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

+ **W.P.(CRL) 1261/2024**

BHUSHAN POWER & STEEL LIMITED

.....Petitioner

Through: Mr. Abhishek Manu Singhvi, Sr. Adv.,
Mr. Vikas Pahwa, Sr. Adv., Mr.
Raunak Dhillon, Ms. Madhavi
Khanna, Ms. Isha Malik, Ms. Niharika
Shukla, Advocates

versus

UNION OF INDIA & ANR.

.....Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel with
Mr. Manish Jain, SPP with Mr. Vivek
Gurnani, SC with Mr. Kartik
Sabharwal, Mr. Pranjal Tripathi and
Mr. Kaushik Maurya, Advocates.
Mr Satya Ranjan Swain (SPC),
Advocate for Respondent no. 1/UOI

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **30.01.2025**

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (Cr.P.C.) seeking quashing of ECIR NO. DLZO-I/02/2019 under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (PMLA) and all consequential proceedings arising out of or emanating therefrom including the order issuing process dated 17.01.2020 passed by the Special Judge-05, CBI (PC Act), Rouse Avenue District Court qua the Petitioner Company.



2. Facts germane for deciding the present Petition are as under:

2.1 It is stated that 26.07.2017 the learned National Company Law Tribunal (NCLT) had admitted an application filed by the Punjab National Bank (PNB) under Section 7 of the Insolvency and Bankruptcy Code (IBC) initiating corporate insolvency resolution process (CIRP) against M/s Bhushan Power and Steel Limited (BPSL).

2.2 It is stated that during the CIRP of BPSL, JSW Steel Ltd. (JSW) emerged as the successful resolution applicant.

2.3 It is stated that in the meanwhile, on 05.04.2019, an FIR bearing RC No. RCBD1/2019/E/0002 was registered by the CBI against the Petitioner Company, its Chairman, Directors and other persons in respect of offences committed under sections 120-B r/w 420, 468, 471 & 477A of the Indian Penal Code, 1860 (IPC) & Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988 (PC Act).

2.4 It is stated that on 25.04.2019, the Enforcement Directorate (ED) recorded Enforcement Case Information Report bearing (ECIR) No. DLZO-1/02/2019, dated 25.04.2019 against the Corporate Debtor, on the basis of the scheduled offences as mentioned in the FIR bearing FIR/RC No. RCBD1/2019/E/0002 dated 05.04.2019 registered by the CBI, for suspected commission of money laundering.

2.5 It is stated that the NCLT passed an order dated 05.09.2019 *conditionally approving* the resolution plan of JSW under Section 31 of the IBC. However, NCLT while granting the protection to JSW against criminal proceedings qua the erstwhile management of the Petitioner Company, did not expressly grant protection from liability of the Petitioner Company for the



acts or omission of the previous management in relation to the period prior to approval of the resolution plan and passed the following order:

“127...

- i) *The criminal proceedings initiated against the erstwhile Members of the Board of Directors and others shall not effect the JSW-H1 Resolution Plan Applicant or the implementation of the resolution plan by the Monitoring Agency comprising of CoC and RP. We leave it open to the Members of the CoC to file appropriate applications if criminal proceedings result in recovery of money which has been siphoned of or on account of tainted transactions or fabrication as contemplated under the various provisions of the Code or any other law. Those applications shall be considered in accordance with the prevalent law.”*

2.6 It is stated that being aggrieved by the aforesaid order, JSW filed an appeal before the National Company Law Appellate Tribunal (NCLAT) to the extent of seeking protection from penal, financial liability and attachment of the Petitioner Company’s assets on account of acts of omission or commission of the previous management of BPSL.

2.7 It is stated that 16.09.2019, the NCLAT permitted JSW to implead the Union of India (UOI) through the Ministry of Corporate Affairs (MCA) and the Directorate of Enforcement (DOE).

2.8 It is stated that on 10.10.2019, in exercise of the powers under sub section (1) of Section 5 of the PMLA, Provisional Attachment Order (POA) No. 11/2019 was passed provisionally attaching assets of the Corporate Debtor i.e. M/s Bhushan Power and Steel Ltd. being “*proceeds of crime*” as defined under Section 2(u) of the PMLA. The PAO also directed that the assets attached could not be transferred, disposed, parted with or otherwise



dealt with in any manner, whatsoever, unless specifically permitted by the DOE.

2.9 It is stated that the UOI through the MCA had also filed an affidavit dated 10.10.2019 taking a divergent view on the issue of attachment under the PMLA.

2.10 It is stated that on 14.10.2019, NCLAT vide an interim order stayed the order of provisional attachment dated 10.10.2019 passed by the ED and further prohibited the officers of the ED from attaching any property of M/s. Bhushan Power and Steel Ltd. without prior approval of the NCLAT. The NCLAT further directed the ED to release the assets to the resolution professional.

2.11 It is stated that thereafter on 25.10.2019, NCLAT adjourned the matter to give the different wings of the Central Government an opportunity to sit together and resolve the issues.

2.12 It is stated that on 28.12.2019, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was notified and came into force with immediate effect. Paragraph '10' of the amendment ordinance introduced Section 32A in the IBC.

2.13 It is stated that on 17.01.2020 the ED filed a prosecution complaint inter-alia arraying M/s Bhushan Power and Steel Limited as an accused along with the erstwhile Chairman and Managing Director as well as other Director and officers of the Petitioner Company who were involved in the offence of money laundering in relation to the bank fraud to the tune of Rs. 47, 204 Crores. It is pertinent to mention that the erstwhile promoters and officers of the Petitioner Company were also implicated inter alia in terms of Section 70 of PMLA, which reads as under:



“70. Offences by companies.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation 134 [1].—For the purposes of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

[Explanation 2.—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]”

2.14 It is stated that thereafter on 17.02.2020 the NCLAT passed its final judgment declaring the attachment of assets of the ‘Corporate Debtor’ by the



DOE pursuant to order dated 10.10.2019 as illegal and without jurisdiction in view of the Section 32A of the IBC.

2.15 It is stated that the ED had preferred an Appeal to the Supreme Court by way of Civil Appeal No. 3362/2020 challenging the order of the NCLAT quashing the provisional attachment order dated 10.10.2019.

2.16 It is stated that the appeal filed by the ED bearing Civil Appeal No. 3362/2020 came to be disposed of by the Supreme Court vide its order dated 11.12.2024 in the following manner:

“3. The issue involved in the instant Appeals pertained to the jurisdiction of the E.D. to attach the properties of the Corporate Debtor, which was undergoing Corporate Insolvency Resolution Process, particularly in the light of Section 32A of the Insolvency and Bankruptcy Code, 2016 (IBC).

4. Today, the learned counsel Mr. Zoheb Hussain and learned S.G. Mr. Tushar Mehta appearing for the E.D. have submitted the Affidavit dated 11.12.2022 of Mr. Dipin Goel, Deputy Director, Directorate of Enforcement, New Delhi, and have prayed to dispose of these Appeals in the light of the said Affidavit. Mr. Zoheb Hussain also took the Court to the provisions contained in the sub-section(2) of Section 32A of the IBC and in sub-section(8) of Section 8 of the PMLA read with Rule 3A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016 (hereinafter referred to as the said Rules) to submit that the NCLT had approved the Resolution Plan vide the order dated 05.09.2019 which was under challenge before the NCLAT in the Appeals filed by various parties, and in the meantime the competent authority of the PMLA vide the order dated 10.10.2019 had provisionally attached the properties of the Corporate Debtor. He further submitted that Section 32A came to be inserted in the IBC with effect from 28.12.2019, which did not have the retrospective effect, and hence, in view of the peculiar facts and circumstances of the case and without prejudice to the rights and contentions of the E.D. with regard to the investigation of the case registered against the accused-Promoters of the Corporate Debtor-Bhushan Power and Steel Ltd. and Others, the successful Resolution Applicant be permitted to take control of the attached



properties treating the same as the restitution under Section 8(8) of the PMLA read with Rule 3A of the said Rules.

5. The learned senior counsel Mr. Abhishek Manu Singhvi appearing for the CoC and learned senior advocate Mr. Neeraj Kishan Kaul appearing for the successful Resolution Applicant have also stated that they have no objection if these Appeals are disposed of as prayed for in the light of the said Affidavit filed on behalf of the E.D.

6. In view of the above submissions made by the learned counsel for the E.D. and the learned counsel for the CoC and for the successful Resolution Applicant JSW, following order is passed without expressing any opinion on the merits of the Appeals and without prejudice to the rights and contentions of the respective parties in the connected Appeals and other proceedings, including the right of the E.D. to investigate into the cases registered against the accused-Promoters of the Corporate Debtor, under the PMLA.

ORDER

(i) The Appellant-E.D. is directed to handover and the Respondent successful Resolution Applicant JSW is directed to take over the control of the properties of Corporate Debtor-Bhushan Power and Steel Ltd., provisionally attached vide the order dated 10.10.2019 passed by the E.D., immediately in view of Section 8(8) of the PMLA read with Rule 3A of the said Rules.

(ii) It is clarified that this order is passed with the consensus of the learned counsels appearing for the concerned parties, considering the peculiar facts and circumstances of the cases, more particularly the fact that the order of provisional attachment was passed by the

E.D. after the Adjudicating Authority i.e., NCLT had approved the Resolution Plan submitted by the successful Resolution Applicant.

(iii) It is further clarified that the Court has not expressed any opinion on the interpretation of Section 32A (2) of IBC or on the powers of the E.D. to attach the property of the Corporate Debtor which is undergoing the Corporate Insolvency Resolution Process, or on any other legal issue involved in the other connected Appeals which are pending for consideration before this Court.

7. All the three Appeals stand disposed of in terms of the aforesaid order.”



(Emphasis supplied)

Arguments on behalf of the Petitioner Company

3. Dr. Abhishek Manu Singhvi and Mr. Vikas Pahwa, learned senior counsels appearing on behalf of the Petitioner Company states that the liability of a Corporate Debtor for an offence committed prior to the commencement of CIRP shall cease and the Corporate Debtor shall not be prosecuted for such an offence once the resolution plan has been approved.

3.1 They further place reliance on the affidavit filed before the Supreme Court in Civil Appeal No. 3362/2020 wherein it has been stated that in the present case, since the provisional attachment order dated 10.10.2019 was issued after the resolution plan was approved under the Code on 05.09.2019, the resolution plan may prevail. Further, it is stated that under Section 8(8) of the PMLA, the confiscated properties can be restored to the claimant. It is stated that the ED agreed to applicability of the protection under Section 32A to the Petitioner Company in the present case. It is stated that the Supreme Court by way of its order dated 11.12.2024 has taken the aforesaid affidavit on record and directed restoration of confiscated properties of the Petitioner Company and reserved the right of the ED to investigate into the cases registered against the erstwhile promoters of the erstwhile Corporate Debtor, under the PMLA.

Arguments on behalf of Respondent No.2/Directorate of Enforcement

4. Mr. Zoheb Hossain, learned Special Counsel for the DOE, upon instructions, states that in light of the mandate of Section 32A (1) of the IBC, a Corporate Debtor cannot be prosecuted for an offence from the date the Resolution Plan has been approved, subject to fulfilment of the conditions laid down therein.



4.1 He states that in the present case, the Resolution Plan was approved on 05.09.2019 by the NCLT and on 17.02.2020 by the NCLAT. He states that the Resolution Plan in this case, however, is subject to further challenge in various petitions filed by stakeholders pending in the Supreme Court. He further states that in view of the *clean slate* theory propounded in the IBC, even if the Corporate Debtor in this case cannot be prosecuted further, since it has been taken over by a new management and resolution plan has been approved, nevertheless, the role of the Corporate Debtor in its earlier avatar which was involved in the case of bank fraud and the offence of money laundering to the tune of Rs 47,000 Crores, will have to be examined by the Courts to examine the involvement of the erstwhile Promoters/Directors, as the second proviso to Section 32A(1) itself permits prosecution of the erstwhile Promoters/Directors and other persons in charge of the Corporate Debtor in its earlier avatar notwithstanding the fact that the liability of the Corporate Debtor may have ceased.

5. The learned Senior Counsels appearing for the Petitioner Company do not deny the above proposition of law and have no objection, if the instant petition is disposed of in terms of the aforesaid submissions.

Findings and Analysis

6. In order to appreciate the submissions of the parties it would be appropriate to refer to Section 32A of IBC which reads as follows:

“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 incharge 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."

(Emphasis supplied)

6.1 A plain reading of the above provision would reveal that there is no dispute over the legal position that once a resolution plan has been approved by the adjudicating authority under Section 31 of IBC and the conditions specified in Section 32A of the IBC are fulfilled, the Corporate Debtor shall not be prosecuted for an offence committed prior to the commencement of the CIRP.



6.2 However, Section 32A of IBC also clarifies that any erstwhile officer of the Corporate Debtor who 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 or who was directly or indirectly involved in the commission of such offence prior to the commencement of CIRP as per the complaint filed by the investigating authority, shall continue to be prosecuted and punished for such an offence committed by the Corporate Debtor, notwithstanding that the Corporate Debtor's liability has ceased.

6.3 Considering the submissions made by the counsel appearing for the ED, which has not been objected to by the Senior Counsels for the Petitioner Company, it is clarified that the role of the Corporate Debtor, as elaborately stated in the prosecution complaint filed before the Special Court for PMLA cases under the PMLA, will necessarily have to be examined in the trial of the erstwhile promoters/directors of the Petitioner Company as it relates to the commission of the offence by the Petitioner Company in its earlier avatar as it was under the erstwhile management, when the offence was committed, more so when there are allegations under Section 70 of the PMLA

7. In the overall conspectus, the writ petition is being partly allowed with the above clarification and the impugned order dated 17.01.2020 passed by the Special Judge, CBI, Rouse Avenue District Court taking cognizance and issuing process and the consequential criminal proceedings in CC No.1/2020 only to the extent of the Petitioner Company are being hereby set aside.

7.1 Further, in view of the mandate under sub-section (1) of Section 32A of the IBC, the Petitioner Company, having undergone a successful resolution process under Section 31 of the IBC, shall not be prosecuted for the offences committed prior to the commencement of the CIRP.



7.2 It is clarified that the above order will be subject to the final outcome of the challenge to the approval of the resolution plan pending in various civil appeals filed by various stakeholders before the Supreme Court in Civil Appeal No(s). 1808/2024 and connected cases.

8. Needless to state that the observations made by this Court in the present order are only for the purpose of deciding the present petition and shall have no bearing on the merits of the case during the trial.

9. With the aforesaid observation the petition is disposed of along with pending applications if any.

10. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J
JANUARY 30, 2025/rhc/sk

Click here to check corrigendum, if any