NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (INS) No. 63 / 2024
(IA No. 190 / 2024)

In the matter of:

Narayan Maheshwari,
Door No. 177 / 2, Legend Apartments,
P H Road, Kilpauk,
Chennai - 600010 **… Appellant**

V

Ms. Kavitha Surana,
Liquidator of
M/s. Shri Veerganapathi Steels (P) Ltd.
No.2, Vimala Street, Ayyavoo Colony,
Aminjikarai, Chennai – 600029 **… Respondent No.1**

Bank of India,
Represented by its Assistant General Manager,
Chennai Main Branch,
Star House, 30 (old no. 17)
Errabalu Street, Chennai - 600001 **… Respondent No.2**

Present :

For Appellant : Mr. TK. Bhaskar, Mr. Vasanth &
Ms. Pushpitha, Advocates

For Respondents : Dr. S. Sathiyanarayanan, Advocate for R1

J U D G M E N T
(Hybrid Mode)

Per : Justice Sharad Kumar Sharma, Member (Judicial):

1. The question that has been argued by the Ld. Counsel for the Appellant is:

"Whether the provisions as contained under Section 12A of I & B Code, 2016, which was inserted by Act No. 26 of 2018, with effect from 06.06.2018, which made to constitute to be the part of Chapter II of I & B Code, 2016, since, Chapter II exclusively deals with the proceedings of the CIRP, whether the same could be borrowed and stretched to be made applicable to the proceedings at the stage of process of Liquidation, as contemplated under Chapter III of I & B Code, 2016."

2. There would be yet another question, which would incidentally emerge for consideration, namely:

"With the insertion of Section 12A, under the I & B Code, 2016, has taken place by a subsequent enactment, by issuance of the Amending Act No. 26 of 2018, the legislature at its wisdom was conscious of the fact that the aspect of consideration of the withdrawal of an application was confined to be made applicable to the proceedings of CIRP contemplated under Section 7, 9 or 10 of I & B Code, 2016 and that is why it was only made as part of the provisions as applicable to Chapter II, which would be deemed exclusion of its applicability over the proceedings, reacting to stage of Chapter III.''

3. Had the legislature felt that the powers vested by the insertion of Section 12A of the I & B Code, 2016, permitting withdrawal of an application, could be made

applicable to the proceedings contemplated under Chapter III, i.e., liquidation, there would have been a specific and corresponding amendment by way of insertion in Chapter III as well, which exclusively governs the provisions relating to liquidation. Liquidation is a stage that is reached only after exhaustion of the CIRP proceedings contemplated under Chapter II of the I & B Code, 2016.

4. Its exclusion from being incorporated as part of Chapter III raises the question as to whether it can at all be deemed to be attracted or made applicable at the stage when the process has reached liquidation, permitting withdrawal of the proceedings initiated either under Section 7, 9, or 10 of the I & B Code, 2016.

5. The brief facts of the case are as follows:

The Corporate Debtor, i.e., M/s. Shri Veerganapathi Steels (P) Ltd., was subjected to CIRP proceedings by virtue of an order dated 26.04.2018 passed in CP/229 (IB)/2018, initiated under Section 7 of the I & B Code, 2016. Pursuant to the initiation of CIRP by the said order, the 1st Respondent was appointed as the Resolution Professional of the Corporate Debtor. However, since no Resolution Plan or satisfactory Resolution Plan was submitted, the Resolution Professional filed an application bearing MA/308/2019 before the Ld. NCLT, seeking initiation of the liquidation process. The said application was allowed by the impugned order dated 19.07.2023, passed in IA (IBC)/193 (CHE)/2023 in CP/229 (IB)/2018.

6. It is an admitted case of the Appellant that up to the stage of appointment of the Liquidator, there was no occasion or situation where the provisions contained under Section 12A of the I & B Code, 2016 could have been invoked during the proceedings carried out under Chapter II, i.e., at the stage of the CIRP process.

7. However, after the Corporate Debtor was put into liquidation, Respondent No. 2 communicated, vide its letter, that the promoters and personal guarantors of the Corporate Debtor were eligible and willing to enter into a One Time Settlement (OTS) scheme.

8. It was contended by the Appellant that, pursuant to the said OTS proposal, various stages of discussions and negotiations were held between 07.05.2022 and 12.09.2022. Respondent No. 2, who held 100% of the voting rights during the CIRP process, is stated to have agreed to the proposed OTS. The same was alleged to have been acted upon by the Corporate Debtor, i.e., the Appellant herein. The One Time Settlement, as extended by Respondent No. 2, was stated to have been accepted on 13.09.2022, along with a payment of Rs. 17 lakhs made as an advance towards the OTS proposal, which is stated to have been approved by Respondent No. 2.

9. It is the case of the Appellant that, in furtherance of enforcement of the covenants of the O.T.S. proposal, the Appellant deposited the balance amount of Rs.1,27,40,000/- on 15.09.2022, in accordance with the terms of the O.T.S. proposal,

towards full and final settlement of the dues payable by the Corporate Debtor, on account of which the CIRP proceedings had been initiated by the order dated 26.04.2018.

10. The question that presently emerges for consideration is:

As to whether such an O.T.S. proposal, which was crystallized on 13.09.2022, after the Corporate Debtor had been placed into liquidation proceedings under Chapter III, could at all be accepted in the absence of any specific provision prescribed under Chapter III permitting such withdrawal at the stage when the Corporate Debtor has been put into liquidation, which is an admitted position between the parties. The issue also arises as to whether, merely because the Appellant has deposited the amount in terms of the O.T.S. proposal, the terms of the O.T.S. proposal itself can be taken as a substitute for the provisions contained under Section 12A of the I & B Code, 2016, so as to borrow and apply the same for the purpose of withdrawal of proceedings initiated under Section 7 of the I & B Code, 2016, and that too at a stage when an order of liquidation has already been passed owing to non-receipt of any resolution plan within the stipulated timeframe.

11. The Appellant submitted that, since the O.T.S. offer made by the guarantors had been honoured, accepted, and acted upon, a request was made to withdraw the case filed before the Ld. NCLT, Chennai Bench, on 15.09.2022 and 20.09.2022. An

intimation in this regard was also submitted to Respondent No. 1 through email communication dated 28.09.2022.

12. In response to the aforesaid email communication, Respondent No. 1 / Liquidator is stated to have raised a preliminary objection, observing that since the process of liquidation had already been initiated, and as the statute neither visualises nor provides for withdrawal of proceedings once the Corporate Debtor has been put into liquidation, the issuance of Form FA on 01.11.2022 for closure of the CIRP process did not require consideration and deserved to be refused. It was further observed that the provisions contained under Section 12A of the I & B Code, 2016, being alien to the process contemplated under Chapter III, could not be accepted or acted upon merely on the basis of a unilateral decision taken by the parties to proceedings under Section 7 of the I & B Code, 2016, for withdrawal of the proceedings by allegedly invoking Section 12A of the I & B Code, 2016, particularly at a stage after the passing of the order of liquidation.

13. However, the Appellant contends that despite the refusal on the part of Respondent No. 1 to accept the offer for withdrawal of the liquidation proceedings, the Appellant filed IA (IBC)/193 (CHE)/2023 in CP/229 (IB)/2018, seeking directions from the Ld. NCLT to permit filing of an application for withdrawal of the CIRP proceedings on the basis of the O.T.S. proposal dated 13.09.2022, which

had been accepted and acted upon, with the remittance of the settled amount to the full satisfaction of the Appellant.

14. The issue that ultimately emerges for consideration is whether withdrawal of proceedings initiated under Section 7 of the I & B Code, 2016, can at all be permitted at the stage when the Corporate Debtor has been directed to face liquidation. The Ld. Counsel for the Appellant has attempted to argue to the contrary, submitting that there is no express bar, and that withdrawal under Section 12A of the I & B Code, 2016, can still be resorted to even after the liquidation process has been set in motion. It is further submitted that the impugned order reflects complete non-application of mind and runs contrary to law.

15. If the contents of the application preferred by the Appellant before the Ld. Adjudicating Authority are examined, it is evident that the Appellant sought a direction to permit filing of the necessary application before the Ld. Tribunal for withdrawal of the liquidation process and to allow withdrawal of the liquidation proceedings initiated against the Corporate Debtor pursuant to the One Time Settlement entered into between Respondent No. 2 and the promoter guarantors with 100% voting rights, particularly in view of the fact that full and final payment had already been made, the last deposit having been made on 15.09.2022.

16. Apart from this, yet another foundation laid by the Appellant for the purpose of consideration of the application is that a "No Due Certificate" had been obtained from Respondent No. 2 and the same was received by the Promoter Guarantor. On this basis, it is contended that the withdrawal application deserves to be accepted.

17. Before the Ld. Adjudicating Authority, in support of the rival contentions, various judgments were placed on record pertaining to the issue as to whether, and at what stage, an application under Section 12A of the I & B Code would be maintainable.

18. During the course of proceedings in the instant Company Appeal, the Ld. Counsel for the Appellant submitted that on the issue of applicability of Section 12A of the I & B Code at the stage of liquidation, divergent views have been taken by various Benches of co-ordinate strength. These Benches have differed on the question of whether Section 12A of the I & B Code would apply exclusively to proceedings under Chapter II or whether it could also be extended to apply to proceedings that have reached the stage of Chapter III, i.e., liquidation.

19. In this regard, the impugned judgment has considered one of the ratios propounded in the matter of *Navaneetha Krishnan v. Central Bank of India, Coimbatore & Anr.*, as rendered in Company Appeal (AT) (INS) Nos. 288 & 289 of 2018. While doing so, reliance was placed on the contents of paragraphs 4 and 5,

which otherwise advocate that Section 12A of the I & B Code could be attracted even during the liquidation period. The relevant paragraphs 4 and 5 are extracted hereunder:

> *``4. Taking into consideration the fact that the 'resolution plan' was submitted on 178th day and on the next day i.e. 179th day the 'Committee of Creditors' decided to go for liquidation as 180th day was to be completed and order under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') was required to be passed and in absence of any good reason for extension of time, we are not inclined to grant any relief.*
>
> *5. However, in view of Section 12A even during the liquidation period if any person, not barred under Section 29A, satisfy the demand of 'Committee of Creditors' then such person may move before the Adjudicating Authority by giving offer which may be considered by the 'Committee of Creditors', and if by 90% voting share of the 'committee of creditors', accept the offer and decide for withdrawal of the application under Section 7 of the I&B Code, the observation as made above or the order of liquidation passed by the Adjudicating Authority will not come in the way of Adjudicating Authority to pass appropriate order. Both the appeals are dismissed with aforesaid observations. No cost.''*

20. The reason assigned therein was that since such a person was not specifically barred under Section 29A of the I & B Code and had satisfied the demand of the Committee of Creditors, it was held that in proceedings initiated under Section 7 of the I & B Code, no impediment would be caused for the Ld. Adjudicating Authority to pass an appropriate order on an application seeking withdrawal of the proceedings under Section 12A of the I & B Code.

21. At this juncture, a tentative view is taken that the inference drawn in paragraph 5, holding that Section 12A of the I & B Code is not barred from being applied at the liquidation stage on the ground that it is not prohibited under Section 29A of the I & B Code, must be read in a harmonious construction. This construction must keep in mind the stage at which the said matter was being considered by the Co-ordinate Bench, particularly taking into account the fact that the resolution plan was submitted on the 178th day and, on the very next day, the Committee of Creditors decided to proceed with liquidation owing to the cessation of the statutory period prescribed for completion of the CIRP process and denial of extension of time. It was under these peculiar circumstances that the Co-ordinate Bench considered the applicability of Section 12A of the I & B Code at a stage when liquidation was imminent.

22. The Ld. Tribunal, in the impugned order, considered the observations made in paragraph 4 of the said judgment and their impact on the present petition, as the CIRP process could not be completed within the specified timeframe and an order of liquidation was passed at that stage. It was also noted that Section 12A of the I & B Code was never invoked during the liquidation period in that case, and that the facts and circumstances were altogether different from cases where Section 12A of the I & B Code was applied during the liquidation stage.

23. While dealing with this controversial issue concerning the applicability of Section 12A of the I & B Code at the liquidation stage, i.e., during proceedings under Chapter III, the Ld. Tribunal drew an inference from yet another judgment in *Hemanth Meka Rao v. Asset Reconstruction Company (India) Ltd. & Anr.*, rendered in Company Appeal (AT) (INS) No. 696 of 2018. In its judgment dated 07.03.2019, the Tribunal observed in paragraph 7 that "no order of settlement can be passed by this Appellate Tribunal, even though the Appellant, promoter agrees to pay all the dues," and consequently issued a direction to proceed in accordance with the ratio laid down in *Y. Shivram Prasad v. S. Dhanapal & Ors.* The relevant paragraph 7 is extracted hereunder:

> *"7. In the aforesaid background, no order of settlement can be passed by this Appellate Tribunal, even though the Appellant, promoter agrees to pay all the dues. However, we direct the liquidator to proceed in terms of the decision in "Y. Shivram Prasad Vs S. Dhanapal & Ors." (Supra)."*

24. The Ld. Tribunal has rightly come to the conclusion that, in accordance with the procedural proposition propounded by the Hon'ble Apex Court in the judgment reported in *2021 SCC OnLine SC 220, Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.*, while referring to paragraph 103, it was observed that the procedures contemplated for the NCLT and the NCLAT, while exercising adjudicatory authority under the provisions of the I & B Code, 2016, are regulated by judicial

intervention and must be strictly confined within the framework of procedural and substantive law as envisaged under the I & B Code, 2016. It was ultimately concluded that the I & B Code is a thoughtful legislation enacted with a specific intention and object to be achieved. The Code seeks to avoid the introduction of any alien process at a stage of proceedings that has already been exhausted as contemplated under the statute, so that the basic intention and efficiency of the legislature are preserved. The legislature, based on its experience, sought to prevent judicial chaos that could arise if innovative or experimental interventions were permitted before the NCLT or NCLAT. It was observed that, at the very minimum, the Tribunal should not disturb or deviate from the foundational principles of the I & B Code, 2016, as such deviation would be detrimental to the intention of the framers of the law. The relevant paragraph 103 is extracted hereunder:

> *``103.* **.** *At this juncture, it is important to remember that the explicit recognition of the schemes under Section 230 into the liquidation process under the IBC was through the judicial intervention of NCLAT in Y. Shivram Prasad (supra). Since the efficacy of this arrangement is not challenged before us in this case, we cannot comment on its merits. <u>However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the Adjudicatory Authority and Appellate Authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by</u>*

constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC. This conscious shift in their role has been noted in the report of the Bankruptcy Law Reforms Committee (2015) in the following terms:

> *"**An adjudicating authority ensures adherence to the process***
> *At all points, the adherence to the process and compliance with all applicable laws is controlled by the adjudicating authority. The adjudicating authority gives powers to the insolvency professional to take appropriate action against the Directors and management of the entity, with recommendations from the creditors committee. All material actions and events during the process are recorded at the adjudicating authority. The adjudicating authority can assess and penalise frivolous applications. The adjudicator hears allegations of violations and fraud while the process is on. The adjudicating authority will adjudicate on fraud, particularly during the process resolving bankruptcy. Appeals/actions against the behaviour of the insolvency professional are directed to the Regulator/Adjudicator."*

25. The Ld. Tribunal has also appropriately examined the controversy from another perspective, namely, with respect to the extent to which the provisions of Section 12A of the I & B Code could be expanded to apply at the stage of liquidation proceedings under Chapter III. It examined how far the provisions contained under Section 60(5), read with Rule 11 of the NCLT Rules, could be stretched in a far-fetched manner so as to sabotage the prescribed statutory procedure, which could have catastrophic consequences and allow vices to creep in, thereby defeating the very object of the Code.

26. It has been specifically observed, and is also well settled, though in the context of Section 151 of the Code of Civil Procedure, in the judgment reported in AIR 2004 SC 3992, paragraph 9, in the matter of *Vareed Jacob V. Sosamma Geevarghese & Ors*., that inherent powers should not invariably be attracted or applied in areas of law or procedure where the legislature has consciously provided specific parameters under the statute, as framed by the authors of the I & B Code, 2016. The relevant paragraph 9 is extracted hereunder:

> *``9. In the case of Ram Chand & Sons Sugar Mills (P) Ltd. v. Kanhayalal Bhargava [AIR 1966 SC 1899] it has been held by this Court that the inherent power of the court under Section 151 CPC is in addition to and complementary to the powers expressly conferred under CPC, but that power will not be exercised in conflict with any of the powers expressly or by implication conferred by other provisions of CPC. If there is express provision covering a particular topic, then Section 151 CPC cannot be applied. Therefore, Section 151 CPC recognises inherent power of the court by virtue of its duty to do justice and which inherent power is in addition to and complementary to powers conferred under CPC, expressly or by implication.''*

27. A similar issue arose for consideration before the Hon'ble Apex Court while dealing with the limits on the exercise of inherent powers under Section 151 of the C.P.C., as reported in paragraphs 7 and 8 of *2008 (2) SCC 488, State of U.P. & Ors. v. Roshan Singh & Ors.* The Hon'ble Apex Court categorically observed that inherent powers can be exercised only when the law is silent, when procedural law

does not provide for a particular field, or where a vacuum exists. The relevant paragraphs are extracted hereunder:

> *``7. The principles which regulate the exercise of inherent powers by a court have been highlighted in many cases. In matters with which the Code of Civil Procedure does not deal with, the court will exercise its inherent power to do justice between the parties which is warranted under the circumstances and which the necessities of the case require. If there are specific provisions of the Code of Civil Procedure dealing with the particular topic and they expressly or by necessary implication exhaust the scope of the powers of the court or the jurisdiction that may be exercised in relation to a matter, the inherent powers of the court cannot be invoked in order to cut across the powers conferred by the Code of Civil Procedure. The inherent powers of the court are not to be used for the benefit of a litigant who has a remedy under the Code of Civil Procedure. Similar is the position vis-à-vis other statutes.*
>
> *8. The object of Section 151 CPC is to supplement and not to replace the remedies provided for in the Code of Civil Procedure. Section 151 CPC will not be available when there is alternative remedy and the same is accepted to be a well-settled ratio of law. The operative field of power being thus restricted, the same cannot be risen to inherent power. The inherent powers of the court are in addition to the powers specifically conferred on it. If there are express provisions covering a particular topic, such power cannot be exercised in that regard. The section confers on the court power of making such orders as may be necessary for the ends of justice of the court. Section 151 CPC cannot be invoked when there is express provision even under which the relief can be claimed by the aggrieved party. The power can only be invoked to supplement the provisions of the Code and not to override or evade other express provisions. The position is not different so far as the other statutes are concerned. Undisputedly, an aggrieved person is not remediless under the Act.''*

28. So far as the present controversy under the I & B Code, 2016 is concerned, there is no ambiguity in law. Once Section 12A of the I & B Code, 2016 was inserted subsequent to the promulgation of the principal legislation, prescribing withdrawal of proceedings under Sections 7, 9, or 10, it was done with a clear object and intent by confining its application exclusively to Chapter II, i.e., the CIRP stage. This leads to a logical inference that there was an intentional, intelligible, and conscious legislative distinction in not extending the provisions of Section 12A or any similar provision permitting withdrawal of proceedings, to the stage of liquidation. This intent is further reinforced by the absence of any corresponding amendment or insertion in Chapter III governing liquidation proceedings, even where proceedings have reached the liquidation stage and withdrawal is sought on the basis of an alleged settlement.

29. The argument advanced by the Ld. Counsel for the Appellant, that withdrawal could be permitted at the liquidation stage by borrowing the provisions of Section 12A of the I & B Code and applying them to proceedings under Chapter III, appears to be irrational, unsupported by any cogent rationale, and contrary to the legislative intent. The exercise of inherent powers cannot be distorted or extended in a manner that contravenes, conflicts with, or ignores express provisions of law contained in the Code. As discussed in paragraph 77 of the aforesaid judgment, Section 12A of

the I & B Code cannot be attracted at the stage of liquidation, as the I & B Code is a self-contained and exhaustive legislation in its applicability.

30. We are of the view that there cannot be any unjustified experimentation so as to distort the object of the law while expanding its applicability by exercising inherent powers, particularly when such applicability has otherwise been barred, exempted, or consciously omitted by the framers of the law through specific incorporation of the conditions for attracting Section 12A of the I & B Code only at the CIRP stage and not at the stage of liquidation.

31. The reason for this is that the legislature has deliberately not provided for withdrawal of proceedings at the stage of liquidation, as permitting such withdrawal would amount to an aberration and distortion of the process contemplated under the I & B Code, 2016. Since there is an express exclusion of the applicability of Section 12A at the Chapter III stage, the provision cannot be stretched by interpretation or inference without logical and legal backing. This is particularly so when such an extension would fall outside the ambit of inherent powers, as the field of law is already governed by the specific provisions of Section 12A of the I & B Code, which were consciously inserted and confined to Chapter II alone, to the exclusion of Chapter III dealing with liquidation.

32. Besides this, no provision of law has been placed by the Ld. Counsel for the Appellant to demonstrate the existence of any procedure under the statute by which the Appellant could be taken outside the ambit of liquidation. Once the stage of liquidation is reached by passing an order appointing the Liquidator and initiating the liquidation process, and that too after crossing the stage at which Section 12A of the I & B Code could have been invoked, the process cannot be pushed back de novo.

33. A nearly identical controversy arose for consideration before the Principal Bench of the NCLAT in Company Appeal (AT) (INS) Nos. 1425–1428 of 2024, in *Asha Chopra & Ors. v. M/s. Hind Motors India Limited & Ors.* The Three-Member Bench, while dealing with the aforesaid issue, framed specific questions pertaining to withdrawal of proceedings under Sections 7, 9, or 10 under the garb of Section 12A of the I & B Code, 2016.

34. The issue was examined in consonance with the scope of compromise or arrangement under Regulation 2B, as observed in paragraph 8 of the said judgment, which is extracted hereunder:

> *``8. An Order of Liquidation is passed in Section 33 when before the expiry of the Insolvency Resolution Process, no Resolution Plan is received under Section 30(6) or Resolution Plan is rejected, under Section 33(2) Liquidation can be directed at any time during the CIRP but before confirmation of the Resolution Plan when the Adjudicating Authority is intimated, the decision of*

the Committee of Creditors (`CoC') with approval of not less than 66% of the voting share to liquidate the Corporate Debtor. It is not disputed that Liquidation commenced on 12.09.2017. Section 12A itself contemplates withdrawal of the Application with the approval of the 90% voting share of the CoC in such manner as may be prescribed. The CoC exist till continuation of the CIRP and after the Order passed under Section 33 for Liquidation, the CoC does not continues so as to take a decision for withdrawal of an Application under Sections 7, 9 & 10. The Statutory Scheme of IBC thus clearly contemplates that withdrawal of Application is permissible only during CIRP period with the approval of 90% vote shares of the CoC. The Scheme of Liquidation and the Liquidation Regulations do not contemplate any withdrawal under Section 12A. In this context, we may refer to Regulation 2B of the IBBI (Liquidation Process) Regulations, 2016, which provides for Compromise or Arrangement. Regulation 2B provides as follows;

> *"2B. Compromise or arrangement. (1) Where a compromise or arrangement is proposed under section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under [***] section 33:*
>
> *Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.*
>
> *Provided further that the liquidator shall file the proposal of compromise or arrangement only in cases where such recommendation has been made by the committee under regulation 39BA of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016:*
>
> *Provided further that the liquidator shall not file such proposal after expiry of thirty days from the liquidation commencement date.*
>
> *(2) The time taken on compromise or arrangement, not exceeding ninety days, shall not be included in the liquidation period.*
>
> *(3) Any cost incurred by the liquidator in relation to compromise or arrangement shall be borne by the corporate debtor, where such*

compromise or arrangement is sanctioned by the Tribunal under subsection (6) of section 230:

Provided that such cost shall be borne by the parties who proposed compromise or arrangement, where such compromise or arrangement is not sanctioned by the Tribunal under sub-section (6) of section 230."

35. Ultimately, based on the aforesaid analysis, the Tribunal observed that, in view of the statutory scheme of the I & B Code, 2016, and particularly the interplay between Section 12A, Section 33, and Regulation 2B of the Liquidation Regulations, an application under Section 12A of the I & B Code is not permissible during the liquidation period. Accordingly, the conclusion recorded in paragraph 15 of the judgment is extracted hereunder:

``15. In view of the clear ***Statutory Scheme as delineated by 12A, Section 33 and Regulation 2B of the Liquidation Regulation, we are of the view that during Liquidation period, an Application under Section 12A is not permissible.*** *In the facts of the present case, it is clear that former Director of the Corporate Debtor, Ashish Mohan Gupta, himself has challenged the Liquidation Order and also sought to submit a Scheme which were all rejected up to this Tribunal. The Application which has been filed by the Appellant No. 1 under Section 12A was filed after more than three years from Liquidation commencement, which was at the instance of the former Director Aashish Mohan Gupta, which has been clearly noticed by the Adjudicating Authority in the Impugned Order. We may notice Paragraphs 3 (iv) and (v), Adjudicating Authority also in Paragraph 5 has noticed that Union Bank of India which has 80.43% vote shares as stated before the Adjudicating Authority that Union Bank of India is not inclined to enter into any kind of settlement with Respondent No. 2.''*

36. We are of the view that the issue stands squarely covered by the judgment rendered in Company Appeal (AT) (INS) Nos. 1425–1428 of 2024 in *Asha Chopra v. M/s. Hind Motors India Limited* (supra), wherein the Three-Member Bench has categorically held that Section 12A of the I & B Code cannot be applied at the stage of liquidation, as doing so would be contrary to the legislative intent. We do not find any error in the impugned order passed by the Tribunal dismissing the application filed by the Appellant, holding that the same could not be brought within the ambit of inherent powers for the purpose of invoking Section 12A of the I & B Code at the liquidation stage.

37. It would, however, not be appropriate to omit dealing with the principle canvassed by the Ld. Counsel for the Appellant that when two Co-ordinate Benches have taken divergent views on the applicability of a particular provision of law, and if a third Co-ordinate Bench is inclined to adopt one of those views, the matter ought to be referred to a larger Bench.

38. We are of the view that this argument is not tenable in light of the judgment relied upon by the Ld. Counsel for the Appellant, as reported in *2011 Vol. XII SCC 499, Gammon India Pvt. Ltd. v. Commissioner of Customs, Mumbai*, wherein it was held that when a Co-ordinate Bench has rendered a judgment and there exists a difference of opinion, the matter ought to be referred to a larger Bench.

39. The said principle would have been applicable if the differing view had been taken by a Bench of the same strength. However, in the present case, the subsequent judgment rendered in *Asha Chopra & Ors. v. M/s. Hind Motors (India) Limited* is by a Three-Member Bench and is later in point of time. Having laid down a clearer and more authoritative ratio of law, the said judgment would prevail, operate as a binding precedent, and govern the field on the issue argued by the Ld. Counsel for the Appellant.

40. Owing to the above, the Company Appeal (AT) (CH) (INS) No. 63 / 2024 lacks merit and the same is accordingly dismissed. All pending Interlocutory Applications, if any, would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

17/12/2025

SR / MS / RS