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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 712/2020 & CRL. M. A. Nos. 5449/2020 & 5450/2020**

ANGUL ENERGY LIMITED

..... Petitioner

Through: Mr Dayan Krishnan, Senior Advocate with Mr Amit K. Mishra, Mr Sidharth Agarwal, Ms Devna Arora, Ms Apeksha Dhanvijay, Ms Nikita, Mr Arvind Thapliyal, Mr Varad Chaudhary, Mr Manik Ahluwalia and Ms Saujanya, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr Jasmeet Singh, CGSC with Mr Devank Maheshwari, Advocates for R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.03.2020

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 16.08.2019 in CC No. 770/2019 captioned '*Serious Fraud Investigation Office v. Bhushan Steel Limited*', whereby the Trial Court had taken cognizance of the offences punishable under the Companies

Act, 2013; offences punishable under the Companies Act, 1956 and; certain offences under the Indian Penal Code, 1860. The petitioner also impugns the summons dated 28.08.2019, issued by the learned ASJ to the petitioner. The petitioner also prays that the compliant bearing CC No. 770/2019 filed by the Serious Fraud Investigation Office, be quashed.

2. It is stated in terms of the Insolvency and Bankruptcy Code, 2016 (hereafter the 'IBC'), a financial creditor of the petitioner (then known as 'Bhushan Energy Limited') had initiated the Corporate Insolvency Resolution Process (CIRP) by filing a petition before the National Company Law Tribunal (NCLT). The said petition was admitted on 08.01.2018. Thereafter, Tata Steel Limited had submitted a Resolution Plan with respect to the petitioner (then known as 'Bhushan Energy Limited'), which was approved by the Committee of Creditors and the NCLT. Pursuant to the same, 99.9% of the petitioner's equity capital was acquired by Tata Steel BSL Limited.

3. In terms of the Resolution Plan, the management of the petitioner company has been taken over by new promoters, who are not connected with the previous management.

4. The learned counsel appearing for the petitioner submits that in terms of Section 32A of the IBC, as inserted by Section 10 of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019; the petitioner is required to be discharged from the aforesaid proceedings.

5. Section 32A(1) of the IBC, as inserted by the aforementioned

ordinance, is set out below:

“32A. (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 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 or any “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge 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."

6. It is clear from the express language of the aforementioned provision that a Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the Adjudicating Authority.

7. In the present case, there is no dispute that a resolution plan has been approved by the Adjudicating Authority (NCLT) and in the circumstances, there is much merit in the contention that the petitioner cannot be prosecuted and is liable to be discharged.

8. The petition is, accordingly, allowed and the impugned order dated 16.08.2019 and the impugned summons dated 28.08.2019, are set aside. The impugned compliant (CC No. 770/2019) against the petitioner, is also set aside.

9. It is clarified that this order will not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences in relation to the affairs of the petitioner company.

VIBHU BAKHRU, J

MARCH 13, 2020/RK