

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 18131 of 2019 (O&M)

Date of decision : 25.9.2019

Pradeep Aggarwal

.... Petitioner

versus

Union of India and others

... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma, Acting Chief Justice
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Anand Chhibbar, Senior Advocate with
Mr. Shikhar Sarin, Mr. Tanuj Sud, Mr. Ajay Kumar and
Ms. Sakshi Raizala, Advocates, for the petitioners.

Mr. Gaurav Pathak, Advocate, for respondent no.1.

Ms. Munisha Gandhi, Senior Advocate with
Ms. Salina Chalana, Advocate, for respondent nos. 2 and 3.

Ms. Jasveer Kaur and Mr. D. K. Gupta, Advocates,
for respondent nos. 4, 5 and 7.

Rajiv Sharma, Acting Chief Justice.

1. The present writ petition has been filed for the following
reliefs:-

- (a) Declare Section 31 of the Insolvency and Bankruptcy Code, 2016 ultra vires the Constitution.
- (b) Declare that the resolution plan approved with respect to Respondent No. 3, inter alia, by the Respondent No. 4 to 14 is null and void to the extent that if modified / extinguishes the rights/claims of the Petitioner qua the Respondent No. 3, arising under, or by virtue of, the guarantees furnished by the petitioner to the Respondents No. 4 to 14 in respect of the facilities availed by the Respondent No.3 therefrom, whether such rights/ claims are presently accruing/

may arise in the future / are contingent;

- (c) Declare that, pursuant to acceptance of Resolution Plan by the creditors, no further claim in relation to the debt of the corporate debtor arise, against the guarantors thereof;
- (d) Pending disposal of the present Writ Petition, stay the corporate insolvency resolution process of the Respondent No. 3 or in the alternative, stay the operation of the resolution plan to extent that it modifies/ extinguishes the rights/ claims of the Petitioner qua the Respondent No.3, arising under, or by virtue of the guarantees furnished by the Petitioner to the Respondents No. 4 to 14 in respect of the facilities availed by the Respondent No. 3 therefrom, whether such rights/ claims are presently accruing/may arise in the future/are contingent;
- (e) Ex parte ad interim reliefs in terms of (c) above;
- (f) Such other / further orders as this Hon'ble Court may deem fit.”

2. The brief facts necessary for the adjudication of the case are that the Financial Creditor – State Bank of India has moved an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter to be referred as 'the Code', for brevity sake) with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of Asian Colour Coated Ispat Limited. The National Company Law Tribunal, New Delhi, passed the order on 20.7.2018, which led to the appointment of the Resolution Professionals. The Resolution Professionals have taken over the Management of the Company. The Insolvency and Bankruptcy Code being the complete Code resolution plans were invited. JSW Steel Coated Products Limited also participated and submitted its resolution plan. The

final resolution plan tendered by JSW Steel was accepted on 17.6.2019.

Various stakeholders have filed their objections against the resolution plans submitted by JSW Steel. The petitioner, being the guarantor, also filed the objections against the resolution plan.

3. The petitioner has laid challenge to the vires to Section 31 of the Code. Section 31 reads as under:-

“Approval of resolution plan

31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1), —

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.”

4. Section 31 of the Code provides that in case the Adjudicating Authority is satisfied that the resolution as approved by the Committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall approve the plan.

5. Learned counsel for respondent nos. 2 and 3 submits that the resolution plan is yet to be finally approved by the NCLT.

6. In order to challenge the vires of the section, it is necessary for the petitioner to point out which constitutional provision is violated by Section 31 of the Code.

7. Learned counsel for the petitioner submits that Articles 14 and 19 of the Constitution of India have been violated.

8. We do not subscribe to the submissions made by learned counsel for the petitioner as neither Article 14 nor Article 19 has been violated by Section 31 of the Code, rather Section 31 of the Code is culminating the process, which is triggered by the appointment of Resolution Professional, leading to calling the resolution plan and thereafter, its approval. It does not violate the rights of the creditors and also the stakeholders including guarantors. There is presumption of constitutionality of the provision. The Insolvency and Bankruptcy Code, 2016 is a complete code in itself.

9. The petitioner has been granted ample opportunity to project its case before the authorities provided for under the Code.

10. Accordingly, there is no merit in the present writ petition. The same is dismissed.

(Rajiv Sharma)
Acting Chief Justice

25.9.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No