the learned counsel for revisionist though appeared to be attracted at the first flush but upon deeper scrutiny, the same is found to be devoid of substance.

26. In view of the discussion made above, the case law relied upon by the learned counsel for revisionist is not applicable in the facts and circumstances of the case.

27. As a result, the present criminal revision fails and is liable to be dismissed.

28. It is, accordingly, **dismissed**.

Order Date :- 09.08.2024

Vinay