OD 19

IA NO: GA/4/2022
IN CS/298/2009
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

MINING ASSOCIATES
Vs
BHUSHAN POWER & STEEL LTD. & ORS.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date : 1st March, 2022.
[Via Video Conference]

Appearance:
Mr. Arik Banerjee, Adv.
Mr. Jaydeb Ghorai, Adv.
Mr. Diptesh Ghorai, Adv.

Mr. Arijit Basu, Adv.
Mr. Chiranjib Sinha, Adv.

The Court: This is an application for dismissing the suit bearing CS No.298 of 2009 filed by the plaintiff against the company and its directors. It is to be noted that an application under Section 7 the Insolvency and Bankruptcy Code, 2016 was filed by the Punjab National Bank against the defendant company. Subsequently, an order dated 5th September, 2019 was passed by the NCLT approving the resolution plan of the defendant company. The same was confirmed by the NCLAT by an order dated 17th February, 2020.

Mr. Arik Banerjee, counsel appearing on behalf of the petitioner submits that pursuant to the orders passed by the NCLT and the NCLAT no claim made by any other persons can be entertained any further. He relies on

Section 31 read with Section 238 of the Insolvency and Bankruptcy Code, 2016 to submit that the plaintiff has no further right/claim over the defendant company. He relies on two judgments of the Hon'ble Supreme Court reported in (2021) 9 Supreme Court Cases 657 (Ghanashyam Mishra & Sons Pvt. Ltd. versus Edelweiss Asset Reconstruction Company Ltd.) and (2020) 8 Supreme Court Cases 531 (Essar Steel India Ltd. Committee of Creditors versus Satish Kumar Gupta) to buttress his arguments.

Upon a reading of the Sections and upon reading paragraphs 105 and 107 in Satish Kumar Gupta (supra) it is clear that all claims were required to be submitted and decided by the resolution professional and once the resolution plan is confirmed, no further claims may stand and are actually extinguished. The relevant paragraphs are delineated below:-

"**105.** Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were, In *SBI v. V. Ramakrishnan*, this Court relying upon section 31 of the Code has held: (SCC p. 411, para 25)

> "*25*. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the

reason that Annexure VI*(e)* to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

Similar observations have been made in Ghanashyam Mishra & Sons Pvt. Ltd. (supra) at paragraph 102.1 which is delineated below:-

"**102.1.** That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan."

In light of the above, I am of the view that the suit is liable to be dismissed. Accordingly, let there be an order in terms of prayer (a) of the Notice of Motion.

Department is directed to take steps in accordance with law.

All other interlocutory applications are also disposed of.

Plaintiff company shall be at liberty to act in accordance with law.

(SHEKHAR B. SARAF, J.)

sp/