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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO.640 OF 2024
IN
COMM EXECUTION APPLICATION NO.205 OF 2019

Hi Tech Elastomers Ltd.

...Applicant /
Ori. Plaintiff

Versus

DBM Geotechnics & Constructions Pvt. Ltd.

...Respondent /
Orig. Defendant

Mr. Pankaj shah, for the Applicant / Decree Holder.

Mr. Sachin Mandlik with Mr. Yogi Joshi i/b. Mandlik and Partners for
the Respondent / Judgment Debtor.

CORAM : R.I. CHAGLA J.

DATE : 7TH FEBRUARY, 2025.

ORDER :

1. By order dated 28th August, 2024, this Court had referred to the submission of Mr. Shah for the Applicant that a communication dated 30th July, 2024 had been addressed by the Applicant to the Resolution Professional to furnish resolution plan, information memorandum and the status report of the

implementation of the resolution plan and that once the response of the Resolution Professional is received, he will take instructions from his client in accordance with Section 31 of the Insolvency and Bankruptcy Code, 2016 read with the decision of the Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.*¹.

2. Mr. Sachin Mandlik, the learned Counsel appearing for the Corporate Debtor has submitted that since the operational creditor has been given nil under the resolution plan and as per the decision of the Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. (Supra)*, there would be no further liability on the corporate debtor in view of clean slate principle. He had submitted that the Execution Application has become infructuous and that this Court dispose of the application as such.

3. The learned Single Judge by the said Order was of the view that the Resolution Professional is required to respond the communication dated 30th July, 2024 from the Applicant within a period of one week from said Order.

¹ (2021) 9 SCC 657.

4. The Resolution Professional has responded to the communication dated 30th July, 2024 vide communication dated 4th September, 2024. In the said response, it is stated that the name of the Applicant was included in the list of creditors of the Judgment Debtor / Respondent Company as operational creditor. The NCLT vide Order dated 25th January, 2023 approved the resolution plan as submitted by successful resolution application (“SRA”) namely, Next Orbit Ventures Fund and as per the approved resolution plan ‘NIL payment has been proposed to be paid to the operational creditors of the Judgment Debtor / Respondent Company which includes the Applicant herein. It is further mentioned that the Resolution Professional has become functus officio and the SRA has taken over the control of the Judgment Debtor / Respondent. The said communication dated 4th September, 2024 has been annexed to the Affidavit on behalf of the Decree Holder / Plaintiff filed on 24th September, 2024.

5. Considering that the Resolution Profession has become functus officio upon the resolution plan being approved by NCLT vide Order dated 25th January, 2023 and as the successful resolution applicant (‘SRA’) namely, Next Orbit Ventures Fund has taken over

the control of the Judgment Debtor / Respondent. Further, as per resolution plan, NIL payment has been proposed to be paid to the operational creditors of the judgment debtors / Respondent Company including the Applicant herein. There would be no liability of the cooperate debtor i.e. the Respondent in view of the clean slate principle. The judgment of the Supreme Court in the case of ***Ghanshyam Mishra and Sons Pvt. Ltd. (Supra)*** is apposite.

6. Accordingly, the Commercial Execution Application has become infructuous and is disposed of.

7. The Interim Application No.640 of 2024 and Chamber Summons No.1602 of 2016 also do not survive and are accordingly disposed of.

8. Further, the proceedings before the Commissioner for Taking Accounts shall cease in view of this Order.

[R.I. CHAGLA J.]