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

\+ **<u>W.P.(CRL) 3245/2024 & CRL.M.A. 31343/2024, CRL.M.A. 31344/2024</u>**

MS. JAYPEE INFRATECH LIMITED THROUGH ITS AUTHORISED REPRESENTATIVE .....Petitioner

Through: Mr. Mohit Mathur, Senior Advocate with Mr. Mukul Bhimani and Mr. K.N. Sinha, Advs.

versus

THE STATE (NCT OF DELHI) & ORS. .....Respondent

Through: Mr. Amol Sinha, ASC for the State with Mr. Kshitiz Garg and Ms. Chavi Lazarus, Advs. with Insp. Vijay Kasana, PS EOW.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>O R D E R</u>

% **28.10.2024**

1. The present petition is filed praying as under :

> *"I. Allow the present petition under Article 226 of the Constitution of India and set aside notice dated 12.08.2024 issued by the investigating officer Economic offences Wing, New Delhi being null, void and infructuous in accordance with law.*
> *II. Quash the FIR bearing number 61/2017 dated 11.04.2017 registered with Economic Offences Wing, Delhi qua the Petitioner.*
> *III. Pass any such other order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

2. The learned Additional Public Prosecutor for the State submits that the chargesheet had already been filed prior to the filing of the present petition.

3. It is undisputed that the resolution plan submitted by M/s Suraksha Reality Limited with certain modifications in regard to

the petitioner company (corporate debtor) was approved finally by the learned National Company Law Appellate Tribunal (**NCLAT**) by order dated 24.05.2024.

4. In terms of Section 32A of the Insolvency and Bankruptcy Code, 2016 (**IBC**), liability of a corporate debtor for an offence committed prior to commencement of the corporate insolvency resolution process shall cease, and the corporate debtor is not to be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority.

5. The FIR, in the present case, was registered on 11.04.2017 for the offences, which were allegedly committed prior to the commencement of the corporate insolvency resolution process, by order dated 09.08.2017, passed by the learned NCLT.

6. Section 32A of the IBC reads as under :

> ***"32A. Liability for prior offences, etc.***
>
> *(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 offence committed prior to the commencement of the 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 (6 of 2009), or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 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.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not–

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) 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.

Explanation : For the purposes of this sub-section, it is hereby clarified that,–

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a

person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

7. In view of the undisputed fact that the corporate insolvency resolution process in regard to the petitioner company commenced by the order dated 09.08.2017 whereas the FIR was registered on 11.04.2017 in regard to the alleged offences committed between the years 2010 and 2016, any liability for such offences shall cease against the corporate debtor, that is, the petitioner herein, and the petitioner cannot be prosecuted for the offences.

8. In view of the above, the present petition is allowed. The petitioner is discharged in FIR No. 61/2017 and the proceedings against the petitioner are quashed. Pending application(s) also stand disposed of.

9. It is made clear that this Court has not impeded the learned Trial Court from proceeding further with the matter against the other accused persons.

AMIT MAHAJAN, J

OCTOBER 28, 2024

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