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

\+ **W.P.(C) 5603/2019 & CM Nos. 24595-24597/2019**

SATENDER KUMAR NAGAR & ORS ..... Petitioners

Through: Ms Shobha Gupta, Ms Jyoti Rana, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Anurag Ahluwalia, CGSC for R-1 to R-3.
Mr Abhishek Anand, Mr Mohak Sharma, Advocates for R-4.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 23.07.2019

1. The petitioners have filed the present petition, *inter alia*, praying for the issuance of directions to the respondents for immediate disbursement of the wages and service dues to the workers and employees of Moser Baer India Limited ('MBIL'), for issuance of the declaration that the insolvency proceedings of MBIL are null and void and for the issuance of a forensic audit of the Moser Baer Group and all its subsidiary companies.

2. The petitioners are the workers and employees of MBIL. MBIL is a global tech-manufacturing company and manufactures optical storage media, like CDs and DVDs. Due to the weak financial position of MBIL, there was a lock out of a 114 acres plant of MBIL, which resulted in the termination of employment of approximately 2,280 workers.

3. The petitioners allege that MBIL was making profits till 2008 and

thereafter, the management of the company started diverting its funds and business to its subsidiary and sister concerns. The petitioners contend that the same has been done at the cost of the secured creditors and the other workers, who have not been paid salaries and other dues since September, 2017. The petitioners allege that the erstwhile management of the company suddenly declared the lockout of the company which was fully functional, and under the garb of the said illegal lock-out, they started removing the stock from the NOIDA plant of the company.

4. The petitioners contend that the present case is a corporate white-collar fraud, which needs to be investigated by the respondents. The petitioners contend that the Registrar of Companies completely failed to act and perform its duties as required under Chapter XIV of the Companies Act, 2013, to conduct inquiry and submit a report to the Central Government of the apparent fraud being committed by the Moser Baer Group, so that proper investigation as contemplated under Section 212 of the Companies Act, 2013 could be initiated.

5. The petitioners had filed a writ petition seeking similar reliefs (W.P. (C) 434 of 2019) before the Supreme Court. On 08.05.2019, the said petition was withdrawn by the petitioners with the liberty to seek an appropriate remedy as per law. Thereafter, the petitioners have filed the present petition.

6. This Court is informed that NCLT has already appointed a liquidator in terms of Section 23 of the Insolvency and Bankruptcy Code, 2016. It is now well settled that the Insolvency and Bankruptcy Code, 2016 (hereafter 'the IBC') is a complete code (See: ***M/s. Innoventive Industries Ltd. v. ICICI Bank & Anr.: (2018) 1 SCC 407***). It is also apparent from the plain

language of Section 35 of the IBC that the liquidator has sufficient powers to investigate the financial affairs of a corporate debtor and to determine the undervalued or preferential transactions. The liquidator is also empowered to apply to the adjudicating authority (National Company Law Tribunal) for such orders or directions as may be necessary.

7. Section 45 of the IBC requires the liquidator to make an application to the adjudicating authority to declare certain undervalued transactions as void and reverse the effect of such transactions. Section 48 of the IBC provides for orders that can be passed by the adjudicating authority in cases of undervalued transactions. Section 49 of the IBC contains provisions for adjudicating authority to pass orders, with reference to transactions which have been entered into by the corporate debtor, for getting the assets of a corporate debtor beyond the reach of a person who is entitled to make a claim against the said debtor, or to adversely affect the interest of any person in relation to claims made. Sections 48 and 49 of the IBC are set out below:-

> "**48. Order in cases of undervalued transactions**.—(1) The order of the Adjudicating Authority under sub-section (1) of section 45 may provide for the following:—
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> (a) require any property transferred as part of the transaction, to be vested in the corporate debtor;
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> (b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;
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> (c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or
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> (d) require the payment of such consideration for the transaction as may be determined by an independent expert.

> **49. Transactions defrauding creditors**.—Where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45 and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor—
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> (a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or
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> (b) in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order—
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> (i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and
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> (ii) protecting the interests of persons who are victims of such transactions:
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> Provided that an order under this section—
>
> (a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and
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> (b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction."

8. The Companies Act, 2013 also contains several provisions regarding the powers of NCLT to pass orders where it is found that the affairs of the companies are conducted in a fraudulent manner. Thus, NCLT has sufficient powers to pass orders where it is established that the affairs of the company have been conducted in a manner so as to defraud the company or

its constituent stakeholders.

9. Given the powers of NCLT, this Court does not consider it apposite to entertain any controversy regarding allegations of any fraud alleged to have been perpetuated by the promoters of company which is in liquidation.

10. The learned counsel appearing for the petitioners had contended that the reference to NCLT under the IBC was a result of a fraudulent scheme perpetuated by the promoters of the company. She contended that since the petitioners were claiming that the said proceedings itself were a result of fraud and consequently MBIL ought to be restored to the status of a going concern, as existing prior to the interim resolution professional (interim liquidator) being appointed, the petitioners do not have an efficacious remedy before NCLT. This contention is unmerited. NCLT has already passed an order for the dissolution of the company. The liquidator has been appointed. Plainly, if the petitioners were aggrieved by any such order, it is open for the petitioners to have availed of an appellate remedy under IBC.

11. In view of the above, the present petition is disposed of leaving it open for the petitioners to avail of other remedies as available in law. The pending application is disposed of.

VIBHU BAKHRU, J

JULY 23, 2019
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