IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2023

CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.3432 of 2022

Anil Kumar Ojha ... Petitioner

Vs.

1.Central Bureau of Investigation,
Rep.by DIG-ACB,
Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai-600 034.

2.Mr.Chandramouli Ramasubramaniam,
Resolution Professional of SLO Industries Limited,
Raji, 3-B-1, III Floor,, Gaiety Palace,
No.1-L, Balckers Road, Mount Road, Chennai-600 002.

3.Union Bank of India,
[Formerly the Corporation Bank]
SAMMV Branch,
Rep.by its Assistant General Manager,
Committee of Creditors in the matter of
M/s.SLO Industries Limited,
39, 39 Whites Road,
Chennai-600 014.

4.The Chairman,

Union Bank of India,
[Formerly known as Corporation Bank]
Union Bank Bhavan, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai-400 021. ... Respondents

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to direct the respondent to register the F.I.R., based on the complaint dated 13.08.2021 in accordance with law.

For Petitioner	:	Mr.V.Karthick, Senior counsel for Mr.Adithyavaradharajan
For R1	:	Mr.K.Srinivasan, Senior counsel Special Public Prosecutor (CBI)
For R2	:	Mr.S.Sathyanarayanan
For R3 & R4	:	Mr.N.Sivabalan

ORDER

M/s.SLO Industries Limited fallen under the scam, which was referred to Insolvency and Bankruptcy Code [IBC] under Section 7 in CP/1264/(IB)/2018. NCLT on 04.11.2019, entrusted the management and affairs of the company to the interim resolution professional. Thereafter, the records indicates that on 21.01.2022, the management was took over by the Liquidator appointed by the NCLT. During the interregnum period, a series of complaint against the interim resolution professional had been lodged by the erstwhile management and some of them were considered by the appropriate Authority of IBC. The order was passed on 29.11.2021 in the review application filed by the complainant against C.Ramasubramaniam / the interim resolution professional.

2. After the management was took over by the Liquidator, the Liquidator found that the accounts as found in the inventory at the time of taking over by the Resolution Professional and its stock position on the date of handing over the documents and stocks, the Liquidator could not be reconciled and alarming figure of closing stock of inventory about 840 Crores could not be reconciled. Therefore, the Liquidator through mail dated 01.03.2023 had sought the explanation from the Resolution Professional to go through the tally back up given to the Liquidator, revisit the entries made during the period, when he was in-charge of the company affairs, update the accounts including the bank accounts and instructed to provide it to the Liquidator for further subtraction. To this communication, the Resolution Professional has responded through letter dated 05.03.2022 and 31.03.2022, but the records indicate that the explanation was not satisfactory. The Liquidator is unable to present the statement of accounts before the NCLT, where the core matter is pending. This could be seen from the order passed by the NCLT on 12.05.2023, which reads as below:

> *"The CIRP was initiated on 04.11.2019. There is a difference of Rs.675.25 crores in the Inventories from the above table as on 01.04.2019 and there was also a corresponding entry regarding difference in the opening balance.*
>
> *Hence for effective adjudication in the matter, the Applicant/Liquidator is directed to provide the following documents:*
>
> *i) Audited Financial Statement for the Financial Year 2018-2019*
>
> *ii) Audited Financial Statement for the Financial Year 2019-2020*
>
> *iii) Audited / Unaudited Financial Statement for the Financial Year 2020-2021*
>
> *Ld.Liquidator is directed to provide the above information within a period of 2 weeks from the date of this order."*

3. It is told across the bar that on 19.06.2023, the Liquidator has submitted a report in reverence to the direction of NCLT stating that the balance sheet of the company was manipulated showing the rosy picture of the company affairs by the erstwhile Directors and different accounts were opened with intention to make transaction complex to hike illegal business practices.

4. The Chartered Accountant appointed by the former Directors of the company did not furnish the details/documents for the financial year 2019-2020 at the instance of the suspended Board of Directors. Therefore, the Liquidator is not able to furnish the details called by the NCLT in the financial statements for the year 2019-20, 2020-21 (21.02.2022). This affidavit also does not reveal whether the query raised by the Liquidator regarding the reference in the statement of accounts and shortage of cash balance and stock in trade running through 840 Crores during the period when the Resolution Professional was in-charge of the company remains unanswered.

5. The learned counsel appearing for the Resolution Professional strongly harp on the orders passed by the IBBI on the complaint given by the erstwhile Director. These orders were passed during the month of October 2021. Whereas the Liquidator had found damning disclosure of the company that during the period when the Resolution Professional was managing the affairs of the company, the closing stock of inventory indicates around 840 Crores shortage or un-reconciled. The answer from the Resolution Professional for the said shortage is that the tally account, which was submitted at the time of taking charge itself, did not reflected the correct and true financial status of the company and the manipulation was done by the erstwhile management. The Resolution Professional was not allowed to manage the affairs of the company due to non cooperation and interruption by the erstwhile Manager. In this regard, a criminal complaint was also lodged, however, later withdrawn by peace.

6. Normally the case of this nature, when there is proper Appellate Authority to oversee the affairs of the Resolution Professional and statute empowers the Insolvency and Bankruptcy Board of India to oversee the action of the Resolution Professional appointed by them, the Court will not interfere. But in this case, this Court finds that the Resolution Professional, who had been operated the account of the company during his tenure and transacted the goods, had not even paid the electrical consumption charge from the month of May 2019 to November 2021, inviting disconnection notice by the Superintending Engineer, EDC North, Chennai-2. It is also brought to our notice that huge sum of GST payable is also due, but in response to this allegations, the learned counsel appearing for the Resolution Professional states that since the claim of GST was not legally permissible, they have approached the Court and obtained stay of payment of GST and not willful default as contended by the petitioner herein.

7. Non payment of GST for acceptable reason can only be an excuse, but at the same time it disclosed the fact that there was business transaction during the tenure of Resolution Professional. If the Resolution Professional has conducted the affairs of the company transparently and dealt with the property in the manner known to law, there is no reason to withhold the details, which are sought by the Liquidator, and till date the details are not satisfactorily explained to the Liquidator. Hence this Court is of the view that the matter cannot be referred to IBBI, but to be probed by specialized agency, since the main case against the petitioner herein is under the Money Laundering and ED seized of the matter. If in continuation of the alleged crime committed by the petitioner herein, somebody has been joined in the company, he must also be prosecuted and cannot be left Scott free. In this case, there is a serious allegation against the Resolution Professional, who is a person appointed by the NCLT. Have they all are the public servant and bound to account for the property entrusted to him or having domain over the property.

8. The learned Special Public Prosecutor appearing for the CBI brought to the notice of this Court about the communication from CBI, ACB, Chennai, letter dated 15.02.2022, wherein, the complaint dated 13.08.2021 and the representation dated 19.01.2022 made by Anilkumar Ohja had been forwarded to the CVC, Union bank of India, Mumbai for taking necessary action and therein in response, CVC Union Bank of India vide its letter dated 09.03.2022 has intimated that M/s.SLO Industries Limited has been referred to NCLT for Corporate Insolvency Resolution Process (CIRP) and SLO Industries is under liquidation. As the matter pending before the NCLT and the Resolution Professional, the representative of NCLT and IBC/2016, the bank has already abide that the complainant to move appropriate application before the adjudicating authority for his grievances and the bank is not in a position to reply on the allegations of the complainant.

9. This communication goes to show that the petitioner herein has already approached the CBI with the complaint followed by the representation that was forwarded to CVC Union Bank and CVC Union Bank after recording the matter that it has already been seized of by the NCLT and Resolution Professional been appointed, warned to approach the appropriate authority. As this Court has already pointed out as one round of complaint had been initiated against the Resolution Professional came to an end by an order passed by IBBI on 29.10.2021 followed by the order in the review application dated 21.11.2021. Now certain new facts from the communication of the Liquidator has come to light and in the normal course, query raised by the Liquidator could have been explained by the Resolution Professional, but he had failed to do so for more than a year. The query raised by the Liquidator regarding non reconciliation of account and stocks, bank cash balance to the tune of 840 Crores need to be proved and explained and therefore, the CBI is directed to conduct preliminary enquiry on the complaint dated 13.08.2021 and the representation been given by the petitioner on 19.01.2021. If need the communication of the Liquidator dated 01.03.2022 shall also be taken for consideration for taking preliminary enquiry and if any cognizable offence is made out, then the CBI can register the complaint and proceed in accordance with law in the course of conducting preliminary enquiry. If the investigating officer need any access to any account in the premises of SLO Industries, party concern shall provide it without any demur or protest.

10. In the result, this Criminal Original Petition is disposed of accordingly.

20.07.2023

rpl
Index: Yes/No
Speaking Order/Non Speaking Order

To
1.The DIG-ACB,
Central Bureau of Investigation,
Shastri Bhavan,
Haddows Road, Nungambakkam,
Chennai-600 034.

2.Mr.Chandramouli Ramasubramaniam,
Resolution Professional of SLO Industries Limited,
Raji, 3-B-1, III Floor,, Gaiety Palace,
No.1-L, Balckers Road, Mount Road, Chennai-600 002.

3.The Assistant General Manager,Union Bank of India,
[Formerly the Corporation Bank]
SAMMV Branch,
Committee of Creditors in the matter of
M/s.SLO Industries Limited,
39, 39 Whites Road,
Chennai-600 014.

4.The Chairman,
Union Bank of India,
[Formerly known as Corporation Bank]
Union Bank Bhavan, 239, Vidhan Bhavan Marg,
Nariman Point, Mumbai-400 021.

5.The Public Prosecutor,
High Court of Madras, Chennai.

Dr.G.JAYACHANDRAN, J.

rpl

Crl.O.P.No.3432 of 2022

20.07.2023