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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; M.M. SUNDRESH; JJ.
CIVIL APPEAL NO. 8411 OF 2019; January 18, 2022
BANK OF BARODA & ANR. *VERSUS* **MBL INFRASTRUCTURES LIMITED & ORS.**

Insolvency and Bankruptcy Code, 2016 ; Section 29A(h) - The word "such creditor" in Section 29A(h) has to be interpreted to mean similarly placed creditors after the application for insolvency application is admitted by the adjudicating authority - What is required to earn a disqualification under the said provision is a mere existence of a personal guarantee that stands invoked by a single creditor, notwithstanding the application being filed by any other creditor seeking initiation of insolvency resolution process. This is subject to further compliance of invocation of the said personal guarantee by any other creditor. *(Para 53)*

For Appellant(s) Mr. Bishwajit Dubey, Adv. Ms. Srideepa Bhattacharyya, Adv. Ms. Aishwarya Gupta, Adv. Mr. Manpreet Lamba, Adv. M/S. Cyril Amarchand Mangaldas Aor, AOR; For Respondent(s) Ms. S. Janani, AOR Mr. Satyendra Kumar, AOR Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. Arjun Bhatia, Adv. Mrs. Shubhra Kapur,Adv. Mr. Lalit Rajput, Adv. Mr. Ankur Mittal, AOR Mr. Atul Kumar, Adv. Mr. Abhimanyu Sharma, Adv. Ms. Deepali, Adv. Mr. Karunakar Rath, Adv. 2 Mr. Tarun Kumar, Adv. Mr. Tarun Gupta, AOR Ms. Archana Pathak Dave, AOR Mr. Mithilesh Kumar Pandey, Adv. Mr. Rakesh Kumar-i, AOR Mr. Shantanu Kumar, AOR Dr. (Mrs.) Vipin Gupta, AOR

J U D G M E N T

M.M. SUNDRESH, J.

1. A judicial interpretation of Section 29A(h) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code"), as amended by the Act 26 of 2018 is sought from us.

2. We have heard Shri. Tushar Mehta, learned Solicitor General and Mr. Bishwajit Dubey, learned counsel appearing for the Appe1llant, and Shri. Ranjit Kumar and Shri. Parag P. Tripathi, learned senior counsels on behalf of Respondent Nos. 1 and 3, respectively. Perused the documents filed by both sides, and additionally, we had the benefit of going through the written arguments placed on record.

A BRIEF JOURNEY:

3. M/s. MBL Infrastructures Limited (Respondent No.1) was set up by one, Mr. Anjanee Kumar Lakhotiya (Respondent No. 3) in the early 1990s. Loans/ credit facilities were obtained by the Respondent No.1 from the consortium of banks (State Bank of Mysore now State Bank of India as lead bank), some of who are also arrayed as respondents apart from the appellant. On the failure of the Respondent No.1 to act in tune with the terms of repayment, some of the respondents were forced to invoke the personal guarantees extended by the Respondent No.3 for the credit facilities availed by the Respondent No.1.

4. M/s. RBL Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), after duly invoking the personal guarantee of the Respondent No.3. This was followed by a similar action at the hands of Respondent No.8 (M/s Allahabad Bank) and M/s. State Bank of Bikaner and Jaipur. We are given to understand that M/s. State Bank of Bikaner and Jaipur got merged with State Bank of India. The aforesaid two proceedings invoking Section 13(2) of the SARFAESI Act were initiated in the month of February and March, 2013, respectively.

5. On the aforesaid factual setting, M/s. RBL Bank filed an application bearing No. (IB)-170/KB/2017 under Section 7 of the Code before the National Company Law Tribunal, Kolkata (hereinafter referred to as "adjudicating authority") to initiate corporate insolvency resolution process (CIRP) against Respondent No.1. It was admitted vide order dated 30.03.2017, appointing an Interim Resolution Professional, leading to imposition of moratorium in terms of Section 14 of the Code. After the expiry of the initial period of CIRP, an application was filed by the Resolution Professional for extending the duration of CIRP by an additional 90 days, which was duly granted.

6. Two resolution plans were received by the Resolution Professional (Respondent No.2 herein) as he then was, of which, one was authored by Respondent No.3 on 29.06.2017. This was done prior to the introduction of Section 29A of the Code.

7. A series of meetings took place with the active participation of the Committee of Creditors (CoC) on the resolution plan submitted by the Respondent No.3 between October 16, 2017 to November 17, 2017. A decision was made in the 9 th meeting of the CoC held on 18.11.2017 seeking an appropriate resolution plan at the hands of Respondent No.3. In tune with the aforesaid directive, the Respondent No.3 submitted a modified resolution plan on 22.11.2017.

8. Thereafter, by way of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, Section 29A was introduced to the Code with which we are concerned in the present *lis,* specifically 29A(c) and (h). The same are reproduced as under:

"**Section 29 A – Persons not eligible to be resolution applicant** – A person shall not be eligible to submit a resolution plan, if such person or any other person acting jointly with such person or any other person who is a promoter or in the management or control of such person, -

xxx xxx xxx

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

xxx xxx xxx

(h) has executed an enforceable guarantee in favour of a creditor, in respect of a corporate

debtor under insolvency resolution process or liquidation under this code."

9. The CoC held its meeting on 01.12.2017 to deliberate upon the impact of the amendment *qua* the eligibility of the Respondent No.3 in submitting a resolution plan in the CIRP proceedings. In view of the lingering doubt expressed, the Respondent No.3 filed an application bearing CA(IB) No.543/KB/2017 praying for a declaration that he was not disqualified from submitting a resolution plan under sub-section (c) and (h) of Section 29A of the Code.

10. The adjudicating authority, vide its order dated 18.12.2017 held that the Respondent No.3 was eligible to submit a resolution plan, notwithstanding the fact that he did extend his personal guarantees on behalf of the Respondent No.1 which were duly invoked by some of the creditors, as aforesaid. This issue was never placed and raised before the adjudicating authority. Though the adjudicating authority took note of Section 29A(c) of the Code, it did not give any specific findings on it. However, it ruled that inasmuch as the personal guarantee having not been invoked and the Respondent No.3 merely having extended his personal guarantee, as such there is no disqualification *per se* under Section 29A(h) of the Code as the liability under a guarantee arises only upon its invocation. Thus, only those guarantors who had antecedents which might adversely impact the credibility of the process are alone to be excluded. As debt payable by Respondent No.3 was not crystalized, he could not be construed as a defaulter for breach of the guarantee. Incidentally, a finding has been given that the Respondent No.3 did not commit any default. With the aforesaid clarification, the application filed was allowed by taking into consideration the amendment made on 23.11.2017, introducing Section 29A to the Code.

11. The aforesaid order was assailed by the Punjab National Bank (Respondent No.10) before the National Company Law Appellate Tribunal (hereinafter referred to as "appellate tribunal") in Company Appeal (AT) (Insolvency) No. 330 of 2017. Upon hearing the Respondent No.10, the following interim order was passed on 21.12.2017:

"Let notice be issued to respondents by speed post. Requisites by next dated. Dasti service permitted.

Copy of this order may also be forwarded to the respondents. The appellant will file the certified copy of the impugned order by 5th January, 2018 . Post the matter on 11th January, 2018.

In the meantime, if the 2nd Respondent filed any Resolution Plan, the Resolution Professional and the Committee of Creditors may go through the same but the Adjudicating Authority will not accept or reject the resolution plan or pass any order in lower court without prior approval of this Appellant Tribunal."

12. On the very same day, the resolution plan submitted by the Respondent No.3 was put to vote by the Respondent No.2 in the 12th meeting of the CoC by way of e-voting, and the process was completed the next day. The plan received 68.50 % vote share of the CoC. Six financial creditors voted against the plan, including Respondent No.10 (PNB) and RBL Bank. The extended 270 day period of CIRP expired on 25.12.2017.

13. RBL Bank filed an appeal against the order dated 18.12.2017 being Company Appeal (AT) (Insolvency) No.1 of 2018 wherein an order was passed upon hearing the parties

on 11.01.2018 facilitating the adjudicating authority to proceed further but not to accept the resolution plan, without its prior approval.

14. The Respondent No.3 filed an application on 12.01.2018 invoking Section 60 of the Code bearing CA No.(IB) 50/KB/2018 seeking an appropriate direction to the dissenting and abstaining creditors to facilitate a possible change of mind by supporting the resolution plan, as modified. Thereafter, Bank of Maharashtra (Respondent No. 11), since impleaded by the order of this court dated 26.10.2021, sent a letter to Respondent No.2 dated 31.01.2018 setting forth its conditions for its approval of the resolution plan. Further, Indian Overseas Bank was pleased to give its approval to the resolution plan. As such, the resolution plan gathered 78.50% vote share.

15. In the meanwhile, Section 29A(h) went through a further amendment which came into effect from 18.01.2018:

"**Section 29 A – Persons not eligible to be resolution applicant** – A person shall not be eligible to submit a resolution plan, if such person or any other person acting jointly or in concert with such person –

xxx xxx xxx

(h) has executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this code."

16. On 23.03.2018 , the appellate tribunal passed the following order in the appeals filed by Respondent No.10 and RBL Bank:

"When the matter was taken up learned counsel appearing on behalf of the Appellant – 'Punjab National Bank' sought permission to withdraw the appeal. One of the learned counsel appearing on behalf of the Respondent opposed the prayer. However, we are not inclined to the ground of opposition as made by the Respondent. Bank intends to withdraw the appeal, without any liberty. In this background, without taking into consideration the grounds shown in the affidavit for withdrawal, we allow the Appellant to withdraw the Appeal without any liberty to challenge the same very impugned order. The appeal is dismissed as withdrawn. I.A. No.311 of 2018 stands disposed of. The 'question of law' may be decided in some other case. No cost.

The interim order passed by this Appellant Tribunal on 21st December, 2017 stands vacated."

17. The above order was passed while permitting the appellants to withdraw the appeals against the order of eligibility of Respondent No.3, in view of the resolution plan having reached the mandatory requirement of 75% as warranted under Section 30(4) of the Code. Thus, it is clear that those appellants did not have any grievance on the plan as accepted by the majority of the CoC. However, the request made by the present appellant who filed I.A. No. 311 of 2018 before the appellate tribunal, seeking to be impleaded as a party to the aforesaid proceedings to continue the *lis* was not favourably considered though no reason was assigned in the aforesaid order. We may also note that the appellant before us who incidentally filed the aforesaid application was not heard before the adjudicating authority. Suffice it is to state that the appellant did raise its objection to the withdrawal of appeal, presumably on the premise that it wanted to continue by substituting itself in place of the original appellants.

18. The resolution professional, the Respondent No.2 filed a report dated 12.02.2018 for recording the increase in voting share up to 78.50% together with the resolution plan stating that it was accordingly passed. Only on the aforesaid factual setting the pending appeal before the appellate tribunal was withdrawn on 27.02.2018. The adjudicating authority approved the resolution plan submitted by its order dated 18.04.2018 inter alia holding that there is a marked difference between extension and exclusion and therefore, the rigor of Section 12(1) of the Code would not get attracted on the facts of the case particularly when there were pending proceedings with interim orders. It was further held that the issue *qua* the eligibility under Section 29A(h) decided already, coupled with the resolution plan crossing the requisite threshold of approval by the CoC, i.e. 75% vote share, having considered the technoeconomic viability and feasibility of the plan, the application filed for approval of the resolution plan submitted by the Respondent No.3 was liable to be allowed. A direction was accordingly given, holding that the approved resolution plan shall come into force with immediate effect.

19. The appellant before us put into challenge, the aforesaid order passed by the adjudicating authority in Company Appeal (AT)(Insolvency) No. 194 of 2018.

20. In the meanwhile, Section 29A(h) went through a further change by way of ordinance dated 06.06.2018, which subsequently became an Act with effect from the same date through the Act 26 of 2018:

"**Section 29 A- Persons not eligible to be resolution applicant** – A person shall not be eligible to submit a resolution plan, if such person or any other person acting jointly or in concert with such person –

xxx xxx xxx

(h) has executed a guarantee in favour of a creditor, in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this code and such guarantee has been invoked by the credit and remains unpaid if full or part."

21. The appellate tribunal did explore other possibilities during the pendency of the appeal. It also directed the Respondent No.3 to submit a revised resolution plan. After hearing the parties, the order passed by the adjudicating authority was confirmed, dismissing the appeal filed by the appellant while approving the revised resolution plan submitted by the Respondent No.3 before it. After the disposal of the appeals filed including that of the appellant along with the others who have not challenged the same before us, the shareholders of the Respondent No.1 approved the fund raising of Rs.300 crores in the Annual General Meeting.

22. The appeals including that of the appellant were dismissed on the ground that the resolution plan was approved with 78.50% of the voting share of the CoC, and it was backed by the techno-economic report *qua* the viability and feasibility. The earlier decision of the adjudicating authority dated 18.12.2017 has attained finality *qua* the issue of eligibility of the Respondent No.3 under Section 29A of the Code to submit a resolution plan, and it cannot sit in appeal over the decision of the adjudicating authority or the CoC in the absence of any apparent discrimination. It is this decision of the appellate authority confirming the order passed by the adjudicating authority, which is tested before us.

23. Before we proceed with the submissions made at the Bar, we have to record one more fact, namely, Section 30 of the Code also underwent a change by the introduction of amendment dated 06.06.2018 by way of an ordinance followed by an Act through which the percentage required for approval of a resolution plan by the CoC has been brought down from 75% to 66% of the voting share of the CoC.

SUBMISSIONS OF THE APPELLANT:

24. We will collectively consider the submissions of the learned counsel appearing for the appellant and the Respondent No.7, though the said respondent did not choose to file any appeal before us.

25. Section 29A has to be given a holistic interpretation as the objective is to weed out undesirable persons with the intention of promoting primacy of debt by disqualifying guarantors who have not fulfilled their co-extensive liability with the insolvent corporate debtor. The Respondent No.3 (who is a promoter of the corporate debtor) was ineligible to submit a resolution plan under Section 29 A(h) of the Code, as several personal guarantees executed by the Respondent No.3 in favour of various creditors of the Respondent No.1 stood invoked, prior commencement of CIRP. There is a clear suppression on the part of Respondent No.3, which was not taken note of by the adjudicating authority on both the occasions. Even the Respondent No.2 failed to bring the said fact before the adjudicating authority. Therefore, the premise on which the adjudicating held the Respondent No.3 eligible to submit a resolution plan is *ex facie* false.

26. The law which was prevailing on the date of the application has to be seen, therefore, the disqualification gets attracted on the date of filing of the application and on the same analogy not only Section 29A(h) but also Section 30(4) has to be interpreted. As fraud vitiates all solemn acts, the appeal deserves to be allowed. A legal ineligibility cannot be done away with by alleged estoppel, such ineligibility is a matter of fact to be considered by Courts irrespective of any waiver by any party or creditor. The approval of the resolution plan was made after the mandatory period of 270 days, i.e. after the expiry of the CIRP period. Since there is clear infraction of Section 12, the orders passed are liable to be interfered with. The learned Solicitor General has sought to place reliance on the judgment of this Court in K. Shashidhar vs. Union of India (Order dated 05.02.2019 in Civil Appeal 10673 of 2018). The revised plan before the appellate tribunal was never approved by the adjudicating authority, including the conditional assent given by the Respondent No.11, which were erroneously accepted.

27. There is no bar in law for questioning the eligibility before the adjudicating authority as the appellant was neither a party before it on earlier occasion nor an adjudication was made on the merits by the appellate tribunal. Therefore, the order passed by the appellate tribunal confirming that of the adjudicating authority requires to be set aside.

SUBMISSIONS OF THE RESPONDENT:

28. A decision made by the CoC in its commercial wisdom on being satisfied with the report of the expert on the viability and feasibility of the resolution plan, is not required to be interfered with by this Court by substituting its views. The revised plan as accepted

by the appellate tribunal is an improvement to the earlier one submitted by the Respondent No.3 and, therefore, there cannot be any grievance on that count.

29. The object of the Code has to be read with Section 29A(h). The appellant being aware of the decision of the adjudicating authority in the first instance ought to have taken it further, as such the appellant is estopped from questioning the eligibility of the Respondent No.3 to submit a resolution plan under Section 29 A(h) of the Code. The provision has to be literally interpreted to the extent that a personal guarantor is barred from submitting a resolution plan only when the creditor invoking the jurisdiction of the adjudicating authority has invoked a personal guarantee executed in favour of said creditor by the resolution applicant.

30. No personal guarantee stood invoked by RBL Bank at the time of application to the adjudicating authority under Section 7 of the Code. It is further submitted that the invocation of the consortium guarantee by Allahabad Bank and State Bank of Bikaner and Jaipur under Section 13(2) of the SARFAESI Act, 2002 is *ex facie* illegal in terms of the inter-se agreement executed between the members of the consortium of banks. Even otherwise the same is not relevant as neither Allahabad Bank nor State Bank of Bikaner and Jaipur filed an application before the adjudicating authority.

31. The first respondent is an on-going concern as of now and the resolution plan is under implementation since 18.04.2018. The object of the Code is revival of the Corporate Debtor and liquidation is the last resort. Any interference at this stage will have an adverse effect and militate against the very object of the Code. The Respondent No.3 has infused over Rs. 63 crores since the resolution plan has been in operation and has further received approval of the shareholders to raise Rs. 300 crores to revive the Respondent No.1. Since the approval of the resolution plan submitted by the Respondent No.3, several projects of national importance have been completed and various others are under execution. Further, all workmen have also been paid in full, and all current employees, operational creditors and statutory dues are being regularly paid.

32. Both the forums have rightly construed the issue *qua* extension and exclusion. Admittedly, there were earlier rounds of litigation and proceedings were pending against the interim orders. This issue has also been concluded finally by this Court inter alia holding that in such a scenario exclusion has to be granted, in light of the time spent in litigation.

33. Buttressing the aforesaid submissions, the counsels for the Respondents have sought to place reliance on the following decisions:

- Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17
- K.N. Rajkumar v. V.N. Nagarajan 2021 SCC OnLine 732
- Arcellor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1
- Committee of Creditors, Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531.
- Apollo Joti LLC & Ors. v. Jyoti Structures Ltd. (Company Appeal (AT) (Insolvency) No. 548 of 2018.
- DBS Bank Ltd. vs. Sharad Sanghi (Civil Appeal No. 3434-3436 of 2019)

- Ebix Singapore Pvt. Ltd. vs. COC of Educomp Solutions Ltd. 2021 SCC OnLine SC 707
- National Spot Exchange v. Anil Kohli 2021 SCC OnLine SC 716

STATUTORY INTERPRETATION:

34. The principle governing statutory interpretation has been repeated with regularity by this Court on quite a few occasions. While construing the said principle adequate thought will have to be given to the nature of the statute and the provisions contained thereunder. The focus is on avoiding any interpretation which might cause an injury or destroy the intent behind the legislation.

35. Lord Denning in Seaford Court Estates Ltd. v. Asher, (1949) 2 KB 481 deals with the role required to be played by the Court even when there is a possible defect:

"When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

36. MAXWELL ON INTERPRETATION OF STATUES, 11th Edition

"It is said to be the duty of the judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of whole object of the legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it. The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words." (Pg. 66)

"…In determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice or legal principles, should, in all cases of doubtful significance, be presumed to be the true one." (Pg. 183)

37. CRAIES IN STATUTE LAW, 7th Edition, Pg. 262:

"… It is the duty of Courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed' .. that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

38. A DRIEDGER, CONSTRUCTION OF STATUTE, 2nd Edition, 1983, Pg. 37:

"Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the Scheme of the Act, the object of the Act, and the intention of Parliament."

39. As repeated on various other occasions by this Court, judging a statute through 'Literal to Heydon's Golden rule' has gone through a complete circle. Thus, we have come to a stage of applying a reasonable, creative and fair construction principle.

40. The often quoted words of Justice Chinnappa Reddy in the celebrated judgment in

the Reserve Bank of India v. Peerless General Finance and Investment Company Limited, (1987) 1 SCC 424 holds the field even today:

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place…."

41. Apropos the passage in the case of Union of India v. Elphinstone Spg. and Wvg. Co. Ltd., (2001) 4 SCC 139:

"While examining a particular statute for finding out the legislative intent it is the attitude of Judges in arriving at a solution by striking a balance between the letter and spirit of the statute without acknowledging that they have in any way supplemented the statute would be the proper criterion. The duty of Judges is to expound and not to legislate is a fundamental rule. There is no doubt a marginal area in which the courts mould or creatively interpret legislation and they are thus finishers, refiners and polishers of legislation which comes to them in a state requiring varying degrees of further processing. (See: *Corocraft Ltd.* v. *Pan American Airways Inc*. [(1968) 3 WLR 714 : (1968) 2 All ER 1059 : (1969) 1 QB 616] WLR, p. 732 and *State of Haryana* v. *Sampuran Singh* [(1975) 2 SCC 810] .) But by no stretch of imagination a Judge is entitled to add something more than what is there in the statute by way of a supposed intention of the legislature. It is, therefore, a cardinal principle of construction of statutes that the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."

42. Touching upon the very interpretation of the Code, this Court on more than one occasion has adopted the very same approach in Arcellor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1, Phoenix Arc (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475 and Arun Kumar Jagatramka v. Jindal Steel & Power Limited, (2021) 7 SCC 474.

INSOLVENCY AND BANKRUPTCY CODE, 2016:

43. The Code has got its laudable object. The idea is to facilitate a process of rehabilitation and revival of the corporate debtor with the active participation of the creditors. Thus, there are two principal actors in the entire process, viz., (i)the committee of creditors and, (ii) the corporate debtor. The others are mere facilitators. There can never be any other interest than that of the committee of creditors and the corporate debtor. We do not wish to multiply the rationale behind the enactment except by quoting the decision of this Court in the case of Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17, which has also found acceptance by the subsequent decision in the case of *Arun Kumar(supra)*:

"27. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

ON SECTION 29A AND ITS PURPOSIVE INTERPRETATION:

44. Section 29A of the Code has also come up for consideration before this Court on earlier occasions, though, the provision with which we are concerned, i.e. Section 29A(h), was not specifically considered. We do not wish to go into Section 29A(c) since no issue has been raised before us in these proceedings.

45. As stated, Section 29A is a facet of the Code, and therefore, this provision has to be read with the main objective enshrined thereunder. The objective behind Section 29A of the Code is to avoid unwarranted and unscrupulous elements to get into the resolution process while preventing their personal interests to step in. Secondly, it consciously seeks to prevent certain categories of persons who may not be in a position to lend credence to the resolution process by virtue of their disqualification.

46. The then Hon'ble Minister of Finance and Corporate Affairs made this statement before Parliament on 29.12.2017 while moving the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, which introduced Section 29A to the Code:

"The core and soul of this new Ordinance is really Clause 5, which is Section 29-A of the original

Bill. I may just explain that once a company goes into the resolution process, then applications would be invited with regard to the potential resolution proposals as far as the company is concerned or the enterprise is concerned. Now a number of ineligibility clauses were not there in the original Act and, therefore, Section 29-A introduces those who are not eligible to apply. For instance there is a clause with regard to an undischarged insolvent who is not eligible to apply; a person who has been disqualified under the Companies Act as a Director cannot apply and a person who is prohibited under the SEBI Act cannot apply. So these are statutory disqualifications. And there is also a disqualification in clause (c) with regard to those who are corporate debtors and who as on the date of the application making a bid do not operationalise the account by paying the interest itself i.e. you cannot say that I have an NPA. I am not making the account operational. The accounts will continue to be NPAs and yet I am going to apply for this. Effectively this clause will mean that those who are in management and on account of whom this insolvent or non-performing asset has arisen will now try and say, I do not discharge any of the outstanding debts in terms of making the accounts operational and yet I would like to apply and set the enterprise back at a discount value, for this is not the object of this particular Act. So Clause 5 has been brought in with that purpose in mind."

47. The Statement of Objects and Reasons of the aforesaid Bill is as follows:

"2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of the company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of the creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible."

48. The aforesaid was taken note of by this Court in Chitra Sharma & Ors. v. Union of India, (2018) 18 SCC 575 and followed in *Arun Kumar(supra)*, wherein this Court considered the need for adopting a purposive interpretation with the primary aim to revive and restart the corporate debtor, with liquidation of the corporate debtor being the last resort:

"41. The enactment of the IBC has marked a quantum change in corporate governance and the rule of law. First and foremost, the IBC perceives good corporate governance, respect for and adherence to the rule of law as central to the resolution of corporate insolvencies. Second, the IBC perceives corporate insolvency not as an isolated problem faced by individual business entities but places it in the context of a framework which is founded on public interest in facilitating economic growth by balancing diverse stakeholder interests. Third, the IBC attributes a primacy to the business decisions taken by creditors acting as a collective body, on the premise that the timely resolution of corporate insolvency is necessary to ensure the growth of credit markets and encourage investment. Fourth, in its diverse provisions, the IBC ensures that the interests of corporate enterprises are not conflated with the interests of their promoters; the economic value of corporate structures is broader in content than the partisan interests of their managements. These salutary objectives of the IBC can be achieved if the integrity of the resolution process is placed at the forefront. Primarily, the IBC is a legislation aimed at reorganisation and resolution of insolvencies. Liquidation is a matter of last resort. These objectives can be achieved only through a purposive interpretation which requires courts, while infusing meaning and content to its provisions, to ensure that the problems which beset

the earlier regime do not enter through the backdoor through disingenuous stratagems.

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48. The underlying purpose of introducing Section 29-A was adverted to in a judgment of this Court in Chitra Sharma v. Union of India (2018) 18 SCC 575 (hereinafter referred to as "Chitra Sharma"). One of us (D.Y. Chandrachud, J.) speaking for a Bench of three learned Judges took note of the Statement of Objects and Reasons accompanying the Bill and emphasised the purpose of Section 29-A thus:

"38. Parliament has introduced Section 29-A into IBC with a specific purpose. The provisions of Section 29-A are intended to ensure that among others, persons responsible for insolvency of the corporate debtor do not participate in the resolution process. The Statement of Objects and Reasons appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017, which was ultimately enacted as Act 8 of 2018, states thus:

'2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that persons who, with their misconduct contributed to defaults of companies or are otherwise undesirable, may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.'

Parliament was evidently concerned over the fact that persons whose misconduct has contributed to defaults on the part of debtor companies misuse the absence of a bar on their participation in the resolution process to gain an entry. Parliament was of the view that to allow such persons to participate in the resolution process would undermine the salutary object and purpose of the Act. It was in this background that Section 29-A has now specified a list of persons who are not eligible to be resolution applicants."

(emphasis in original and supplied)

49. The Court held that "Section 29-A has been enacted in the larger public interest and to facilitate effective corporate governance". The Court further observed that "Parliament rectified a loophole in the Act which allowed backdoor entry to erstwhile managements in CIRP.

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52. While adverting to the earlier decision in *Chitra Sharma* [*Chitra Sharma* v. *Union of India*, (2018) 18 SCC 575] and *ArcelorMittal* [*ArcelorMittal (India) (P) Ltd.* v. *Satish Kumar Gupta*, (2019) 2 SCC 1] , which had elucidated the object underlying Section 29A, this Court in *Swiss Ribbons* [*Swiss Ribbons (P) Ltd.* v. *Union of India*, (2019) 4 SCC 17] held that the norm underlying Section 29-A "continues to permeate" Section 35(1)(*f*) "when it applies not merely to resolution applicants, but to liquidation also". Rejecting the plea that Section 35(1)

(*f*) is ultra vires, this Court held : (*Swiss Ribbons case* [*Swiss Ribbons (P) Ltd.* v. *Union of India*, (2019) 4 SCC 17] ,

"*102*. According to the learned counsel for the petitioners, when immovable and movable property is sold in liquidation, it ought to be sold to any person, including persons who are not eligible to be resolution applicants as, often, it is the erstwhile promoter who alone may purchase such properties piecemeal by public auction or by private contract. The same rationale that has been provided earlier

in this judgment will apply to this proviso as well — there is no vested right in an erstwhile promoter of a corporate debtor to bid for the immovable and movable property of the corporate debtor in liquidation. Further, given the categories of persons who are ineligible under Section 29-A, which includes persons who are malfeasant, or persons who have fallen foul of the law in some way, and persons who are unable to pay their debts in the grace period allowed, are further, by this proviso, interdicted from purchasing assets of the corporate debtor whose debts they have either wilfully not paid or have been unable to pay. The legislative purpose which permeates Section 29-A continues to permeate the section when it applies not merely to resolution applicants, but to liquidation also. Consequently, this plea is also rejected."

A purposive interpretation

53. This line of decisions, beginning with Chitra Sharma [Chitra Sharma v. Union of India, (2018) 18 SCC 575] and continuing to ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] and Swiss Ribbons [Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17] is significant in adopting a purposive interpretation of Section 29-A. Section 29-A has been construed to be a crucial link in ensuring that the objects of the IBC are not defeated by allowing "ineligible persons", including but not confined to those in the management who have run the company aground, to return in the new avatar of resolution applicants. Section 35(1)(f) is placed in the same continuum when the Court observes that the erstwhile promoters of a corporate debtor have no vested right to bid for the property of the corporate debtor in liquidation. The values which animate Section 29-A continue to provide sustenance to the rationale underlying the exclusion of the same category of persons from the process of liquidation involving the sale of assets, by virtue of the provisions of Section 35(1)(f). More recent precedents of this Court continue to adopt a purposive interpretation of the provisions of the IBC. [See in this context the judgments in Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd. [Phoenix ARC (P) Ltd. v. Spade Financial Services Ltd., (2021) 3 SCC 475 : (2021) 2 SCC (Civ) 1 at paras 103-104] , Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd. [Ramesh Kymal v. Siemens Gamesa Renewable Power (P) Ltd., (2021) 3 SCC 224 : (2021) 2 SCC (Civ) 65 at paras 23 and 25] and Jaypee Infratech Ltd. v. Axis Bank Ltd. [Jaypee Infratech Ltd. v. Axis Bank Ltd., (2020) 8 SCC 401 : (2021) 2 SCC (Civ) 334 at paras 28.4 and 28.5]]

Sustainable revival

54. The purpose of the ineligibility under Section 29-A is to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution. Section 29-A, it must be noted, encompasses not only conduct in relation to the corporate debtor but in relation to other companies as well. This is evident from clause (c) ("an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as a non-performing asset"), and clauses (e), (f), (g), (h) and (i) which have widened the net beyond the conduct in relation to the corporate debtor."

49. In *Phoenix Arc (P) Ltd.(supra)* case, this Court considered the principle of purposive and creative interpretation while approving the interpretation given and approach taken by this Court in the earlier decision in *Arcellor Mittal(supra)*:

"89. In Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta [(2019) 2 SCC 1], the issue was whether ineligibility of the resolution applicant under Section 29-A(c) of the Code attached to an applicant at the date of commencement of the CIRP or at the time when the resolution plan is submitted by the resolution applicant. Speaking for this Court, Rohinton F. Nariman, J. interpreted the pre-2018 Amendment, framing of Section

29-A(c), in the following terms: (SCC pp. 61-62, para 46)

"46. According to us, it is clear that the opening words of Section 29A furnish a clue as to the time at which clause (c) is to operate. The opening words of Section 29-A state:'a person shall not be eligible to submit a resolution plan…'. It is clear therefore that the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant. The contrary view expressed by Shri Rohatgi is obviously incorrect, as the date of commencement of the corporate insolvency resolution process is only relevant for the purpose of calculating whether one year has lapsed from the date of classification of a person as a non-performing asset. Further, the expression used is "has", which as Dr Singhvi has correctly argued, is in praesenti. This is to be contrasted with the expression "has been", which is used in clauses (d) and (g), which refers to an anterior point of time. Consequently, the amendment of 2018 introducing the words 'at the time of submission of the resolution plan' is clarificatory, as this was always the correct interpretation as to the point of time at which the disqualification in clause (c) of Section 29-A will attach."

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91. However, it is relevant to examine whether the object and purpose for which the proviso was enacted, are fulfilled by the literal interpretation of the first proviso. Justice G.P. Singh in his authoritative commentary on the interpretation of statutes, Principles of Statutory Interpretation [(1st Edn., Lexis Nexis 2015)], has stated that:

"The intention of the legislature thus assimilates two aspects: In one aspect it carries the concept of "meaning" i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction".

92. Justice G.P. Singh notes that certain enactments require a liberal construction to give effect to its objects and purpose:

"A bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. As stated by Iyer, J. "to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision." Even in construing enactments such as those prescribing a period of limitation for initiation of proceedings where the purpose is only to intimate the people that after lapse of a certain time from a certain event a proceeding will not be entertained and where a strict grammatical construction is normally the only safe guide, a literal and mechanical construction may have to be disregarded if it conflicts with some essential requirement of fair play and natural justice which the legislature never intended to throw overboard. Similarly, in a taxing statute provisions enacted to prevent tax evasion are given a liberal construction to effectuate the purpose of suppressing tax evasion although provisions imposing a charge are construed strictly there being no a priori liability to pay a tax and the purpose of a charging section being only to levy a charge on persons and activities brought within its clear terms. For the same reason, in a legislation relating to defence services "the considerations of the security of the State and enforcement of high degree of discipline additionally intervene and have to be assigned weightage while dealing with any expression needing to be defined or any provision needing to be interpreted."

93. Similar words used in different parts of the enactment can have different meanings. As Justice G.P. Singh notes:

"The rule is of general application as even plainest terms may be controlled by the context, and "it

is conceivable," as Lord Watson said, 'that the legislature whilst enacting one clause in plain terms, might introduce into the same statute other enactments which to some extent qualify or neutralise its effect'. The same word may mean one thing in one context and another in a different context. For this reason the same word used in different sections of a statute or even when used at different places in the same clause or section of a statute may bear different meanings. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. How far and to what extent each component part of the statute influences the meaning of the other part would be different in each given case. But the effect of the application of the rule to a particular case, should not be confounded with the legitimacy of applying it."

(emphasis supplied)

94. In this context, it would be useful to refer to an earlier decision of this Court in Abhay Singh Chautala v. CBI [(2011) 7 SCC 141], where the Court did not interpret the word "is" in praesenti because that would lead to an absurd result, defeating the purpose of the provision concerned. In that case this Court had to interpret Section 19(1) of the Prevention of Corruption Act, 1988, which provided:

"19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11 , 13 and 15 alleged to have been committed by a public servant, except with the previous sanction—

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

95. It was argued before this Court that a literal interpretation should be given to Section 19(1). Since the word "is" has been used in sub-sections (a), (b) and (c), it was urged that this would exclude a public servant who had abused office at an earlier point in time and has now ceased to occupy that office. This Court speaking through Sirpurkar, J. rejected the argument and held: (Abhay Singh Chautala case(supra), SCC p.163, para 44)

"44. … we reject the argument based on the word "is" in clauses (a), (b) and (c). It is true that the section operates in praesenti; however, the section contemplates a person who continues to be a public servant on the date of taking cognizance. However, as per the interpretation, it excludes a person who has abused some other office than the one which he is holding on the date of taking cognizance, by necessary implication. Once that is clear, the necessity of the literal interpretation would not be there in the present case. Therefore, while we agree with the principles laid down in Robert Wigram Crawford v. Richard Spooner; Bidie [(1846 SCC OnLine PC 7)], In re [1949 Ch 121(CA)] and Bourne (Inspector of Taxes) v. Norwich Crematorium Ltd. [(1967) 1 WLR 691], we specifically hold that giving the literal interpretation to the section would lead to absurdity and some unwanted results, as had already been pointed out in Antulay[(1984) 2 SCC 183]."

96. This Court relied on the judgment in R.S. Nayak v. A.R. Antulay(supra) to fortify its interpretation of Section 19(1) of the Prevention of Corruption Act, 1947: (Abhay Singh Chautala case(supra),)

"22. … '24. … An illustration was posed to the learned counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence

and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd end product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter.' (A.R. Antulay case(supra), pp. 206-207, para 24)"

(emphasis supplied)

97. This Court has approved of a purposive interpretation of Section 29-A IBC in Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta(supra), where it was observed that: (SCC pp. 46-47, paras 29-30)

"29. … In *Eera v. State (NCT of Delhi)* [(2017) 15 SCC 133], this Court, after referring to the golden rule of literal construction, and its older counterpart the "object rule" in Heydon case [(1584) 3 Co Rep 7a], referred to the theory of creative interpretation as follows: (*Eera case(supra)*, SCC pp. 200-01 & 204, paras 122 & 127)

'122. Instances of creative interpretation are when the Court looks at both the literal language as well as the purpose or object of the statute in order to better determine what the words used by the draftsman of legislation mean. In D.R. Venkatachalam v. Transport Commr. [(1977) 2 SCC 273], an early instance of this is found in the concurring judgment of Beg, J. The learned Judge put it rather well when he said: (SCC p. 287, para 28)

"28. It is, however, becoming increasingly fashionable to start with some theory of what is basic to a provision or a chapter or in a statute or even to our Constitution in order to interpret and determine the meaning of a particular provision or rule made to subserve an assumed "basic" requirement. I think that this novel method of construction puts, if I may say so, the cart before the horse. It is apt to seriously mislead us unless the tendency to use such a mode of construction is checked or corrected by this Court. What is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself; secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole; thirdly, by the Preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose. The last-mentioned method consists of an application of the Mischief Rule laid down in Heydon case (supra) long ago."

* * *

127. It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the "Lakshman Rekha" has in fact been extended to move away from the strictly literal rule of

interpretation back to the rule of the old English case of Heydon (supra), where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon case (supra), which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon case (supra).'

30. A purposive interpretation of Section 29-A, depending both on the text and the context in which the provision was enacted, must, therefore, inform our interpretation of the same.

(emphasis supplied)"

50. We have already observed that we do not wish to interpret Section 29A(c) as no arguments have been addressed on that, perhaps for the reason that Respondent No.3 might not attract any disqualification on that score.

SCOPE OF SECTION 29A(h)

51. Section 29A(h) of the Code creates one more category of persons not being eligible to be a resolution applicant. Other than the persons mentioned thereunder, there may not be any disqualification. The word "person" is of a wider import to include a promoter or a director, as the case may be. The definition of "person" as mentioned under Section 3(23) of the Code includes certain categories of persons and thus, there is no such exclusion. It is merely illustrative/inclusive in nature and therefore, the persons mentioned in Section 29A alone are ineligible to be resolution applicants.

52. Once a person executes a guarantee in favour of a creditor with respect to the credit facilities availed by a corporate debtor, and in a case where an application for insolvency resolution has been admitted, with the further fact of the said guarantee having been invoked, the bar *qua* eligibility would certainly come into play. What the provision requires is a guarantee in favour of 'a creditor'. Once an application for insolvency resolution is admitted on behalf of 'a creditor' then the process would be one of *rem*, and therefore, all creditors of the same class would have their respective rights at par with each other. This position has also been dealt with by this Court in the case of *Swiss Ribbons (supra)*:

"82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case."

53. The word "such creditor" in Section 29A(h) has to be interpreted to mean similarly placed creditors after the application for insolvency application is admitted by the adjudicating authority. As a result, what is required to earn a disqualification under the said provision is a mere existence of a personal guarantee that stands invoked by a

single creditor, notwithstanding the application being filed by any other creditor seeking initiation of insolvency resolution process. This is subject to further compliance of invocation of the said personal guarantee by any other creditor. We have already said that the concern of the Court is only from the point of view of two entities viz., corporate creditors and the corporate debtors. Any other interpretation would lead to an absurdity striking at the very objective of Section 29A, and hence, the Code. Ineligibility has to be seen from the point of view of the resolution process. It can never be said that there can be ineligibility *qua* one creditor as against others. Rather, the ineligibility is to the participation in the resolution process of the corporate debtor. Exclusion is meant to facilitate a fair and transparent process.

54. The provision after the amendment speaks of invocation by a creditor. The manner of invocation can never be a factor for the adjudicating authority to adjudge, as against its existence. Adequate importance will have to be given to the latter part of the provision which also disqualifies a person whose liability under the personal guarantee executed in favour of a creditor, remains unpaid in full or in part for the amount due from him, upon invocation.

55. It is quite obvious that a resolution applicant, other than a financial creditor under Section 7, an operational creditor under Section 8 and a corporate debtor under Section 10, can ever have an independent right to insist for the protection of its own interest in the resolution process. Thus, Section 29A has a laudable object of protecting and balancing the interest of the committee of creditors and the corporate debtor, while shutting the doors to canvas the interests of others. That is the reason why it consciously excludes certain categories of persons. We may add that Section 29A(h) foresees the creditors who are otherwise either already under the insolvency resolution process or are entitled to go under it.

56. Yet another issue which requires consideration is to the date of reckoning *qua* the provision. That is, the date of submission of resolution plan or the date of adjudication by the authority. Having understood the provision and the objective behind it, as well as the Code, it is clear that, if there is a bar at the time of submission of resolution plan by a resolution applicant, it is obviously not maintainable. However, if the submission of the plan is maintainable at the time at which it is filed, and thereafter, by the operation of the law, a person becomes ineligible, which continues either till the time of approval by the CoC, or adjudication by the authority, then the subsequent amended provision would govern the question of eligibility of resolution applicant to submit a resolution plan. The resolution applicant has no role except to facilitate the process. If there is ineligibility which in turn prohibits the other stakeholders to proceed further and the amendment being in the nature of providing a better process, and that too in the interest of the creditors and the debtor, the same is required to be followed as against the provision that stood at an earlier point of time. Thus, a mere filing of the submission of a resolution plan has got no rationale, as it does not create any right in favour of a facilitator nor it can be extinguished. One cannot say, what is good today cannot be applied merely because an applicant was eligible to submit a resolution plan at an earlier point of time. It is only a part of procedural law. We quote with profit the decision in Ebix Singapore Pvt. Ltd. vs.

COC of Educomp Solutions Ltd., 2021 SCC OnLine 707:

"130. The CoC even with the requisite majority, while approving the Resolution Plan must consider the feasibility and viability of the Plan and the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53 of the IBC. The CoC cannot approve a Resolution Plan proposed by an applicant barred under Section 29A of the IBC. Regulation 37 and 38 of the CIRP Regulations govern the contents of a Resolution Plan. Furthermore, a Resolution Plan, if in compliance with the mandate of the IBC, cannot be rejected by the Adjudicating Authority and becomes binding on its approval upon all stakeholders - including the Central and State Government, local authorities to whom statutory dues are owed, operational creditors who were not a part of the CoC and the workforce of the Corporate Debtor who would now be governed by a new management. Such features of a Resolution Plan, where a statute extensively governs the form, mode, manner and effect of approval distinguishes it from a traditional contract, specifically in its ability to bind those who have not consented to it. In the pure contractual realm, an agreement binds parties who are privy to the contract. In the context of a resolution Plan governed by the IBC, the element of privity becomes inapplicable once the Adjudicating Authority confirms the Resolution Plan under Section 31(1) and declares it to be binding on all stakeholders, who are not a part of the negotiation stage or parties to the Resolution Plan. In fact, a commentator has noted that the purpose of bankruptcy law is to actually solve a specific 'contracting failure' that accompanies financial distress. Such a contracting failure arises because "financial distress involves too many parties with strategic bargaining incentives and too many contingencies for the firm and its creditors to define a set of rules of every scenario." Thus, insolvency law recognizes that parties can take benefit of such 'incomplete contract' to hold each other up for their individual gain. In an attempt to solve the issue of incompleteness and the hold-up threat, the insolvency law provides procedural protections i.e., "the law puts in place guardrails that give the parties room to bargain while keeping them from taking position that veer toward extreme hold up"

ON MERIT

57. Having discussed Section 29A(h) of the Code as we understood, we shall now go into the facts of the instant case.

58. Admittedly, the Respondent No.3 has executed personal guarantees which were invoked by three of the financial creditors even prior to the application filed. The rigor of Section 29A(h) of the Code obviously gets attracted. The eligibility can never be restricted to the aforesaid three creditors, but also to other financial creditors in view of the import of Section 7 of the Code. In the case at hand, in pursuance to the invocation, an application invoking Section 7 indeed was filed by one such creditor. It was invoked even at the time of submitting a resolution plan by the Respondent No.3. Thus, in the touchstone of our interpretation of Section 29A(h), we hold that the plan submitted by the Respondent No.3 ought not to have been entertained.

59. The adjudicating authority and the appellate tribunal were not right in rejecting the contentions of the appellant on the ground that the earlier appeals having been withdrawn without liberty, the issue *qua* eligibility cannot be raised for the second time. Admittedly, the appellant was not a party to the decision of the adjudicating authority on the first occasion, in the appeal the appellant merely filed an application for impleadment. The appellate authority did not decide the matter on merit. In fact, the question of law is left open. The principle governing *res judicata* and *issue estoppel* would never get attracted in such a scenario. Thus, the reasoning rendered by the appellate tribunal to that extent

cannot be sustained in law.

60. On the question of limitation, we are in agreement with the views expressed by the adjudicating authority as confirmed by the appellate tribunal. There were earlier rounds of litigation with the interim orders. The delay of 106 days has been rightly condoned and excluded by the adjudicating authority by invoking Section 12(3) of the Code. It was done only on one occasion. The adjudicating authority was right in holding that there is a marked difference between extension and exclusion. Exclusion would come into play when the decision is challenged before a higher forum. Extension is one which is to be exercised by the authority constituted.

61. Having held so, we would like to come to the last part of our order. Though the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved. We may also note that the percentage has been brought down from 75% to 66% by way of an amendment to Section 30(4) of the Code.

62. Secondly, majority of the creditors have given their approval to the resolution plan. The adjudicating authority has rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan is also put into operation since 18.04.2018, and as of now the Respondent No. 1 is an on-going concern. Though, the Respondent No.11 has taken up the plea that its offer was conditional, it has got a very minor share which may not be sufficient to impact by adding it with that of the appellant and Respondent No.7. The Respondent No.7 and the Respondent No.11 did not choose to challenge the order of the appellate tribunal.

63. We need to take note of the interest of over 23,000 shareholders and thousands of employees of the Respondent No.1. Now, about Rs. 300 crores has also been approved by the shareholders to be raised by the Respondent No.1. It is stated that about Rs. 63 crores has been infused into the Respondent No.1 to make it functional. There are many on-going projects of public importance undertaken by the Respondent No.1 in the nature of construction activities which are at different stages.

64. We remind ourselves of the ultimate object of the Code, which is to put the corporate debtor back on the rails. Incidentally, we also note that no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, we do not wish to disturb the resolution plan leading to the on-going operation of the Respondent No.1.

65. The appeal stands disposed of. Accordingly, all applications stand disposed of.

No costs.