

**IN THE HIGH COURT AT CALCUTTA  
(Ordinary Original Civil Jurisdiction)  
ORIGINAL SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**IA No: GA 7 of 2021**

**In CS 54 of 2012**

**Sumitra Devi Shah & Ors.**

**Versus**

**Tata Steel Limited**

Mr. K.C. Garg

Ms. Sunita Agarwal

... For the plaintiffs.

Mr. Jishnu Saha, Sr. Adv.

Mr. Debraj Sahu

Mr. Bhaskar Mukherjee

Ms. Nafisa Yasmin

Mr. Debdatta Dutta

... For the defendant.

Hearing Concluded On : 30.08.2023

Judgment on : 05.09.2023

**Krishna Rao, J.:**

1. The defendant has filed the present application being GA 7 of 2021 praying for dismissal of the suit being CS 54 of 2012. The plaintiffs

have filed the suit initially against Tata Steel BSL Limited and subsequently as per the application filed by the defendant being GA 8 of 2022, the name of the defendant has been changed to Tata Steel Limited. The plaintiffs have prayed for decree against the defendant for a sum of Rs. 15,00,000/- along with interest.

- 2.** The defendant has filed the present application for dismissal of the suit on the ground that the suit filed by the plaintiffs has become infructuous.
- 3.** Mr. Jishnu Saha, Learned Senior Advocate representing the defendant submitted that during the pendency of the present suit, Corporate Insolvency Resolution Process (herein after referred to as “CIRP”) against the defendant company was initiated pursuant to a petition, under Section 7 of the Insolvency and Bankruptcy Code, 2016 by one of the financial creditors of the company i.e. the State Bank of India, before the Adjudicating Authority of the National Company Law Tribunal, Principal Bench, New Delhi being Company Petition No. (IB)-201 (PB)/2017 on 3<sup>rd</sup> July, 2017. The Adjudicating Authority admitted the petition and had appointed Interim Resolution Professional and imposed a moratorium under Section 14 of the IBC.
- 4.** Mr. Saha, Learned Senior Advocate submitted that the powers of the Board of Directors of the Company were suspended and an Interim Resolution Professional had acted as a sole in-charge of the affairs of the management of the Company and subsequently the said IRP was

approved as the Resolution Professional by the Committee of Creditors. The IRP had made a public announcement in the newspapers inviting claims from all the operational, financial and other creditors of the Company. Mr. Saha submits that once triggered, the resolution proceedings under the IBC are collective proceedings and in the nature of rem. The outcome of the said insolvency proceeding is, therefore, also in the nature of rem and applicable to the general public at large.

5. Mr. Saha, Learned Senior Advocate submitted that this Hon'ble Court by its order dated 17<sup>th</sup> August, 2017 had directed the substituted plaintiffs to approach the Adjudicating Authority for appropriate reliefs but the plaintiffs neither applied before the Adjudicating Authority nor submitted their claims before the IRP as required under the IBC and CIRP Regulations.
6. Mr. Saha, Learned Senior Advocate submitted that the claim made by the plaintiffs in the present suit is in the nature of debt due for goods and services provided by the plaintiffs and the alleged claims of the plaintiffs fall under the category of Operational Debt and consequently the plaintiffs become an Operational Creditor. He submits that the plaintiffs being Operational Creditors were bound to file the alleged claims along with the documents/proof of claim with the IRP as per mandate of IBC but the plaintiffs deliberately chose not to file their alleged claim with the IRP of the company.

- 7.** Mr. Saha, Learned Senior Advocate submitted, that the Tata Steel Limited submitted its resolution plan prepared on the basis of the Information Memorandum to the Resolution Plan. This plan along with the addendums thereto, was approved by the Committee of Creditors with an affirmative voting percentage of 99.8 % as against the required mandate of 75%. The Committee of Creditors approved Resolution Plan was submitted to the Adjudicating Authority for its acceptance and approval of the Resolution Plan as per Section 30 of the IBC. The Adjudicating Authority after being satisfied that all the requirements prescribed under the IBC have been fulfilled, accordingly, on 15<sup>th</sup> May, 2018, the Committee of Creditors approved Resolution Plan making it binding on all the employees, members, creditors and other stakeholders involved in the Approved Resolution Plan as per Section 31 of the IBC.
- 8.** Mr. Saha, Learned Senior Advocate submitted that pursuant to the order dated 15<sup>th</sup> May, 2018, the Tata Steel Limited acquired the control and management of the Committee in compliance of the provisions of the IBC. He submits that the order dated 15<sup>th</sup> May, 2018 was challenged by the Company before the National Company Law Appellate Tribunal but the Appellate Tribunal had dismissed the appeal preferred by the company by its order dated 10<sup>th</sup> August, 2018.
- 9.** Mr. Saha, Learned Senior Advocate submitted that after the approval of the Resolution Plan, the plaintiffs are not entitled to agitate their alleged claims before this Court in contravention to the provisions of

the IBC. He submits that this Court while disposing of the application filed by the plaintiff under Chapter XIII A of the Original Side Rules in GA No. 3369 of 2012 dated 22<sup>nd</sup> January, 2021 has observed that the plaintiffs cannot be said to have a valid claim as against the Company any longer at least subsequent to the approval of Resolution Plan.

- 10.** *Per contra*, Mr. K.C. Garg, the Learned Advocate representing the plaintiffs submits that the plaintiffs are not required to file their claims with the IRP/RP as the plaintiffs have filed the present suit before initiation of the proceeding before the CRIP.
- 11.** Mr. Garg submitted that while disposing of the application filed by the plaintiff under Chapter XIII A of the Original Side Rules, the order passed by Adjudicating Authority was before this Court and this Court after considering the order dated 15<sup>th</sup> May, 2018, had granted unconditional leave to the defendant to defend the suit.
- 12.** Mr. Garg submitted that as this Hon'ble Court by an order dated 22<sup>nd</sup> January, 2021 has granted leave to the defendant to defend the suit and thus the suit filed by the plaintiff is required to be decided on merit and the application filed by the defendant is not maintainable.
- 13.** Heard the Learned Counsel of the respective parties, perused the materials on record. Initially the plaintiff has filed the suit against Tata Steel BSL Limited. As per the order passed by the NCLT, the defendant has filed an application being G.A. No. 8 of 2022 for change of the name of the defendant company from Tata Steel BSL Limited to Tata

Steel Limited and accordingly this court vide order dated 2<sup>nd</sup> February, 2022 has allowed the said prayer. In the suit, the plaintiffs have filed an interlocutory application under Chapter XIII A of the Original Side Rules of this Court for final judgment and decree. By an order dated 22<sup>nd</sup> January, 2021, this Court had dismissed the application filed by the plaintiff. While dismissing the application, this Court observed that *“the plaintiffs cannot be said to have a valid claim as against the defendant any longer and at least subsequent to the approval of the Resolution Plan of the corporate debtor”*.

**14.** In the case of ***Essar Steel India Ltd. Committee of Creditors -vs- Satish Kumar Gupta*** reported in ***(2020) 8 SCC 531***, the Hon’ble Supreme Court held that 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.

**15.** In the case of ***Ghanashyam Mishra and Sons Private Limited -vs- Edelweiss Asset Reconstruction Company and Others*** reported in ***(2021) 9 SCC 657***, the Hon’ble Supreme Court held 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.

- 16.** By an order dated 17<sup>th</sup> August, 2017, this Court passed the following order :

*“In view of the order of moratorium passed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the National Company Law Tribunal on 26<sup>th</sup> July, 2017, this application is adjourned for six months with liberty to mention in the event the moratorium is lifted or any order is passed by the National Company Law Tribunal giving leave to the plaintiff to proceed with the suit, whichever is earlier. The proposed substituted plaintiff may apply before the NCLT for appropriate reliefs.”*

In spite of the order passed by this Court, the plaintiffs have not applied for appropriate relief before the NCLT.

- 17.** In the case of ***Shipping Corporation of India Ltd -vs- Machado Brothers and Others*** reported in **(2004) 11 SCC 168**, the Hon’ble Supreme Court held that :

**“25.** *Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action as is necessary in the interest of justice, which includes disposing of infructuous litigation. For the said purpose it will be*

open to the parties concerned to make an application under Section 151 CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

**30.** We have already noticed that the courts below have also held that the application of the appellant lacks in bona fides. We fail to understand how this is so. If a party has a legal right to ask for dismissal of an infructuous suit, and pursuant to the said right it makes an application for dismissal of the said suit, the same cannot be termed as an act in malice.”

**18.** In the case of **Soumik Sil -vs- Subhas Chandra Sil** reported in **(2015)**

**5 SCC 732**, the Hon’ble Supreme Court held that :

**14.** After perusing the order [Subhas Chandra Sil v. Sumik Sil, (2011) 2 Cal LJ 226 : (2011) 4 CHN 744] passed by the High Court and the reasoning given therein, it appears to us that the High Court has correctly perused the plaint in its entirety and after deletion of the name of Plaintiff 1 from the said title suit, held that the plaint discloses no cause of action after taking into account the fact that the very purpose of the suit has become infructuous in view of the order passed by the High Court to hand over the possession of the rooms in question. Therefore, the foundation of the suit was not subsisting after the handing over of possession to the defendant by Plaintiff 1 in terms of the order. Hence, in these circumstances, the High Court held that the plaint discloses no cause of action.

**15.** Now, it is necessary for us to find out whether the plaint discloses any cause of action after deletion of the name of Plaintiff 1 in Title Suit No. 2430 of 2007. We have gone through the averments made in the said plaint. After perusing the averments and on the basis of its entirety and considering that the statements made in the plaint are correct, it

*appears to us that the plaint discloses no cause of action and thereby it attracts the provisions of Order 7 Rule 11(a) of the Code, and accordingly we hold that the High Court has correctly ascertained the position and allowed the said application reversing the order of the City Civil Court at Calcutta.*

19. In the present case, the plaintiffs have initially filed the suit against the Tata Steel BSL Limited for recovery of money. After the order passed by the NCLT which was also affirmed by the Appellate Authority, as per the prayer made by the defendant, the name of the original defendant was deleted and the name of Tata Steel Limited was added. Prior to the order of change of the name of the defendant, this Court also granted liberty to the plaintiffs to apply before the NCLT for appropriate reliefs but the plaintiffs have not applied before the NCLT. The Hon'ble Supreme Court in the case of **Ghanashyam Mishra and Sons Private Limited (Supra)** 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.
20. In several judgments, there is a constant view regarding the validity of any claim after the approval of the Resolution Plan. After the approval of the Resolution Plan, no surprise claims should be flung on the successful resolution applicant. As, mentioned under Section 31 of Insolvency and Bankruptcy Code, 2016.

- 21.** The legislative aspiration behind making the Resolution Plan binding on authorities, is to avoid any sort/type of mischief by the 'operational creditors' or 'creditors' in general. Also to make sure of the fact that no claims are entertained other than the ones, which were presented before the approval of the Resolution Plan.
- 22.** The legislative intent, behind freezing all claims is to ensure that the resolution applicant is to start on a clean slate.
- 23.** In view of the aforesaid observations, this Court is of the view that the plaintiffs were given handful of chances to make their claim before various mentioned authorities, but it appears from the record that they have missed their chance.
- 24.** In the circumstances mentioned above, this Court find that after the approval of the Resolution Plan by the Adjudicating Authority, the claim of the plaintiffs became invalid and the suit filed by the plaintiffs have become infructuous.
- 25.** In view of the above, the suit filed by the plaintiffs being **C.S No. 54 of 2012** is thus **dismissed**.
- 26. G.A No. 7 of 2021** is thus **allowed**.

**(Krishna Rao, J.)**