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

\+ W.P.(C) 17455/2024

ANANT LAXMAN PRABHUDESAI .....Petitioner

Through: Mr. Ishan Roy Chowdhary, Advocate

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA .....Respondent

Through: Mr. Sahil Monga, Ms. Alekhya Sattigeri, Advocates

\+ W.P.(C) 17456/2024

ARIEZ RUSTOM TATA .....Petitioner

Through: Mr. Siddharth Nath, Mr. Anunay Chowdhary, Mr. Asjad Hussain, Advocates

versus

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA .....Respondent

Through: Mr. Sahil Monga, Ms. Alekhya Sattigeri, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% **18.12.2024**

<u>CM APPL. 74210/2024 (Exemption) in W.P.(C) 17455/2024</u>
<u>CM APPL. 74211/2024 (Exemption) in W.P.(C) 17456/2024</u>

1. Exemptions are granted, subject to all just exceptions.

2. The Applicant shall file legible and clearer copies of exempted

documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the applications stand disposed of.

W.P.(C) 17455/2024 & CM APPL. 74209/2024 (for interim directions), W.P.(C) 17456/2024, CM APPL. 74212/2024 (for interim directions) & CM APPL. 74213/2024 (seeking permission to file lengthy synopsis and list of dates)

4. The Petitioners i.e., Mr. Anant Laxman Prabhudesai and Mr. Ariez Rustom Tata were appointed as non-executive directors of Say India Jewellers Private Limited. Mr. Tata also has a shareholding of 1.97% in Say India Jewellers Private Limited.

5. The Say India Jewellers Private Limited was in Corporate Insolvency Resolution Process, which proceedings have now been concluded. Subsequent to the Resolution Plan of corporate debtor being approved, the successful resolution applicant has taken over the Company as a going concern.

6. The grievance of the Petitioners arises from the Impugned notices dated 12th November, 2024[1] issued by Insolvency and Bankruptcy Board of India,[2] which are identically worded. For the sake of reference, the notice in W.P.(C) 17455/2024 is extracted hereinbelow:

> *"To*
> *Mr. Anant Prabhudesai*
> *F2/07, Kalpita Enclave CHS Limited,*
> *Andheri (East), Mumbai - 400069*
> ***Subject: Notice for initiating prosecution by Insolvency and Bankruptcy Board of India.***
> *Sir,*
> *You are aware that Corporate Insolvency Resolution Process ('CIRP') has been initiated against M/s. Say India Jewellers Private*

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[1] "Impugned notices"
[2] "Board"

Limited ('Corporate Debtor'), vide order of Adjudicating Authority ('AA'), Mumbai Bench, dated 01.08.2017. Mr. Ram Ratan Kanoongo was appointed as the Resolution Professional ('RP') vide AA order dated 09.01.2018.
It has come to our knowledge vide the order dated 03.09.2024 passed by AA, that you have been involved in the preferential as well as fraudulent transactions of the CD as provided under Section 43 and Section 66 of the Insolvency Bankruptcy Code, 2016 ('IBC') by engaging in bogus sales & purchases, inflated salary expenses, siphoning of funds by sale of fixed assets, transfer to related persons and preferential payments.
In view of the aforesaid facts, please explain within I5 days from the date of receipt of this notice, why prosecution should not be initiated against you under section 236 of IBC.

Rajesh Kumar
General Manager
Prosecution"

7. The Petitioners raise doubts as regards the jurisdiction of the Board in issuing the Impugned notices. They argue that in case of preferential and fraudulent transactions under Section 43 and 66 of the Insolvency Bankruptcy Code, 2016,[3] only NCLT has jurisdiction to examine the allegations in respect of the aforenoted provisions. They point out that, in fact, by order dated 03rd September, 2024, NCLT has specifically rejected the application filed by the erstwhile Resolution Professional seeking action under the aforenoted provisions against the Petitioners. They further argue that the aforenoted order was not assailed either by the Resolution Professional or any other party and has attained finality. Moreover, it is pointed out, the consequences of the violation of Section 43 and 66 of the IBC are civil in nature and therefore, the Board cannot initiate any criminal proceedings under Section 236 of the IBC for violation of the said provisions.

[3] "IBC"

8. Counsels for the Petitioners further assert that order dated 03rd September, 2024 passed by NCLT, is being misconstrued by the Board. While the NCLT, while disposing of the petition, does direct the board to initiate action, they had been specifically directed to look into the aspects pointed out in the order dated 03rd September, 2024 and initiate appropriate proceedings against the Petitioners in terms of Section 70, 71 and 73 of the IBC.

9. Mr. Sahil Monga, counsel for IBBI, at the outset, states that the Impugned notices only afford an opportunity to the Petitioners to put forth their stand. He clarifies that the Board does not intend to take any action for violations of the Section 43 and 66 of the IBC in the proposed prosecution contemplated in the Impugned notices. He further submits that there are serious allegations against the Petitioners, which the Board has taken note of and the Impugned notices. Before proceeding further, Petitioners are given the opportunity to put forth their stand, in case they so desire. In fact, he submits that both the Petitioners have responded to the aforenoted notices seeking time from the Board to file a detailed reply.

10. The Court has considered the aforenoted contentions.

11. In light of the clarifications given by Mr. Sahil Monga, that the impending action, will not be for the violation of Section 43 and 66 of the IBC where the jurisdiction lies with the adjudicating authority, the grievance of the Petitioners stands redressed. For initiating an action under Section 236 of the IBC, a complaint has to be filed before the Special Court established under Chapter XXVIII of the Companies Act. Section 236(2) of IBC clearly specifies that no Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Central

Government or any person authorised by the Central Government in this behalf. Thus, in case, the Board files such a complaint before the Special Court, it will be the Special Court which would examine the same and take cognizance, if so required.

12. In light of the statement made by the counsel for the Respondent, the present petitions are disposed of. It is clarified that the Court has not examined the merits of the case and all rights and contentions of the parties are reserved.

13. The Petitioners shall be at liberty to file a response to the aforenoted notices within a period of two weeks from today, without prejudice to their rights and contentions.

14. With the above directions, the present applications are disposed of along with the pending applications.

SANJEEV NARULA, J

DECEMBER 18, 2024/ab