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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 23.07.2024***+ **CS(COMM) 272/2016**
SHRI VIJAY PRAKASH

.....Plaintiff

Through: Ms.Poonam, Mr.Atul Kumar,
Ms.Yukti Gupta, Advs.

versus

M/S ALOK INDUSTRIES LTD

.....Defendant

Through: Mr.Ashim Sood, Mr.Mridul
Yadav, Ms.Gunjan Mathur,
Mr.A.Sengar, Ms.Pakavi
Pratap, Ms.Kinjal, Advs.**CORAM:**
HON'BLE MR. JUSTICE NAVIN CHAWLA**NAVIN CHAWLA, J. (ORAL)****I.A. 11494/2022**

1. This application has been filed by the plaintiff praying for directions to the defendant to produce on record the Resolution Plan, list of undisputed documents, and list of operational creditors; specify the names of the individuals and creditors who have been paid; and specify if the alleged excess payments made by the defendant to the plaintiff was part of the Resolution Plan.
2. On 08.07.2024, the learned counsel for the defendant had handed over the printout of Clause 1 and Clause 3 of the Resolution Plan, and the list of operational creditors, to the learned counsel for the



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plaintiff.

3. Today, the learned counsel for the plaintiff submits that Clause 3 of the Resolution Plan has not been supplied in full to the plaintiff.
4. On a query from this Court on whether any such requisition was made by the plaintiff to the defendant or its counsel, the learned counsel for the plaintiff fairly admits that no such requisition was made since last date of hearing.
5. Accordingly, in my view, documents that are required for a proper adjudication of IA no.2769/2022, filed by the defendant, are supplied to the plaintiff. In any case, the plaintiff has also not made any effort to obtain a copy of the Resolution Plan from the NCLT.
6. The application is, therefore, disposed of.

IA 2769/2022

7. Though this application has been filed under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908, (in short, 'CPC'), praying for dismissal of the instant Suit, the defendant has also sought to invoke the inherent powers of this Court under Section 151 of the CPC, stating that in view of the subsequent developments, the Suit no longer survives for adjudication.
8. The defendant contends that the State Bank of India, being the lead bank, had filed a Company Petition, bearing no.CP (IB) 48/2017, before the learned National Company Law Tribunal, Ahmedabad (hereinafter referred to as 'NCLT') against the



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defendant company under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short, 'IBC'). The same was admitted by the learned NCLT *vide* Order dated 18.07.2017, and an Interim Resolution Professional was also appointed, who was later confirmed as the Resolution Professional.

9. The Resolution Professional, *vide* a public announcement dated 19.07.2017, invited claims from all the creditors, that is, Financial and Operational creditors of the defendant company. The plaintiff herein failed to file its claim before the Resolution Professional.
10. Subsequently, an invitation for Expression of Interest was issued, pursuant to which a Resolution Plan dated 12.04.2018 was submitted by the Reliance Industries Ltd. and JM Financial Asset Reconstruction Company, JM Finance ARC March 2018-Trust. The said Resolution Plan was approved by the learned NCLT *vide* its Orders dated 08.03.2019 and 26.07.2019, respectively.
11. The defendant asserts that in terms of Clause 3.3.1 of the approved Resolution Plan, the defendant company was to make payment only to those Operational Creditors, as set out in Annexure 9 to the Resolution Plan, to whom the Company owed amount only upto Rs.3 lacs. For the remaining Operational Creditors, whether their claims were already admitted as on the Closing Day or are made or admitted thereafter, the claim was to be treated as NIL. The defendant claims that the plaintiff herein was not shown in the list of operational creditors of the defendant company and has not filed any claim till date.



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12. The defendant claims that in terms of Clause 3.3.6 of the approved Resolution Plan, failure to submit claims during the period prior to the Closing Date would result in extinguishment of such claims on the Closing Date. The defendant asserts that therefore, the claim of the plaintiff herein is now barred and cannot proceed.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE DEFENDANT/APPLICANT:

13. The learned counsel for the defendant/applicant, placing reliance on Clause 3.3 of the Resolution Plan, submits that the plaintiff having failed to submit its claim before the Resolution Professional and having been not included in the list of operational creditors, on passing of the Resolution Plan, the claim of the plaintiff would stand extinguished and cannot proceed. In support, he places reliance on the judgment of the Supreme Court in *Ghanashyam Mishra AND Sons Pvt. Ltd through the Authorised signatory v. Edelweiss Asset Reconstruction Company Ltd. through the Director & Ors.*, (2021) 9 SCC 657.
14. The learned counsel for the defendant further submits that the successful Resolution Applicant company has already paid its dues in respect of all the admitted claims of the creditors in terms of the Resolution Plan and the plan stands fully implemented.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PLAINTIFF:

15. On the other hand, the learned counsel for the plaintiff, placing



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reliance on the Order dated 08.03.2019 passed by the NCLT in the above mentioned Company Petition, submits that paragraph 28 thereof provides that the approval of the Resolution plan does not make automatic waiver or abatement of any legal proceedings which are pending by or against the defendant company /Corporate Debtor as those are the subject matter of the concerned competent authorities having their proper/own jurisdiction to pass any appropriate Order, as the case may be.

16. She submits that the learned NCLT also clarified that the Resolution Plan shall be subject to various existing laws and shall also conform to such other requirements as specified by the Board and/or other statutory /competent authorities, as the case may be.
17. She submits that, therefore, the present Suit that was pending as on the date of passing of Resolution Plan, does not abate or become untenable on the passing of the Resolution Plan, and it must continue. She places reliance on the judgment of the Co-ordinate Bench of this Court in *Elecon Engineering Company Ltd. v. Energo Engineering Projects Ltd. & Ors.*, 2022 SCC OnLine Del 2860, to contend that the Suit must continue in accordance with law and shall not come to an end merely because of passing of the Resolution Plan.

ANALYSIS AND FINDINGS:

18. I have considered the submissions made by the learned counsels for the parties.
19. Clauses 3.3.1, 3.3.2, 3.3.3, 3.3.6 and 3.3.7 of the Resolution Plan



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are relevant to the adjudication of the present application, and are reproduced hereinunder:

“3.3. Operational Creditors (including the Central Government, State Government or any local authority)”

3.3.1. Amount to be paid to Operational Creditors pursuant to this Plan

As per the Information Memorandum, the liquidation value of the Company is Rs 4433,00,00,000 (Rupees Four Thousand Four Hundred Thirty Three Crores only), which is less than the sum of Estimated CIRP Costs and Outstanding Financial Debt, therefore, the liquidation value available to Operational Creditors (other than employees and workmen who have been dealt with separately under Section 3.4 below) is NIL. Accordingly, no amounts are proposed to be paid under this Plan to the Operational Creditors (other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (ii) the dues owed by the Company to certain Operational Creditors (to each of whom the Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three Lakhs) and whose details are set out in Annexure 9), which dues aggregates to Rs. 4,83,47,321 (Rupees Four Crores Eighty Three Lakhs Forty Seven Thousand Three Hundred Twenty One). If any further claims of Operational Creditors (other than employees and workmen who have been dealt with separately under Section 3.4 below), relating to the period prior to the Closing Date arise and/or are made and/or are admitted, then the amounts payable under this Plan to the Operational Creditors (other than (i) employees and workmen who have been dealt with separately under Section 3.4 below; and (ii) the dues owed by the Company to certain Operational Creditors (to each of whom the



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Company, as on the Insolvency Commencement Date, owes up to Rs. 3,00,000 (Rupees Three Lakhs) and whose details are set out in Annexure 9)), which aggregates to Rs. 4,83,47,321 (Rupees Four Crores Eighty Three Lakhs Forty Seven Thousand Three Hundred Twenty One) shall remain NIL, and shall not increase.

Pursuant to the foregoing, the Company shall have no Liability towards any Operational Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the Closing Date. All such Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled, with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors shall deem to have waived all rights to invoke or enforce the same.

3.3.2. Treatment of Claims by Operational Creditors on matters under verification by the Resolution Professional

We understand that certain claims are under verification by the Resolution Professional. Under Section 3(11) of the IBC, the term "debt" is defined to mean "...a liability or obligation in respect of a claim which is due from any person...", and Section 3(6) of the IBC states that a "claim" Includes "a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured." Therefore, each such claim, which is under verification (including any further claims admitted for



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verification at any time prior to approval of the Plan by the NCLT), are "claims" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC). Accordingly, the full amount of such claims / amounts shall be deemed to be owed and due as of the Closing Date, the liquidation value of which is NIL and therefore, no amount is payable in relation thereto.

3.3.3. Treatment of Claims by Operational Creditors on matters that are Sub Judice

As per the information set out in Annexure H of the Information Memorandum, we understand that the list of claims of Operational Creditors as set out in Annexure D of the Information Memorandum does not include claims submitted by certain persons relating to certain matters which we understand are sub judice before various judicial fora, details of which have been set out in Annexure H of the Information Memorandum. The matters set out in Annexure H of the Information Memorandum (and the corresponding claims against the Company), together with all other claims against the Company which may be pending or sub judice before any forum as on the Closing Date (whether or not such claims are Included in the list of claims of Operational Creditors as set out in Annexure D of the Information Memorandum, and, including but not limited to any proceedings in relation to Taxes initiated against the Company), are collectively the "Sub Judice Claims". Each such Sub Judice Claim, is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore, the full amount of such Sub Judice Claims shall be deemed to be owed and due as of the Closing Date, the liquidation value of



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which is NIL and therefore, no amount is payable in relation thereto.

Pursuant to the foregoing, any and all legal proceedings (including any notice, show cause, adjudication proceedings, assessment proceedings, regulatory orders, etc.) initiated before any forum by or on behalf of any Operational Creditor to enforce any rights or claims against the Company shall immediately, irrevocably and unconditionally stand withdrawn, abated, settled and/or extinguished, and the Operational Creditors shall deem to have taken all necessary steps to ensure the same. The Operational Creditors of the Company shall have no further rights or claims against the Company (including but not limited to, in relation to any past breaches by the Company), in respect of the period prior to the Closing Date, and all such claims shall immediately, irrevocably and unconditionally stand extinguished.

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3.3.6. Failure to Submit Claims or Rejected Claims

(i) The Resolution Professional had issued a public notice dated July 19, 2017 in accordance with the IBC, inviting all creditors of the Company to submit their proof of claims to the Resolution Professional on or prior to August 01, 2017. The Information Memorandum, and information uploaded to the virtual data-room from time to time, contains details of claims made by all creditors of the Company, including Financial Creditors and Operational Creditors, which have been admitted by the Resolution Professional. Further, under the CIRP Regulations, all creditors are required to submit their proof of claim prior to the approval of the Plan by the CoC. We assume that all persons that have any claim(s) against



the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, persons who have paid any advances to the Company against supply of goods or services by the Company, and persons in respect of whom credit balances were written-back by the Company in the years ended March 31, 2016, March 31, 2017 and March 31, 2018) have all filed their claims and all verifiable claims as on the date of approval of this Plan by the CoC, have been admitted by the Resolution Professional and are disclosed in the Information Memorandum, provided that nothing contained herein shall result in an increase in the Total Financial Outlay proposed under this Plan.

(ii) In the event any person that has any claim(s) against the Company (including Financial Creditors, Operational Creditors, Other Creditors, Governmental Authorities, or otherwise), has not submitted its claim(s) (whether or not it was aware of such claim at such time), or if the claim(s) filed by any person has been rejected and/or not been admitted by the Resolution Professional (including any claim against the Company from GAIL (India) Limited arising directly or indirectly under, out of, or in relation to the gas sale agreement dated May 27, 2013 entered into between GAIL (India) Limited and the Company), then: (a) all such obligations, claims and liabilities of the Company (whether final or contingent (whether crystallized or not), whether disputed or undisputed, and whether or not notified to or claimed against the Company); (b) all outstanding disputes or legal proceedings in respect of such claims; and (c) all rights or claims of such persons against the Company; in each case, relating to the period prior to the Closing Date, shall Immediately, irrevocably and unconditionally stand extinguished and waived on the Closing Date, and the Company shall have no



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Liabilities in respect of such claim(s).
Provided however any rights or claims of the Financial Creditors with respect to Existing Promoter Guarantees can continue against such guarantors.

3.3.7. No action by Operational Creditors

Pending the occurrence of the Closing Date, no Operational Creditor shall be entitled to take, initiate or continue any steps or proceedings against the Company or its assets whether by way of demand, legal proceedings, alternative determination process, the levying of distress, in any jurisdiction whatsoever for the purpose of obtaining payment of any Liability, or for the purpose of placing the Company into liquidation or any analogous proceedings.”

(Emphasis supplied)

20. A reading of the above Clauses would show that the claims of Operational Creditors that were *sub judice* as on the closing date were treated to qualify as ‘Operational Debt’ and it was prescribed that the liquidation value of the same shall be Nil. It was further prescribed that failure to submit claims would result in all such obligations and liabilities of the company, whether disputed or undisputed, and all legal proceedings to recover such claims, to immediately, irrevocably, unconditional stand extinguished and waived on the Closing Date. It was further provided that the company shall have no liability in respect of such claims. Admittedly, the plaintiff is not mentioned in the list of the Operational Creditors of the defendant company as



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approved by the NCLT.

21. In paragraph 27 of the Order dated 08.03.2019 passed by the learned NCLT, and referred to by the learned counsel for the plaintiff, while approving the Resolution Plan, it was observed as under:

“27. In this regard, this Adjudicating Authority is of the view that Clause No.3.2.3(iii) at Page No. 19 of the Resolution Plan viz. all legal proceedings initiated before any forum by or on behalf of the financial creditors to enforce any rights or claims against the Company/Corporate Debtor or enforce or invoke any security, interest and/or guarantee, over the assets of the Company /Corporate Debtor, shall immediately, irrevocably and unconditionally stand withdrawn, abetted, settled and/or extinguished. Provided however, any rights or claims of the financial creditors with respect to Existing Promoters Guarantees shall continue against such guarantors”. Approval of the Resolution Plan does not mean automatic waiver or abetment of any legal proceedings which are pending by or against the Company/Corporate Debtor as those are the subject matter of the concerned Competent authorities having their proper /own jurisdiction to pass any appropriate order as the laws may be. The Resolution Applicants on approval of the Plan may approach the Competent Authorities /Courts/Legal Forums/Offices-Govt. or Semi Govt. /State or Central Govt. for appropriate relief(s) sought for in Clause No.3.2.3 (iii) of the Resolution Plan at Page No.19.”

22. Clause 3.2 of the Resolution Plan deals with the ‘Financial Creditors’ of the defendant company. The plaintiff herein would



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not qualify as the ‘Financial Creditor’ of the defendant company, but at best would have been its ‘Operational Creditor’. Therefore, the plaintiff would fall under Clause 3.3 of the Resolution Plan. Paragraph 27 of the above referred Order, therefore, does not come to the aid of the plaintiff.

23. In ***Ghanshyam Mishra and Sons Pvt. Ltd.*** (supra), the Supreme Court while considering Sections 30 and 31 of the IBC held as under:

“93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the



corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

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102. *In the result, we answer the questions framed by us as under:*

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.*

102.2. *The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*

102.3. *Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.*

(Emphasis supplied)



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24. The Supreme Court has, therefore, clarified that on the approval of the Resolution Plan, all claims which were not part of the Resolution Plan stand extinguished and the plaintiff will not be entitled to initiate or continue the proceedings in respect of such claim which is not part of the Resolution Plan, as is the case herein.
25. In ***Elecon Engineering Company Ltd.*** (supra), a Coordinate Bench of this Court was considering Section 33(5) of the IBC, which reads as under:

*“33(5) Subject to Section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:
Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.”*

26. The above provision applies where a liquidation order has been passed against the Corporate Debtor. This is not the case herein. Therefore, the said Judgment cannot come to the aid of the plaintiff herein.
27. The Supreme Court in ***Shipping Corporation of India Ltd. v. Machado Bros. & Ors.***, (2004) 11 SCC 168, while examining the powers of Courts under Section 151 of the CPC to dismiss a pending Suit as having become infructuous because of a subsequent event, held as under:

“22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide



whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of Pasupuleti Venkateswarlu v. Motor & General Traders, (1975) 1 SCC 770 (SCC at pp. 772-73, para 4) has held thus:

“4. We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also



legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.”

24. Almost similar is the view taken by this Court in the case of *J.M. Biswas v. N.K. Bhattacharjee*, (2002) 4 SCC 68 wherein this Court held: (SCC p. 71, para 10)

“[T]he dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation.... In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interest of the Union.”

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.”

(Emphasis Supplied)

28. This Court in *Rajan Gupta v. Pradeep Kumar Gupta & Ors.*,



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2023:DHC:1408, while relying on the law laid down in *Shipping Corporation* (supra), held that though the provisions of Order VII Rule 11 of the CPC may not apply on the facts of the case, however, the Court has ample power under Section 151 of the CPC to dismiss the Suit as having been rendered infructuous due to a subsequent development because of which relief claimed in the Suit cannot be granted. In my opinion, this Suit would be a fit case for the Court to exercise its powers under Section 151 of the CPC to scuttle such a suit as the relief prayed for in the present Suit, due to the subsequent development of the Resolution Plan passed by the learned NCLT, can no longer survive and be granted.

29. In view of the above, the defendant/applicant succeeds in the application.
30. The application is allowed.
31. Consequently, the Suit is dismissed.
32. There shall be no order as to costs.

NAVIN CHAWLA, J

JULY 23, 2024
RN/VS

Click here to check corrigendum, if any