

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1495 of 2024

(Arising out of Order dated 04.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court – II) in IA No.01 of 2024 in CP(IB)-635/PB/2021)

IN THE MATTER OF:

Vantage Point Asset Pte. Ltd
Through Mr. Ashok Kacker
Duly appointed Attorney of Mr. Vikash Kumar
Authorised Representative of SRA
01. Singapore. 6 Battery Road #03-01. Singapore ... Appellant

Versus

Gaurav Misra,
Resolution Professional of
Alchemist Infra Reality Ltd.
1511, Hemkunt Chambers,
89 Nehru Place, New Delhi-110019 ... Respondent

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Mr. Palash S Singhai, Mr. Aditya Dhupar, Mr. Harshal Sareen, Advocates.

For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Mr. Partha Banerjee, Advocate.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Successful Resolution Applicant (“**SRA**”) has been filed challenging the part of the order dated 04.07.2024 passed by National Company Law Tribunal, New Delhi Bench (Court-II) in IA No.01 of 2024 filed by the Resolution Professional (“**RP**”) for approval of Resolution Plan. The

findings returned by the Adjudicating Authority in paragraph 60 in the impugned order has been challenged.

2. Brief facts necessary to be noticed for deciding the Appeal are:

- (i) The Corporate Insolvency Resolution Process (“**CIRP**”) commenced against the Corporate Debtor – Alchemist Infra Realty Limited by order dated 08.10.2021. In the CIRP, the Appellant submitted a Resolution Plan.
- (ii) The RP after conducting due diligence regarding compliance of Resolution Plan with regard to the provisions of Section 29A, shared the Plan with the Committee of Creditors (“**CoC**”). The CoC on 18.10.2023, approved the Resolution Plan of the Appellant with 100% vote share. The Letter of Intent was issued on 20.10.2023 to the Appellant. The RP filed an IA No.01/2024 seeking approval of the Resolution Plan.
- (iii) The Resolution Plan submitted by the Appellant proposed for vacation of charges by the Directorate of Enforcement (“**ED**”) and other Authorities. The Resolution Applicant has prayed in the Resolution Plan that on approval of the Resolution Plan, all the charges/ attachments shall stand vacated by the respective Government Authorities, so that Resolution Applicant/ Corporate

Debtor can monetize the assets by selling/ developing/ getting registry for implementation of the Resolution Plan.

- (iv) By the impugned order, Resolution Plan submitted by SRA was approved. However, the Adjudicating Authority refused to grant prayer made by the Appellant for release of the assets and the Adjudicating Authority observed that it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. The following findings have been returned by the Adjudicating Authority in paragraph 60 of the judgment:

“60. In sum and substance, the SRA/ CD would be entitled to no other relief/ concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016. Nevertheless, the properties which are already attached by ED, under PMLA would not be released and it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. In any case, the changed management covered under Sec. 32A(1)(a) & (2)(i) of IBC, 2016, would not be entitled for any criminal consequences for the offences committed by the ex-management of the CD prior to commencement of the CIRP. It is also noticed that though in the certificate furnished by the RP in Form-H prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016, as also in the Affidavit filed by him, the RP has authenticated that the SRA does not suffer any ineligibility under Sec. 29A of IBC, 2016, but in terms of provisions of Sec. 30(1) of the Code, a Resolution Applicant should submit the Resolution Plan along with an affidavit stating that he is

eligible under Sec. 29A to submit a Resolution Plan, to the Resolution Applicant. We could not find any such affidavit filed by SRA on record. Nevertheless, in the interest of justice we deem it appropriate to give an opportunity to SRA to file the affidavit required in terms of provisions of Sec. 29A read with Sec. 30(1) of the IBC, 2016.”

3. This Appeal has been filed by the Appellant limited to findings in paragraph 60 and further challenge is refusal by Adjudicating Authority to enlarge the protection of Section 32-A to uplift the attachment by Enforcement Directorate. In the Appeal, the Appellant prayed for following reliefs:

- “a. Pass an order setting aside the finding at Para 60 in the Impugned Order dated 04.07.2024 passed in IA No.01 of 2024 in CP (IB) No. 635/PB/2021 by the Ld. Adjudicating Authority, New Delhi Bench II wherein the Adjudicating Authority refused to enlarge the protection of Section 32-A of me to uplift the attachment by Enforcement Directorate over the properties; and
- b. Pass an order for release of properties and accounts seized and attached by Central and State Agencies including Enforcement Directorate, Income Tax, Himachal Pradesh Government/ Authorities etc. to uphold the legislative scheme of Section 32-A of IBC;
- c. Pass any such further or other order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the Appellants.”

4. We have heard Shri Arun Kathpalia, learned Senior Counsel appearing for the Appellant and Shri Krishnendu Datta, learned Senior Counsel appearing for the Resolution Professional/ Respondent.

5. Learned Senior Counsel for the Appellant challenging the order of Adjudicating Authority submits that Adjudicating Authority committed error in not correctly appreciating the ambit and scope of Section 32-A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”). It is submitted that purpose and intent of Section 32-A is to clearly grant protection to the Resolution Applicant from any liability of the Corporate Debtor for offences committed prior to commencement of CIRP. It is submitted that the Explanation to Section 32-A clearly clarifies that 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 available to the Corporate Debtor. It is submitted that judgment of the Bombay High Court in ***Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 and Anr.*** was relied by the Appellant, which has also been noticed by the Adjudicating Authority in the impugned order. The Adjudicating Authority erred in distinguishing the judgment while refusing to grant relief claimed by the Appellant under Section 32-A. It is submitted that law is now well settled that after approval of the Resolution Plan, SRA is absolved from liability of offences committed by Corporate Debtor, prior to initiation of CIRP, which will

also cover the property/ assets of the Corporate Debtor attached under the PMLA Act, hence, the Adjudicating Authority ought to have allowed the relief as claimed under Section 32A, which is within the statutory jurisdiction available to the SRA. It is submitted that the Appellant is, thus, only aggrieved by part of order, by which Adjudicating Authority refused to extend the benefit of Section 32A to the SRA.

6. Shri Krishnendu Datta, learned Senior Counsel appearing for RP also supported the submission of learned Counsel for the Appellant and submits that the Appellant was clearly entitled for benefit of Section 32-A, which ought to have been allowed by the Adjudicating Authority while approving the Resolution Plan, which contained clauses for release of attachment by ED to enable the Resolution Applicant to implement the Resolution Plan.

7. We have considered the submissions of learned Counsel for the parties and perused the record.

8. The submissions which was made by the Appellant with regard to vacation of charges on the assets of the Corporate Debtor, has been noticed in paragraph 37 by the Adjudicating Authority, which is as follows:

“37. He further submitted that the Resolution Applicant in the Resolution Plan has also proposed that certain assets of the Corporate Debtor are under attachment by Directorate of Enforcement (ED), Income Tax Department and Serious Fraud Investigation Office (SFIO). Thus, vacation of charges by the abovementioned authorities are necessary for the

successfully implementation of Resolution Plan as there is no business operation in the Corporate Debtor other than certain land banks and without monetisation of these assets, Corporate Debtor cannot be revived. Therefore, the Resolution Applicant has prayed in the Resolution Plan that on approval of the Resolution Plan by this Tribunal, all the above charges/ attachments shall stand vacated by the respective government authority so that the resolution Applicant/ Corporate Debtor can monetize the assets by selling/ developing/ getting registry from tehsildar / patwari / registrar for implementation of the Resolution Plan.”

9. The judgment of the Bombay High Court in ***Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 and Anr. – Writ Petition (L) No.9943 of 2023*** was relied by the Appellant in support of the submission, which has also been noticed by the Adjudicating Authority in paragraph 38 of the judgment. Paragraph 38 of the impugned order is as follows:

“38. The Ld. Counsel for the Applicant relied upon the judgment of Hon'ble High Court of Judicature at Bombay in Writ Petition (L) No. 9943 of 2023. The relevant excerpt of the judgment reads thus:-

“25. ... Equally, we find that driving a successful resolution applicant to file an appeal under Section 26(1) of the PMLA, 2002 in order to raise the attachment levied on the properties of the corporate debtor or to Section 8(5) of the PMLA, 2002 (to reverse confiscation, which itself is rendered impossible by Section 32A of the IBC, 2016) is wholly unnecessary.

This is for the simple reason that Section 32A itself mandates that once a resolution plan is approved, no action can be taken against the properties of the corporate debtor in relation to an offence committed prior to the commencement of the CIRP of the corporate debtor, where such property is covered under a resolution plan approved by it under Section 31 of the IBC, 2016. It is wholly untenable to contend that the NCLT, and which is the Adjudicating Authority constituted under the IBC, 2016, is incompetent and/ or powerless to either interpret or to give effect to the provisions of the very Act under which it was constituted.

26. We are of the clear view that looking at the purpose and object of not only Section 31, but also Section 32A of the IBC, 2016, the NCLT had all powers to direct the ED to raise its attachment in relation to the attached properties of the corporate debtor once a resolution plan that qualifies for immunity under Section 32A was approved, and those very properties were the subject matter of the resolution plan. This is the clear mandate of the legislature as enshrined in Section 32A of the IBC, 2016.”

10. The Bombay High Court in the above judgment has categorically held that Section 32-A mandates that once a Resolution Plan is approved, no action can be taken against the properties of the Corporate Debtor in relation to an offence committed prior to the commencement of the CIRP of the Corporate Debtor. It was also held by the Bombay High Court that NCLT has all powers to direct the ED to raise its attachment in relation to the attached properties

of the Corporate Debtor, once a Resolution Plan qualifies for immunity under Section 32A was approved.

11. The submissions of the Appellant is again being captured by the Adjudicating Authority in paragraph 39 and 40 of the judgment. The Adjudicating Authority, however, after noticing the judgment, relied by the Appellant, refused the prayer of the Appellant of uplifting the attachment, relying on the judgment of the Delhi High Court in **Rajiv Chakraborty vs. Directorate of Enforcement – (2022) SCC OnLine Del 3703**, where the Delhi High Court has ruled that power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC, 2016. The Adjudicating Authority in the impugned order has noted and extracted the relevant paragraphs of the judgment of the Delhi High Court. The Adjudicating Authority also noted that in the **Rajiv Chakraborty**'s case, the Delhi High Court has specifically ruled that the statutory injunct against the invocation or utilization of the powers available under the PMLA would come into effect only once the trigger event envisaged under Section 32-A comes into effect. The above has been observed by the Adjudicating Authority in paragraph 44 of the judgment, which is as follows:

“44. The Regulation 37 of IBBI (CIRP) Regulations, 2016 specifically provided that a Resolution Plan shall provide for the measures as may be necessary for insolvency resolution of the corporate debtor. The measure provided in the Regulation also includes the provision regarding obtaining necessary approvals

from the central and state government and other authorities. In the case of *Rajiv Chakraborty* (ibid), Hon'ble High Court could specifically rule that the statutory injunct against the invocation or utilisation of the powers available under PMLA would come into effect only once the trigger event envisaged under Sec. 32A comes into effect. According to Hon'ble High Court, the legislature in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under PMLA only once a resolution plan is approved or a measure in aid of liquidation is adopted. In Para 115 of the judgment in *Rajiv Chakraborty* (supra), Hon'ble High Court concluded that the power to attach under the PMLA would not fall within the ken of Sec.14(1)(a) of IBC, 2016. ...”

12. The Adjudicating Authority has also noticed paragraph 115 of the judgment of the Delhi High Court in **Rajiv Chakraborty**, which lays down following:

“115. The Court has independently come to the conclusion that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC. Through Section 32A, the Legislature has authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to the erection of an impregnable wall which cannot be breached by invocation of the provisions of the PMLA. The non obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. The aforesaid issue stands answered accordingly.”

13. The Adjudicating Authority has given its reason for not accepting the submission of the Appellant to release the attachment under the PMLA Act.

In paragraph 45, the Adjudicating Authority noted that it would be dangerous to evolve any such propositions, which may envisage that the properties covered under Section 3 of the Prevention of Money Laundering Act, 2002, attached in terms of the provisions of Section 5 of the PMLA Act, would be released from attachment on approval of the Resolution Plan. In paragraph 45 of the judgment, the Adjudicating Authority noted as follows:

“45. In the wake of the aforementioned, it is viewed that the IBC and the CIRP Regulations framed thereunder envisage and acknowledge the requirement of the judicial proceedings/ investigations be noted by the SRA and the measures in that regard be provided in the Resolution Plan under the head contingencies or otherwise. The Regulation 38(2)(d) specifically require the mention of the provisions for the manner in which proceedings in respect of avoidance transactions, if any will be pursued after the approval of the Resolution Plan. Thus, apparently the scheme of the IBC does not stipulate that the SRA would be completely immune from all sort of shackles qua the judicial process. Nevertheless, in the case of Rajiv Chakraborty, Hon’ble High Court has provided that the RP can always approach the Authorities to release the attached properties of CD and the third parties like secured creditor, etc. would have prior claim over the attached properties, over the PMLA process. But such proposition apply only to such third party claimants, whose right accrue prior to commencement of the criminal proceedings. It would be dangerous to evolve any such propositions, which may envisage that the properties covered under Sec. 3 of the Prevention of Money Laundering Act, 2002, attached in terms of the provisions of Sec. 5 of the Act would be released from attachment on approval of the Resolution Plan by this Tribunal. Such proposition may lead to the attempts to park the properties

under Sec. 3 of the PMLA with certain companies and then initiate the CIRP qua the same only for the purpose of changing the hands qua the properties/ assets to ensure that the property is clean in the hands of the SRA. A thought may evolve that the benefit of Sec. 32A of IBC, 2016 is available to SRA only after approval of the Plan, thus, if investigation is pending against the CD, the Adjudicating Authority may refuse to approve the Plan. Such approach may not work either in the interest of economy or to achieve the object of the Code. The approach would also be perceived as antithesis to realisation of the debt, which the creditors could extend to CD before commencement of CIRP. Thus this Tribunal need to approach the situation with care and precision. Sec. 32A of IBC, 2016 absolve the corporate debtor from liability for offence committed prior to commencement of CIRP and the new management has no liability towards such offence. The Corporate debtor stands discharged from the prosecution, with the approval of Resolution Plan.”

14. In the above paragraph, the Adjudicating Authority has noticed that in respect of the avoidance transactions, if any, the Application will be pursued after the approval of Resolution Plan. Hence, the scheme of the IBC does not stipulate that the SRA would be completely immune from all sort of shackles qua the judicial process. The reliance on the above aspect of contingencies of avoidance application is wholly irrelevant for the purposes of considering the issue which had arisen before the Adjudicating Authority. The avoidance application can be pursued even after the completion of the CIRP, is the scheme of the IBC. In Section 26 of the IBC, following has been provided:

“26. Application for avoidance of transactions not to affect proceedings. - The filing of an avoidance application under clause (j) of sub-section (2) of section 25 by the resolution professional shall not affect the proceedings of the corporate insolvency resolution process.”

15. The reliance on judgment of the Delhi High Court in **Rajiv Chakraborty**’s case for not accepting the prayer of the Appellant is also misplaced. In **Rajiv Chakraborty**’s case, the Delhi High Court has laid down that power to attach under PMLA would not fall within the ken of Section 14(1)(a). Whereas in the same judgment, Section 32A has been noticed and in paragraph 115, the Delhi High Court has laid down following:

“115. The Court has independently come to the conclusion that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC. Through Section 32A, the Legislature has authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to the erection of an impregnable wall which cannot be breached by invocation of the provisions of the PMLA. The non obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. The aforesaid issue stands answered accordingly.”

16. Through, Section 32-A, the legislature have authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to erection of an impregnable wall, which cannot be breached by invocation of

the provisions of the PMLA. The Adjudicating Authority has missed the clear pronouncement by the Delhi High Court in **Rajiv Chakraborty's** case with regard to Section 32A.

17. The Appellant has relied on judgment of the Bombay High Court in **Shiv Charan** (supra), where the Bombay High Court has held that NCLT does not lack jurisdiction to use its judicial discretion to adjudicate upon the release of the attachment. In paragraph 50, 51 and 52 following has been held:

“50. As far as the judgment of Hon'ble High Court of Judicature at Bombay in **Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 and Anr. (Writ Petition (L) No. 9943 of 2023)** is concerned in the said case Hon'ble High Court of Bombay ruled that it is untenable to contend that the NCLT is incompetent and/or powerless to either interpret or to give effect to the provisions of vary act under which it was constituted. Para 25 of the judgment is reproduced hereinabove. In sum and substance the view taken by Hon'ble High Court in the case of Shiv Charan is that this Tribunal is well within its power to direct release of the property attached under PMLA. It is not the view taken by Hon'ble High Court that this Tribunal should mandatorily release the attached property. In the said case, the order passed by this Tribunal, approving the Plan was not under challenge before Hon'ble High Court Bombay. Para 40 and 53 of the judgment reads thus:-

"40. Regardless of whether Respondent No. 1 in WP 9943 (the Adjudicating Authority under the PMLA, 2002) discharges it's duty on its own accord (by taking judicial notice) or on the ED drawing its attention to the decision of the Hon'ble Supreme

Court, to release the attachment by operation of Section 32A of the IBC, 2016, the NCLT (the Adjudicating Authority under the IBC, 2016), is clothed with the explicit power to answer questions of law relating to the resolution (and that too notwithstanding anything contained in any other applicable law, which includes the PMLA, 2002. Section 60(5) clearly empowers the NCLT to answer the question of whether the statutory immunity under Section 32A has accrued to a corporate debtor. As a consequence, the NCLT is well within its jurisdiction and power to rule that prior attachment of the property of a corporate debtor that is subject matter of an approved resolution plan, must be released, if the jurisdictional facts for purposes of Section 32A exist.

x x x

53. In the result, we rule that the attachment by the ED over the Attached Properties, being the four bank accounts of the Corporate Debtor, (with aggregate balances to the tune of Rs. 3,55,298/- and any interest earned thereon) and the 14 flats constructed by the Corporate Debtor valued at Rs. 32,47,55,298/-, came to an end on 17th February, 2023. Such release has occurred by operation of Section 32A of the IBC, 2016, and the ministerial act of communicating must be communicated by the Respondents in WP 9943 and the Petitioner in WP 29111 forthwith to the Corporate Debtor, marking a copy to the Petitioner in WP 9943, within a period of six weeks from the date of this judgment. Such a communication is necessary to enable the Attached Properties to be bankable assets that can be deployed into the revival of the Corporate Debtor in terms of the objective of resolution."

51. In the case before Hon'ble Bombay High Court, when this Tribunal had ordered release of the property attached by ED, upon

approval of Plan, Hon'ble High Court viewed that this Tribunal was well within its power to release the property from attachment and in the absence of challenge to the order of approval of Plan, Hon'ble High Court refused to look into the issue. In the present case before us, neither the issue of application of moratorium is involved nor an issue of ramification of approval of plan by this Tribunal is involved. The issue involved is as to whether we should grant relief and concession in the nature of direction to ED to release the property attached by it. We have already viewed that the property of the CD attached by ED cannot be directed to be released and the approval of the Plan would also not result in such release. In CCE vs. M/s Alnoori Tobacco Products, Hon'ble Supreme ruled thus:-

"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark on lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton fl 951 AC 737: (1951) 2 All ER 1 (HL)j (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the

rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge "

12. In *Home Office v. Dorset Yacht Co.* [(1970) 2 All. ER 294: 1970 AC 1004: (1970) 2 WLR 1140 (HL)] Lord Reid said (All ER p 297 g-h), "Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) [(1971) 1 WLR 1062: (1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in *British Railways Board v. Herrington* [(1972) 1 AC 877: (1972) 2 WLR 537: (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (*Abdul Kayoom v. CIT* [AIR ~ 962 SC 680], AIR p. 688, para 19)

"19. . . Each case depends on its own facts and a close similarity between one case and another is not enough because even a single _significant detail may alter the entire aspect. In deciding such cases, one should avoid

the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

* * *

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

52. Indubitably, the value of the plan as also the amount distributed to the stakeholders is not such as should have been. Nevertheless, it is stare decisis that once in exercise of its commercial wisdom the CoC has accepted the Resolution Plan, this Tribunal/ Adjudicating Authority should not interfere with the same. In **Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors**, Hon'ble Supreme Court ruled that the limited power of judicial review available to this Tribunal is in four corners of Section 30(2) of the Code. It is also the view taken by Hon'ble Supreme Court that such power of review does not enable this Tribunal to interfere with the Resolution Plan."

18. The Hon'ble Supreme Court had occasion to consider the challenge to Section 32-A in the Writ Petition filed in the Hon'ble Supreme Court under Article 32 in the judgment of **Manish Kumar vs. Union of India and Anr. – (2021) 5 SCC 1**. In the above judgment challenge to Section 32-A was repelled and while repelling the challenge to Section 32-A, the Hon'ble Supreme Court examined the legislative scheme of Section 32-A. In paragraph 320 of the

judgment, sub-section (2) of Section 32-A was noticed and following was observed:

“320. Coming to sub-section (2) of Section 32-A, it declares a bar against taking any action against property of the corporate debtor. This bar also contemplates the connection between the offence committed by the corporate debtor before the commencement of the CIRP and the property of the corporate debtor. This bar is conditional to the property being covered under the resolution plan. The further requirement is that a resolution plan must be approved by the adjudicating authority and, finally, the approved plan, must result in a change in control of the corporate debtor not to a person, who is already identified and described in sub-section (1). In other words, the requirements for invoking the bar against proceeding against the property of the corporate debtor in relation to an offence committed before the commencement of the CIRP, are as follows:

320.1. There must be resolution plan, which is approved by the adjudicating authority under Section 31 of the Code.

320.2. The approved resolution plan must result in the change in control of the corporate debtor to a person, who was not — (a) a promoter; (b) in the management or control of the corporate debtor; or (c) a related party of the corporate debtor; (d) a person with regard to whom the investigating authority, had, on the basis of the material, reason to believe that he has abetted or conspired for the commission of the offence and has submitted a report or a complaint. If all these aforesaid conditions are fulfilled then the law giver has provided that no action can be taken against the property of the corporate debtor in connection with the offence.”

19. The Hon’ble Supreme Court also noticed the explanation to sub-section (2) of Section 32 and made following observations in paragraphs 321 and 322:

“321. The Explanation to sub-section (2) of Section 32-A has clarified that the words “an action against the property of the corporate debtor in relation to an offence”, would include the attachment, seizure, retention or confiscation of such property under the law applicable to the corporate debtor. Since the word “include” is used under sub-clause (i) of the Explanation, the word “action” against the property of the corporate debtor is intended to have the widest possible amplitude. There is a clear nexus with the object of the Code. The other part of the clarification, under the Explanation, is found in the second sub-clause of Explanation (ii).

322. Under the second limb of the Explanation to Section 32-A(2), the law giver has clearly articulated the point that as far as the property of any person, other than the corporate debtor or any person who had acquired the property of the corporate debtor through the CIRP or liquidation process under the Code and who otherwise fulfils the requirement under Section 32-A, action can be taken against the property of such other person.”

20. Paragraphs 323, 323.1, 323.2, 323.3 and 324 also elaborate legislative scheme, which is as follows:

“323. Thus, reading sub-section (1) and sub-section (2) of Section 32-A together, two results emerge:

323.1. Subject to the requirements embedded in sub-section (1) of Section 32-A, the liability of the corporate debtor for the offence committed under the CIRP, will cease.

323.2. The property of the corporate debtor is protected from any legal action again subject to the safeguards, which we have indicated.

323.3. The bar against action against the property, is available, not only to the corporate debtor but also to any person who acquires

property of the corporate debtor under the CIRP or the liquidation process. The bar against action against the property of the corporate debtor is also available in the case of a person subject to the same limitation as prescribed in sub-section (1) and also in sub-section (2), if he has purchased the property of the corporate debtor in the proceedings for the liquidation of the corporate debtor.

324. The last segment of Section 32-A makes it obligatory on the part of the corporate debtor or any person, to whom immunity is provided under Section 32-A, to provide all assistance to the investigating officer qua any offence committed prior to the commencement of the CIRP.”

21. The Hon’ble Supreme Court has clearly held that Section 32-A has been engrafted in the legislation, which is a legislative scheme and if legislature thought that immunity be granted to the Corporate Debtor or its property, it hardly furnishes a ground for this Court to interfere. In paragraph 326, it has been emphasized that the extinguishment of the criminal liability of the Corporate Debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. In paragraph 326, following has been observed:

“326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32-A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the Code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the

legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the interim resolution professional and thereafter into the hands of the resolution professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.”

22. In view of the foregoing discussions, we are of the view that the Adjudicating Authority erred in not extending the benefit of Section 32-A, sub-section (2) to the Resolution Applicant, who was entitled to protection under Section 32A of the IBC.

23. In result, we allow the Appeal, set aside the findings recorded in the impugned order in paragraph 60 and observations made in the judgment, denying the benefit of Section 32-A to the SRA. The SRA is entitled to relief of extension of benefit of protection of Section 32-A to lift the attachment by

Enforcement Directorate over the assets of the Corporate Debtor. We allow the reliefs as prayed in the Appeal and set aside the findings in paragraph 60 of the judgment and the observations in the judgment, denying the protection of Section 32-A of the IBC. The Appeal is allowed accordingly. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

13th August, 2024

Ashwani