IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA

IA (IB) No.75/KB/2021
in
CP (IB) No.295/KB/2021

An application under section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of the National Company Law Tribunal Rules, 2016.

CP (IB) No.295/KB/2022

In the matter of:

Reserve Bank of India ... Appropriate Regulator

Versus

SREI Infrastructure Finance Limited ... Financial Service Provider

And

IA (IB) No.75/KB/2022

In the matter of:

Hemant Kanoria … Applicant

Versus

1. **Srei Infrastructure Finance Limited**
   Through its Administrator, Mr Rajneesh Sharma
2. **Srei Equipment Finance Limited**
   Through its Administrator, Mr Rajneesh Sharma
3. **UCO Bank**
4. **Axis Bank Limited**
5. **KPMG Assurance and Consulting Services LLP** ... Respondents

Order reserved on: 11 March 2022

Order pronounced on: 17 May 2022

Coram:

Shri Rajasekhar V.K. : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (through hybrid mode):

For the Applicant : Mr SN Mookherjee, Ld. Advocate General & Senior Advocate
Mr Ratnanko Banerji, Senior Advocate
Mr Rishav Banerjee, Advocate
Mr Saptarshi Mandal, Advocate

For Respondent Nos.1 & 2/Administrator	:	Mr Jishnu Saha, Senior Advocate Mr Soumyajit Mishra, Advocate
For Respondent Nos.3 & 4/Banks	:	Mr Abhinav Vasisht, Senior Advocate Mr Anoop Rawat, Advocate Mr Saurav Panda, Advocate Mr Vishrut Kansal, Advocate Mr Deepanjan Dutta Roy, Advocate Ms Arushi Chandra, Advocate Ms Maanvi Jain, Advocate Mr Ahkam Khan, Advocate
For Respondent No.5/KPMG	:	Mr Ramji Srinivasan, Senior Advocate Mr Deep Roy, Advocate Mr Rahul Auddy, Advocate Mr Rajshree Chaudhuri, Advocate Ms Nivedita Bhardwaj, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. ***Prologue***

1.1. This Court convened through hybrid mode.

1.2. IA (IB) No.75/KB/2022 has been filed by Mr Hemant Kanoria, shareholder of Srei Infrastructure Finance Limited ***("SIFL")*** and SREI Equipment Finance Limited ***("SEFL")*** and member of the suspended Board of Directors of SIFL, under section 60(5) of the Insolvency and Bankruptcy Code ***("Code***") *inter alia* praying for setting aside the appointment of KPMG Assurance and Consulting Services LLP ("***KPMG***") and restraining Axis Bank Limited ***("Axis Bank Limited")*** and UCO Bank ***("UCO Bank")*** *(collectively,* ***"bankers")*** from conducting or proceeding with the process of audit through KPMG.

1.3. For convenience and better understanding, the prayers sought by the Applicant are:

(a) An order and/or orders directing the Respondent Nos.3 and 4 to forthwith, withdraw and/or rescind the process of audit of the Corporate Debtor as being conducted by the KPMG in light of the Corporate Insolvency Resolution Process of the Corporate Debtor;

(b) An order and/or orders setting aside the audit process conducted by KPMG in respect of the Corporate Debtor in light of the initiation of CIRP of the Corporate Debtor and in light of the subsequent appointment of BDO India LLP as an auditor by the Resolution Professional in respect of the Corporate Debtor;

(c) Ad interim order restraining the Respondent Nos.3 and 4 banks from conducting and/or proceeding with the process of audit of the Corporate Debtor through KPMG during CIRP of the Corporate Debtor;

(d) An order restraining the Respondent Nos.3 and 4 from publishing any information based on the alleged improper audit being conducted or conducted by KPMG either in Central Repository of Information on Large Credits (CRILC) or anywhere else or taking any action based on the said report and/or if any action has or any steps have already been initiated, an order restraining the Respondents from proceeding with or giving effect to or taking any coercive steps in respect of any such action in any manner whatsoever, directly or indirectly, till the final disposal of the instant application;

(e) An order of injunction restraining the Respondent No.5 from continuing with any audit of the Corporate Debtor pursuant to the appointment of 13th April 2021 or from publishing any report or publishing any information in connection with the said audit.

1.4. SIFL and SEFL are under Corporate Insolvency Resolution Process ("***CIRP***") from 08 October 2021, and Mr Rajneesh Sharma was appointed as the Administrator of SIFL and SEFL.

1.5. Notice was sent to the Respondents. The Respondent Nos.1 & 2 filed their reply on 14 February 2022, Respondent Nos.3 & 4 also filed their reply on 14 February 2022 and the Respondent No.5 filed its reply on 11 February 2022. Prior to filing of the min reply, there was a preliminary reply filed by Respondent No.5 *vide* their letter 31 January 2022. There was another reply filed by Respondent No.5 *vide* their letter dated 03 February 2022, which was filed on 04 February 2022.

1.6. Axis Bank Limited and UCO Bank appointed KPMG as auditor for SIFL on 23 March 2021 in terms of the Circular dated 01 July 2016 bearing

No.RBI/DBS/2016-17/28DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 issued by the Reserve Bank of India ("***RBI***") as updated on 03 July 2017 ("***RBI Circular***").[1] Following the initiation of CIRP against SEFL and SIFL, the Administrator appointed BDO India LLP ("***BDO***") as the transaction auditor of SEFL and SIFL under the Code on 02 November 2021 to probe vulnerable transactions.

1.7. As per the RBI Circular, KPMG was required to complete the audit and give a report within a period of three months from the date of the Joint Lenders Forum **("JLF")** meeting authorising the same. In the present case, the Core Committee Meeting was held on 24 March 2021. Thus, KPMG was required to complete the audit within 24 June 2021. However, KPMG continued with the audit of SIFL even after the initiation of CIRP.

1.8. The Applicant wrote to KPMG on several occasions, requesting KPMG to share the preliminary report for comments by the suspended Board of Management and to stop the finalisation of the report in view of the commencement of CIRP.

1.9. At the commencement of the hearing, Mr Abhinav Vasisht, learned Senior Counsel appearing for the Respondent Nos.3 and 4 submitted that the final report of KPMG ***("KPMG Report")*** has been circulated among the lead bankers by Axis Bank Limited as on 28 December 2021 and UCO Bank circulated the same on 29 December 2021 to thirty-six lenders, including ECB lenders.

1.10. Mr Ramji Srinivasan, learned Senior Counsel appearing on behalf of the Respondent No.5, submitted that the KPMG report was completed on 22 December 2021 with the participation of the suspended management and the KPMG report had already been circulated on 28 December 2021 and 29 December 2021.

[1] Pages 36-70 of the IA

2. *Submissions of Mr S.N. Mookherjee, learned Advocate General and Senior Counsel appearing for the Applicant*

2.1. Mr S.N. Mookherjee, Ld Advocate General & Senior Counsel appearing for the Applicant, submitted that the only issue involved in the present IA is that an audit being conducted by KPMG at the instance of some bankers, cannot be continued after commencement of CIRP which was itself initiated at the instance of RBI, and the appointment of transactional auditors by the Administrator. Mr Mookherjee briefly outlined the three points that he sought to argue, as follows:

a. *Appointment of KPMG and BDO*

KPMG was appointed by a communication dated 13 April 2021[2] by the consortium of bankers. The period under review was 01 April 2016 to 30 September 2020. The timeline for completion was eight weeks.[3] RBI, as the regulator of the Corporate Debtor, appointed an Administrator and instituted proceedings under section 227 read with section 239 of the Code, which was admitted on 08 October 2021. On 02 November 2021, BDO was appointed as the transactional auditor under section 25(2)(j) of the Code.

b. *Timeframe for KPMG to file the report*

Mr Mookherjee pointed out the period within which KPMG was supposed to file a report, was within three months, which they did not. He led us through clause 8.9.5 of the RBI circular dated 01 July 2016 issued under section 35A of the Banking Regulation Act, 1949, which envisages completion of forensic audit within a period of three months. Clause 8.9.6 of the RBI circular stipulates that the overall time allowed for the entire exercise to be completed is six months from the date when the first member bank reported the account as RFA or Fraud.[4]

c. *Parallel audits*

The Applicant's grievances are two-fold: firstly, KPMG conducted an audit without consulting the management. Secondly, once a transactional auditor has been appointed under the Code, a previous audit cannot continue. There cannot be a parallel forensic audit without consulting the management at the instance of the bankers. The Insolvency and Bankruptcy Code is recognised as

[2] Page 24 of the IA

[3] Page 25 of the IA

[4] Page 61 of the IA

a complete Code and has overriding effect. That being the position, the Applicant is seeking an order of restraint against the bankers from proceeding with the audit being conducted by KPMG.

2.2. Mr Mookherjee stated prayer (d) *supra* of the Applicant was to restrain KPMG from publication of any information. But KPMG had already circulated their report to the members of the consortium. Hence publication had already happened to a limited extent by making available the report to the bankers.

2.3. Mr Mookherjee then concentrated on the reply affidavits of the respondents.

Submissions with regard to the reply affidavit of Respondent Nos.3 & 4

2.4. Mr Mookherjee first referred to the reply of the Respondent No.4 wherein a letter dated 28 December 2021 of the Respondent No.5/KPMG has been annexed.[5] The relevant portions are extracted below for ready reference:

> "*The procedures in the forensic review did not include the forensic investigation (such as forensic collection and review of electronically stored information on the computer devices of SREI Entities, and related interviews, etc.). Given such limited access to data, information and records, the results of this work are subject to changes based on additional information being made available. Therefore, comments in this report may not be considered as definitive pronouncement on any individuals or companies and a full investigation procedures (sic) are required for such conclusions.*
>
> *"KPMG did not have access to the financial records (e.g., books of accounts, bank statements, financial statements, etc.) of the entities (loan customers) who were granted loans and advances by SREI Entities, accordingly it is not possible to comment upon how the funds were utilised or treated by these entities in all cases. Wherever possible, publicly available information (e.g., MCA21) was accessed/procured for analysis. However, KPMG is not responsible for any further subsequent updates being carried out, if any, in the documents available on MCA21, that may impact the observations, after the date they were accessed/procured."*

2.5. In the light of these caveats, *ex facie*, KPMG report is incomplete and should not be treated as a definitive pronouncement, even according to KPMG. The transactional auditors appointed by the Administrator will have complete

[5] Page 72-73 of the reply filed by R4/Axis Bank Limited, @ page 73

access to all the documents of the Corporate Debtor. The purpose of the forensic audit was to determine whether the red flags should be removed or whether it should be classified as a fraud account. Because the KPMG report is incomplete, no coercive action can be taken even on facts, Mr Mookherjee submitted.

2.6. Respondent Nos.3 & 4 have taken three major defences. The first stand is on jurisdiction. Respondent Nos.3 & 4 have relied on a judgment dated 07 January 2021 passed by the NCLT, Hyderabad Bench in ***BV Bhaskar Reddy v Bank of India & others.***[6] Mr Mookherjee submitted that in that case, the Adjudicating Authority was looking into a case where one of the banks had already declared the corporate debtor's account as 'fraud.' The Adjudicating Authority did not consider the provisions relating to preferential, undervalued and fraudulent transactions. Secondly, the period for which transactional audit was sought was not covered by the period for which the forensic audit was sought. Thirdly, the time period was extended by one of the bankers during the CIRP. Mr Mookherjee drew our attention to paragraph 6 of the judgment which reflects that CIRP in that case had commenced on 26 May 2020. Paragraph 9 is also important because it says that the forensic audit is not done under the Code but under RBI regulations. Mr Mookherjee submitted that it does not matter whether the forensic audit is under the Code or under the RBI circulars. What was lost sight of is this: the fraud aspect was completely ignored as is seen in paragraph 10 of the judgment.

2.7. The second point taken is with regard to the *locus standi* of the Applicant. Answering this point, Mr Mookherjee submitted that the fact of the matter is that till the Administrator was appointed by RBI, the Applicant was the director. The Applicant is concerned by the forensic audit conducted by the transactional auditor and by KPMG, and that too without consulting the persons in management. In any event, the Applicant is also a shareholder of

[6] MANU/ND/1394/2021 decided by NCLT Hyderabad Bench on 07 January 2021

the SIFL whose subsidiary is the SEFL. Hence, the Applicant has locus to file the present IA.

2.8. The third point is whether such an order can be passed under section 60(5)[7] of the Code. Mr Mookherjee submitted that the language of the provision is couched in the widest terms. It has been considered by the Hon'ble Supreme Court in ***Embassy Property Developments Pvt Ltd v State of Karnataka & others,***[8] and ***Gujarat Urja Vikas Nigam Limited v Amit Gupta and Ors***.[9] The question is whether the Code will have precedence over the RBI circular. Section 238[10] of the Code envisages that the Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Repugnancy also includes overriding effect.

2.9. Mr Mookherjee then relied on ***Duncan Industries Limited v A.J. Agrochem.***[11] wherein it was held that section 238 *ibid* shall be applicable, and the provisions of Code shall have over-riding effect. If the purpose of Code is to revive or ensure continued existence of an enterprise and to maximise its value, it is imperative that the transactional audit being conducted under the Code should get precedence. Any other audit is inconsistent with the object

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[7] **60: Adjudicating Authority for corporate persons.–** (1) to (4) * * *

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of –

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b)any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

[8] (2020) 13 SCC 308 decided on 03 December 2019

[9] (2021) 7 SCC 209 decided on 08 March 2021

[10] **238: Provisions of this Code to override other laws**.– The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

[11] (2019) 9 SCC 725 decided on 04 October 2019 [placetum b, paragraph 7.4 @ page 737]

sought to be achieved under the Code, particularly when KPMG itself has stated that the report is incomplete.

2.10. The Applicant does not have to show repugnancy but must only show that the Code has overriding effect. In fact, there is a repugnancy because audit of fraudulent transactions is an occupied field under the IBC. If there is an occupied field, then it is good enough for repugnancy as held by the Hon'ble Supreme Court in judgments under Article 254[12] of the Constitution. Therefore, the Adjudicating Authority has jurisdiction, Mr Mookherjee submitted.

2.11. Mr Mookherjee stressed on section 60(5)(c) of the Code, wherein it states that notwithstanding anything to the contrary contained in any other law for the time being in force, the Adjudicating Authority shall have jurisdiction to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Mr Mookherjee made two submissions with regard to the provision. First, the sub-section starts with a *non obstante* clause. The expression used is, "arising out of or in relation to". On the face of it, if there were competing jurisdictions or forums dealing with a particular issue, the Adjudicating Authority would have jurisdiction to the exclusion of the other forum. The second submission is, in any event, where there is no other forum to decide

[12] 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States. –

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

this issue, the Adjudicating Authority will quite clearly have jurisdiction to deal with the matter. Mr Mookherjee asserted that once CIRP starts, and an institutionalised audit taking place, can the other audit, even if it is prior in time, proceed, because it is audit under the Code is in relation to or arising out of CIRP.

2.12. Any statutory provision under the Code will have to be interpreted in relation to the preamble itself, which has been quoted practically in every judgment of the Hon'ble Supreme Court relating to the Code. If it is a complete Code, what is not provided therein, is excluded. What is provided therein, will have to be undertaken in the form prescribed. The audit that is recognised is an institutionalised audit to be undertaken by the majority vote of the CoC. Second, it relates to maximisation of value of assets to promote entrepreneurship, availability of credit and to balance the interests of all stakeholders. The object is that this remains the only forum in which this issue can be decided. Mr Mookherjee submitted that if an audit is being conducted under the Code, no other audit, and that too only on the volition of the CoC members, can proceed in parallel or otherwise.

2.13. Mr Mookherjee submitted that in this situation it is very important to consider that even in ***Embassy Properties (supra),***[13] the Hon'ble Supreme Court has held that the Adjudicating Authority can decide all issues of fraud (paragraphs 47 and 53). The Adjudicating Authority cannot go into matters where there is a dispute to be decided by a statutory or judicial authority. The Respondents do not say that the jurisdiction is barred because it involves a public law element. The bankers contend that under the consortium agreement, they can go into the audit. This is not within the jurisdiction of any other law, Mr Mookherjee asserted

2.14. A faint attempt has been made by the Respondent Nos.3 & 4 to rely on the decision of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd v.***

[13] 2020 13 SCC 308 : 2019 SCC OnLine SC 1542 decided on 03 December 2019

Amit Gupta & others.[14] In this case, an analysis was made of section 60(5)(c) of the Code at paragraphs 49 to 74. Mr Mookherjee then went on to give a schematic framework of the discussion in this decision and state what the conclusion ultimately is.

2.15. Mr Mookherjee elaborated on the expression "arising out of" and "in relation to." He submitted that in ***Gujarat Urja (supra)*** the Hon'ble Supreme Court, quoting its own judgment in ***Renusagar Power Co Ltd v General Electric Co.***[15] has held this to be of the widest amplitude.[16] In paragraphs 52 and 53, the Hon'ble Apex Court further took note of its decision in ***Doypack Systems P Ltd v Union of India,***[17] where the Hon'ble Supreme Court held that words can have different meanings depending on the subject or context. Paragraph 54 of ***Gujarat Urja (supra)*** interprets section 446(2)(d) of the Companies Act, 1956,[18] is the predecessor in interest of the Code, in liquidation proceedings. Mr Mookherjee then led us to paragraph 55 which notes the striking resemblance between section 446(2)(d) and 60(5)(c) of the Code, the statement of objects and reasons have also been noted. In Paragraph 56 of the judgment, a total of nine points have been noted, which emerge from the state of the law prior to enactment of the Code. Paragraph 65 states that

[14] (2021) 7 SCC 209 decided on 08 March 2021

[15] (1984) 4 SCC 679 decided on 16 August 1984

[16] Gujarat Urja (supra) at page 704

[17] AIR 1988 SC 782 decided on 12 February 1988

[18] 446. Suits stayed on winding up order.–

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced. or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being, in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

considerations such as avoiding multiplicity of fora, speedy disposal and litigation costs would also be germane to the establishment of an exclusive body under the Code to adjudicate matters arising from or in relation to the CIRP. Paragraph 69 of the judgment recognises that the institutional framework under the Code contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. Paragraph 74 notes that for adjudication of disputes that arise *de hors* the insolvency of the corporate debtor, the RP must approach the relevant competent authority. No other forum is indicated. If the regime under the Code has to be given priority and primacy, the only exclusive forum is this Adjudicating Authority and no other forum. Mr Mookherjee submitted that there is no other authority. The question of this IA has arisen because of insolvency, it arises out of and is in relation to insolvency.

2.16. Mr Mookherjee urged us to examine this in the context of an RBI circular of 19.12.2017,[19] which recognises the primacy of the Code. Paragraph 3 thereof directs all Financial Creditors regulated by RBI are advised to adhere to the relevant provisions of Code and IBBI (Information Utilities) Regulations, 2017 and immediately put in place appropriate systems and procedures to ensure compliance to the provisions of the Code and regulations.

2.17. On 13 April 2021, KPMG was appointed as the auditors to find out whether there was fraud, and if so, to approach the police or the CBI.

2.18. Mr Mookherjee urged us to keep in mind three important dates:

(a) On 04 October 2021, the Administrator is appointed.

(b) On 08 October 2021, the CIRP commenced.

(c) On 02 November 2021, that is after all the information had been made available to KPMG according to their affidavit, which the banks were aware of, the banks voted in favour of the Administrator appointing a transactional auditor.

[19] https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11189

It is in this context that the Adjudicating Authority is now called upon to decide whether the previous audit should be allowed to continue. The end result of an audit conducted under the aegis of the Code could be a report which is different to the KPMG report, and the Code would not contemplate any action, or *vice versa*. Mr Mookherjee submitted that such a situation which is rife with the possibility of conflict, not resolving the processes undertaken under the Code, should not be permitted to continue at all.

2.19. Mr Mookherjee submitted that four or five other issues are relevant: section 20(1)[20] of the Code enjoins upon the Interim Resolution Professional the duty to protect and preserve the property of the Corporate Debtor keep the Corporate Debtor as a going concern. Sub-section (2) states that for this purpose the Interim Resolution Professional shall appoint accountants, legal or other professionals as may be necessary.

2.20. Mr Mookherjee then led us through section 25 of the Code which stipulates that the RP can file application for avoidance of transactions in accordance with Chapter III, if any.

2.21. It is up to the Adjudicating Authority to see whether the institutionalised audit should be allowed to continue in preference to the arrangement *de hors* the Code, ordered by a few creditors. The provisions under sections 68 to 77 of the Code show that criminal offences address the same issues under a special court. No advantage is gained by the erstwhile management. On the other hand, the transactional audit under Code will adopt a fairer procedure.

2.22. The Applicant had written several letters to Respondent No.5/KPMG.[21] The time period for the audit is also over. The date of appointment is 13 April 2021. The auditors were given approximately eight weeks.[22] The kick-off

[20] (1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

[21] Pages 72 to 85 of the IA

[22] Page 25 of the IA

meeting was on 24 March 2021. RBI's circular of 01 July 2016,[23] *vide* paragraph 8.9.5[24] thereof, mandates a maximum period of three months from the date of the JLF meeting authorising the audit. Paragraph 8.9.6 stipulates that the overall time allowed for the entire exercise to be completed is six months.

Submissions with reference to the reply affidavit of Respondent No.5/KPMG

2.23. Mr Mookherjee then responded to the main affidavit of Respondent No.5, *i.e.,* KPMG. He referred to clause D,[25] which states that a team was present from Respondent No.5's side from 22 June 2021 to 29 August 2021 to collect documents physically. Clause F[26] states that most queries (other than minor clarifications) were addressed and responded to by the first week of October 2021. This was well within the knowledge of the CoC. Thereafter a draft report was prepared and circulated. Yet the CoC went ahead and appointed the transactional auditor on 02 November 2021.

2.24. The final audit report was delivered to the Respondent No.1 and Respondent No.2 on 22 December 2021 and delivered to Respondent No.3 and Respondent No.4 on 28 December 2021.

2.25. Mr Mookherjee submitted that two pertinent questions arise as follows:

(a) Why was the preliminary report circulated to the bankers?

(b) What came up between preliminary report and final report? The consultation process with SREI's management ended in September 2021. Was there any consultation with the Administrator who came in on 04.10.2021?

2.26. Mr Mookherjee then proceeded to respond to the affidavit of the Respondent No.3/Axis Bank Limited. KPMG provided its first preliminary report on 01

[23] Page 36 of the IA

[24] Page 61 of the IA

[25] Page 7 of R5's reply

[26] Page 8 of R5's reply

December 2021 and final report on 28 December 2021.[27] Hence, now there is a draft report, a preliminary report, and a final report. According to KPMG, the management was involved till September 2021. KPMG did not think it fit to circulate the draft report even once to the management.

2.27. Mr Mookherjee drew our attention to the nature of the report. He referred to the email dated 28 December 2021[28] sent from Mr Jagvinder Brar of KPMG. KPMG states that field work for the forensic review was performed prior to 04 October 2021, during the time previous management officers were in charge. The procedures did not include forensic investigation. It also notes that limited access to data, information and records, the results of this work are subject to changes. Therefore, KPMG has stated the comments in the report may not be considered as a definitive pronouncement.[29]

2.28. Mr Mookherjee articulated his objections as follows: First, the reports that have been submitted are behind the back of the erstwhile management. Second, there are three reports – draft, preliminary and final. And third, even the final report says that it is not a forensic report.

2.29. The field for unearthing fraud is an occupied field – the occupied field is the IBC, in terms of the judgment in ***Duncan (supra),***[30] wherein it was held that considering section 238 of the Code, which is an Act subsequent to the Tea Act, 1953, the provisions of Code shall have an overriding effect over the Tea Act 1953. The requirement of audit under the Code is in aid of the main object and once we have an audit underway, the civil aspect of the audit is with the Adjudicating Authority. As far as criminal aspect is concerned, the same is also under section 236 of the Code.

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[27] Clause g at Page 22 of R4's reply

[28] Page 72 of R4's reply

[29] Page 73 of R4's reply

[30] (2019) 9 SCC 725 decided on 04 October 2019 [Paragraph 7.4 at page 736 of the judgment]

2.30. In support of this proposition, Mr Mookherjee relied on the following three judgments:

a. ***Venkata Subbarao Kalva, Liquidator of Triumph India Software Services Pvt Ltd v Mohan Ramanathan & another***[31]– (paragraphs 8 and 10). In that case, it was observed that the forensic report was based on uncorroborated evidence, and that principles of natural justice dictate that the party concerned should associate himself with the enquiry or investigation.

b. ***M Srinivas v Ramanathan Bhuvaneswari,***[32] (paragraph 3, 16, 17): in this case, the Hon'ble NCLAT held that the Adjudicating Authority cannot direct SFIO investigation only under section 213. Adjudicating Authority has power to refer the matter to the Central Government for investigation, if the Adjudicating Authority forms a *prima facie* opinion that acts of fraud have been committed by company or its directors.

c. ***Union of India v Maharashtra Tourism Development Corporation Limited & another,*** [33] (paragraph 7)– wherein the Hon'ble NCLAT referred the matter to the Secretary, MCA, to get the matter investigated by inspectors following the procedure in terms of section 213 of the Companies Act, 2013.

3. *Supplemental Arguments of Mr Ratnanko Banerji, learned Senior Advocate appearing on behalf of the Applicant*

3.1. Supplementing the arguments of Mr S.N. Mookherjee, Mr Ratnanko Banerji, Ld Senior Counsel appearing for the Applicant, stated that the crux of the matter is that under the Code, there is a mechanism by which previous transactions, can be recalled, if they fall within the category of vulnerable transactions. This is so to ensure that there is only one court dealing with all these issues.

3.2. Prior to the proceedings under the Code, KPMG had been appointed by the lenders for carrying out forensic audit.

[31] 2020 SCC Online NCLT 5814 decided on 13 February 2020

[32] 2019 SCC OnLine NCLAT 1001 decided on 24 July 2019

[33] 2019 SCC OnLine NCLAT 1414 decided on 02 December 2019

3.3. Mr Banerji highlighted three broad heads of submission which are as follows: -

(a) If the scope of this investigation is common to some extent, then it is the Code which will have a preference.

(b) The KPMG report itself says that the audit is inconclusive, and therefore, there should be no further scope for improvement thereon.

(c) There is a preliminary report and thereafter a final report. This aspect is not very clear. The Financial Creditor cannot be monitoring the content of the report. There is a serious apprehension on the part of the Applicant as to why there was a preliminary report and a final report. The final report says that the report is inconclusive.

3.4. Mr Ratnanko Banerji submitted that the Applicant had written several letters to KPMG, stating that after CIRP has been initiated, there is really no scope of interaction or chance of providing any information necessary for the purpose of imposing any liability on the suspended board, if at all. These have not been responded to at all.

3.5. Sections 49 and 66 of the Code are very important, both dealing with fraud. Punishment is given in sections 69, 72 and 73(b) of the Code. Section 236 of the Code has provisions for setting up special courts. If the previous management was being charged for fraud, then also the Code has provisions for the same. The Code envisages a special set of rules and punishments for the Corporate Debtor and its officers. The RBI Circular is also with reference to fraud with respect to the accounts of the Corporate Debtor. The Applicant should not be subjected both to general law and special law like the Code especially when the Code and regulation 36(2)(h) of the CIRP regulations provides a more institutional framework for dealing with frauds.

3.6. The RBI master circular is a framework laid down under which the banks have to act. This framework cannot overrun the framework of the Code. The same banks are the members of the CoC. Hence, the Code does have jurisdiction over the CoC. Whatever initiatives have been taken under the

RBI Circulars, must now give way to the Code. This is an important issue that has been argued vis-à-vis other Acts and laws. The RBI Circular dated 19.12.2017[34] recognises and directs financial institutions will comply with the Code.

3.7. Mr Ratnanko Banerji also exhorted the Adjudicating Authority to look into the fact that the KPMG auditors did not adhere to the timeframe of the RBI Circular, to complete the audit within a period of three months. He placed the letter of 13 April 2021,[35] the reference *inter alia* concerns review of compliance with relevant provisions of the Companies Act, RBI, FEMA or any other regulatory compliance, and review and understand the reasons, if any, behind failure to service loans received by SIFL and SEFL – the scope of the work is between 01 April 2016 and 30 September 2020.[36] The timeline was mandated by the consortium of bankers was to be completed within approximately eight weeks.[37] As per the RBI Circular, it was to be completed within six months.

3.8. Mr Banerji submitted that there is no answer as to why this audit procedure was not completed within the timeframe within which it was required to be completed. If it had been, then perhaps different consequences would have ensued. The apprehension that the applicants have is not without basis, Mr Banerji further submitted.

4. *Submission of Mr Abhinav Vasisht, learned Senior Advocate appearing on behalf of Respondent Nos.3 & 4*

4.1. Mr Abhinav Vasisht, learned Senior Counsel appearing for Respondent Nos.3 & 4, sought to open his arguments by addressing the issue of locus of the Applicant before this Adjudicating Authority. The second aspect was jurisdiction of this Adjudicating Authority, acting in its capacity as such under

[34] https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11189

[35] Page 24 of the IA

[36] Page 24 of the IA

[37] Page 25 of the IA

the Code. The question that begs an answer is whether the Adjudicating Authority would be clothed with the jurisdiction to go into the matter.

4.2. To elaborate the objection with respect to the jurisdiction that is vested with the Adjudicating Authority, section 20 of the Code envisages duties for the Insolvency Resolution Professional and section 25(2)(d) of the Code embodies the duties of the Resolution Professional. There is a common thread – the duty to preserve and protect the assets of the Corporate Debtor. Mr Vasisht led us through the duties of Resolution Professional, envisioned under section 25(1)(j) of the Code. Such duties are limited to Chapter III of the Code.

4.3. Under section 25(2)(j) of the Code, for preserving and protecting the assets of the Corporate Debtor, the Resolution Professional may undertake certain duties. One of the duties is to file applications for avoidance of transactions in accordance with Chapter III of the Code, if any. Chapter III of the Code is limited to only certain sections from sections 33 to 54. Chapter VII of the Code deals with offences and penalties dealing with punishments for certain criminal acts. This has to be done by the Special Court.

4.4. Mr Vasisht submitted that provisions of section 43 of the Code are restorative or claw-back clauses and have nothing to do with criminal aspects which may be brought out in a report. He submitted that there are a couple of things to be seen in section 43 of the Code. It is the Resolution Professional or the Liquidator who has to form an opinion, that opinion has to be only for the limited purpose of this section, and for a limited duration, which is given in sub-section (4) of section 43 of the Code. The liquidator may or may not choose to form an opinion in a particular manner. Section 44 of the Code provides for the orders that the Adjudicating Authority can pass in such a case. The Adjudicating Authority's order can require a property transfer to be vested in the Corporate Debtor, release or discharge etc., basically it deals with a civil wrong with civil consequences.

4.5. Similarly, under section 45 of the Code, under the provisions for the avoidance of undervalued transactions it is stated that if the Liquidator or the Resolution Professional as the case may be, on examination of the transactions, during the relevant period which is mentioned in section 46 of the Code, and even a creditor can come in. The Adjudicating Authority can pass orders under section 48, 49, 50 and 51 of the Code, which are all restorative in nature. Even under section 66 of the Code, an order that can be passed in accordance with section 67 of the Code and is restricted to section 66(2) of the Code.

4.6. For bankers, RBI has given a directive under the statute as to how to operate. It directs the banks to go to the police or the Central Bureau of Investigation. These sections under Chapter III do not fall into consideration.

4.7. Mr Vasisht drew our attention to the consequential part of the KPMG report. The consequences are there in the reply. He submitted that a report under the Code is limited in scope, with limited consequences and to be given in respect of finite time periods. The report from KPMG was sought from 2016 onwards. KPMG could have gone even beyond the limited scope of the Code. On 08 February 2022, the banks have taken a call on the report, and it reveals some serious lapses. There is protection to the Corporate Debtor under section 14 of the Code, but not necessarily to the promoters. It was a little too early to say what the banks would put the KPMG report to. Action against promoters may well be taken, Mr Vasisht candidly submitted.

4.8. The question is: what is it that the Applicant really wants. The Applicant wants to get an order against Respondent Nos.3 & 4 not to use this purpose for any purpose whatsoever. There were no legal grounds for such an order. These proceedings emanating from the KPMG report are not hit by the moratorium under section 14, which is really to protect the CD from distress. Section 14 of the Code is limited to civil matters. It is wholly civil in nature, and does not touch upon any criminal matters. The banks should not be

directed in so far as the promoters of the corporate debtors are concerned, Mr Vasisht insisted.

4.9. Mr Vasisht referred to the sections under the heading ***"Offences and Penalties"*** in Chapter VII. Section 68 of the Code envisages the provisions for punishment for concealment of property. Similarly, sections 69 to 72 of the Code also deal with punishment that deals with respect to the offences done by the officers of the Corporate Debtor. Section 236 of the Code lays down the provisions for trial of offences by Special Court.

4.10. In the course of the CIRP or liquidation, there are duties that are cast upon the insolvency professionals. There are powers assigned to the Adjudicating Authority as well. However, the powers do not extend to certain criminal acts with which the Adjudicating Authority should be concerned at all. The IBBI or the Central Government will deal with those criminal acts, as envisaged under section 236 of the Code.

4.11. Mr Vasisht insisted that it is incorrect to state that there should not be a criminal investigation. Section 32A of the Code recognises two parts– the investigation part and the prosecution part. Hence, can anyone now say that since an independent auditor has been appointed, the process initiated under other laws should come to a stop? That was never the intent. The intent is clear: only in limited circumstances will even the Corporate Debtor be discharged and that is the very purpose of the Code. The Corporate Debtor can be resolved, but not its management. If the Corporate Debtor is taken by independent third parties, then it is free from prosecution, not otherwise.

4.12. In this context, Mr Vasisht took us through section 32A of the Code. Sub-section (1) section 32A of the Code recognises that the liability of the Corporate Debtor for the offences shall cease, if the resolution results in change of management or control of the Corporate Debtor. It recognises that there are prosecutions which can continue in parallel. Even here, only the Corporate Debtor ultimately gets discharge if a proper resolution takes place.

Sub-section (2) *ibid* further stipulates that no action can be taken against the property of the corporate debtor in certain circumstances. Sub-section (3) section 32A of the Code lays down that subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the Corporate Debtor and any person who may be required to provide assistance under such law as may be applicable to such Corporate Debtor or person, shall extend all assistance and co-operation to **any authority investigating** an offence committed prior to the commencement of the corporate insolvency resolution process.

4.13. The Resolution Professional is not obliged to go beyond section 25 of the Code. The RP may also get to know by chance or otherwise that there are acts of omission or commission that are beyond the confines of sections 43, 47, 50 and 66 of the Code. The Resolution Professional is not bound to accept the report of the transactional auditor. The Committee of Creditors ***("CoC")*** has no role in the determination of the Resolution Professional to file applications. This does not preclude the lenders from commissioning a separate audit and taking an action independent of the Code. The forum may be different. It may overlap with certain offences that can be covered under the Code. Mr Vasisht submitted that under the IBC architecture, the Resolution Professional is not supposed to discover the criminal acts.

4.14. Mr Vasisht asserted that the Applicant wants the Adjudicating Authority to assume jurisdiction to stay the criminal aspects that have been thrown up by the audit commissioned by the lenders, and respectfully submitted that these are beyond the remit of the Adjudicating Authority.

4.15. It is in this background that Mr Vasisht sought liberty to place the judgment of the Hon'ble NCLAT in ***Vivek Prakash v Dinesh Kr Gupta, liquidator of Jarvis Infratech Pvt. Ltd.,***[38] wherein the Resolution Professional sought directions to the suspended management to hand over books and to extend full assistance. The NCLT had directed the RP to institute a criminal case under

[38] 2022 SCC OnLine NCLAT 81 decided on 21 February 2022

section 70. The Hon'ble NCLAT observed that this direction was not in consonance with the Code (para 8 of the judgment).

4.16. Mr Vasisht placed reliance on the following judgments in support of his contention that the liability against the Corporate Debtor may get extinguished, but the person associated with the Corporate Debtor, whether directly or indirectly, will continue to be held liable: -

(a) ***Manish Kumar v Union of India,***[39]*(para 253); and*

(b) ***P Mohanraj & Ors v Shah Brothers Ispat Private Limited***[40] *(paras 36, 41, 42, 43, 102)*

4.17. Section 212(2) of the Companies Act 2013 acts as a bar against investigation by any agency once the SFIO has been assigned an investigation, in respect of any offence under the Companies Act, 2013. Clauses (a) and (b) of sub-section 17 of section 212 of the Companies Act, 2013 envisages that any other investigating agency, State Government, Police authorities, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office (SFIO) and *vice versa.* Mr Vasisht placed the judgment of the Hon'ble High Court at Hyderabad in ***State of Telangana v Nowhera Shaik,***[41] (paragraph 8). The appeal against this order was dismissed by the Hon'ble Supreme Court on 14 December 2018.

4.18. On double jeopardy, Mr Abhinav Vasisht relied on the judgment of the Hon'ble Gujarat High Court in ***Essar Oil Limited v Central Bureau of Investigation,***[42] (paragraph 75), to state that there is no double jeopardy at the time of investigation. He also relied on the judgment of the Hon'ble Supreme

[39] MANU/SC/0029/2021 decided on 19 January 2021

[40] (2021) 6 SCC 258 decided on 01 March 2021

[41] MANU/HY/0326/2018 decided 13 November 2018

[42] 2009 SCC OnLine Guj 6273 decided on 29 July 2009

Court in ***Thomas Dana v State of Punjab***[43] (paragraphs 9 and 10) that there must be three conditions to be satisfied before the principle of double jeopardy within the meaning of Article 20(2) of the Constitution:

(a) There must be "prosecution;"

(b) There must be "punishment;" **and**

(c) There must be a subsequent prosecution for the "same offence."

If any of these three ingredients are absent, then double jeopardy is not attracted. In the present case, looked at from any angle, the principle of double jeopardy is not attracted at all, since only a report has been submitted.

4.19. Addressing the question of fraud, Mr Vasisht submitted that fraud has two parts to it, restoration is one of them. The punishment part is not within the domain of the Adjudicating Authority. There are different punishments which can be given under sections 70, 72, 73 etc., the relevant section being section 236 of the Code. This section takes cognisance only if the complainant is the IBBI, Central Government or any other person authorised by the Central Government. Based on the KPMG report received, the banks' internal monitoring committee will look into the matter and will file complaints with the enforcement agencies. Under the RBI guidelines, the bankers have to file complaints before the police or CBI.

4.20. Mr Vasisht drew our attention to page 39 of the Master Direction on Fraud –

"*The directions are issued with a view to providing a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the investigative agencies so that fraudsters are brought to book early, examining staff accountability and do effective fraud risk management".*

[43] AIR 1959 SC 375 decided on 04 November 1958

4.21. Mr Vasisht submitted that an argument was made with regard to the time limit. It had been vehemently argued that the investigation was not completed within the time specified in the master circular. In this regard, Mr Vasisht submitted that the breach of timelines, if at all, is between the banks and the RBI. The Applicant herein surely cannot take any advantage of it and ask for stoppage of the audit.

4.22. Mr Vasisht then placed several paragraphs of the Reserve Bank of India (Frauds classification and reporting by Commercial Banks and select FIs) Directions, 2016 ***("RBI Directions")***, starting with paragraph 2.2[44] and paragraphs 3.3.1 and 3.3.2[45] of the RBI Directions, wherein the classification of frauds has been listed. It has also been stated that banks should ensure that the reporting system is suitably streamlined so that delay in reporting of frauds, submission of delayed and incomplete fraud reports are avoided and delay in reporting of frauds could result in similar frauds being perpetrated elsewhere. Banks were cautioned that in case of inability to adhere to the timeframe, the banks would be liable for penal action prescribed under section 74 of the Banking Regulation Act, 1949.

4.23. Paragraph 5.2[46] of the RBI Directions directs banks to close only such cases where the actions as stated in the said para only after the cases are finally disposed of by CBI, police, or court. Paragraph 5.6[47] of the RBI Directions, directs that for closure, banks shall have to submit their proposals, case-wise, for closure to the SSM of the bank. Even after this, banks should ensure follow-up. Paragraph 5.8[48] of the RBI Directions enjoins the banks to go ahead with the process of examination of staff accountability or conclude staff side actions. Paragraph 6.1[49] of the RBI Directions is very important. It states

[44] Page 40 of the IA

[45] Page 43 of the IA

[46] Page 48 of the IA

[47] Page 49 of the IA

[48] Page 49 of the IA

[49] Page 50 of the IA

that in dealing with cases of fraud/embezzlement, banks should not merely be actuated by the necessity of recovering the amount involved, but also be motivated by public interest. Paragraph 8.8[50] of the RBI Directions is for sole lenders. Paragraph 8.8.2[51] of the RBI Directions states that the bank may use internal auditors, including forensic experts or an internal team for investigations before taking a final view on the RFA. Paragraph 8.9[52] deals with lending under consortium or multiple banking arrangements whereas paragraph 8.9.4[53] delineates the manner in which the action regarding classification of account takes place – this will be at individual bank level and it will be responsibility of the bank to report. Paragraph 8.9.5[54] of the RBI Directions directs the forensic audit to be completed within a maximum period of three months from the date of the JLF meeting. Within fifteen days of the completion of the forensic audit, the JLF should reconvene and decide on the status of the account, either by consensus or the majority rule. In case the decision is to classify the account as a fraud, the RFA status should be changed to fraud in all banks and reported to RBI. Paragraph 8.9.6[55] of the RBI Directions envisages that the audit should be completed within six months from the date when the first bank reported the account as Red Flagged Account (RFA) or "Fraud" on the Central Repository of Information on Large Credits ***(CRILC)*** platform. In this regard, Mr Vasisht relied on Paragraph 3.3.1[56] of the RBI Directions which directs banks to fix staff accountability. Similarly, paragraph 8.11.1[57] of the RBI Directions, directs banks to lodge the complaint with the law enforcement agencies immediately on detection of fraud.

[50] Page 58 of the IA

[51] Page 59 of the IA

[52] Page 59 of the IA

[53] Page 60 of the IA

[54] Page 61 of the IA

[55] Page 61 of the IA

[56] Page 43 of the IA

[57] Page 62 of the IA

4.24. Mr Vasisht submitted that the real intent of the applicant is to preclude the investigation from reaching that stage. The Adjudicating Authority has not been given the jurisdiction to look into matters that are beyond the Code itself. The Adjudicating Authority does not have equity jurisdiction and double jeopardy is a jurisdiction in equity.

4.25. In support of his contention, Mr Vasisht relied on the judgment of the Hon'ble Supreme Court in ***Pratap Technocrats Private Limited v. Monitoring Committee of Reliance Infratel Limited and Another***[58] (paragraphs 25, 29, 45 and 47), wherein it has clearly been held that once the requirements of the Code have been fulfilled, the Adjudicating Authority is bound by the legislature and cannot exercise an equity-based jurisdiction. The jurisdiction that the applicant wants to exercise does not exist under the IBC.

4.26. Mr Vasisht placed reliance on ***BV Bhaskar Reddy v Bank of India & others***[59] passed by the NCLT, Hyderabad Bench. In this case, an application was filed prayed for restraining R1 from conducting forensic audit for the financial year 01 April 2013 to 31 March 2019. Only one bank wanted to do a forensic audit, while the other two did not. The application was countered both by RP and the other two banks. The arguments are captured in para 3. Clause (e) in para 4 captures that the other members voted against the proposal for the audit. It was held that no fraudulent motive was attributed. It was further held that the Forensic Audit was being under the Banking Regulation Act, 1949 and not the Code. Further the Corporate Debtor's account was already declared as fraud hence it was necessary to conduct the Forensic Audit.

4.27. Mr Vasisht then led us to the next proposition, *i.e.*, on the jurisdiction of the Adjudicating Authority: He submitted that the Adjudicating Authority has jurisdiction to deal with all matters pertaining to insolvency resolution, but nothing else.

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[58] (2021) 10 SCC 623 decided on 10 August 2021

[59] MANU/ND/1394/2021 decided on 07 January 2021

4.28. He relied on ***Gujarat Urja Vikas Nigam Ltd v Amit Gupta & others***[60], (paragraph 73 and 74) wherein the Hon'ble Supreme Court has held that NCLT cannot derive its power from the spirit or object of the Code, NCLT can entertain and dispose of questions of fact or law arising out of or in relation to the insolvency resolution process and not outside. In this case, the PPA was terminated solely on the ground of insolvency, which gives NCLT jurisdiction under section 60(5)(c).[61]

4.29. Nothing prevented the legislature to add powers, but they did not. No specific restraint has been given but section 60(5)(c) of the Code should be read in the above context.

4.30. Mr Vasisht urged that when one reads section 60 of the Code, one has to read the limits. It is important to see whether it will affect the insolvency process or is in relation to the insolvency process itself. The prayer[62] sought for is for rescinding the process. That is not related to the insolvency process. The Applicant also wants an order restraining Respondent No.3 and Respondent No.4 based on "alleged" improper audit. The question is, who will decide whether the audit was "improper," Mr Vasisht stated.

4.31. Mr Vasisht then referred to paragraph 69 and paragraph 91 of ***Gujarat Urja (supra)***, wherein it was observed that NCLT has jurisdiction to adjudicate disputes which arise due to the insolvency of the Corporate Debtor and NCLT should not usurp the jurisdiction of any other fora. Also, it cannot be argued that the separate procedure envisaged under the RBI and therefore under the statute because of the binding nature of the RBI's instructions under the Banking Regulation Act, 1949, are in any manner going to delay the insolvency process.

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[60] (2021) 7 SCC 209 decided on 08 March 2021

[61] Paragraph 75 of the judgment

[62] Page 20 of the IA

4.32. Mr Vasisht also referred to paragraph 79 of ***Gujarat Urja (supra)*** which states that section 238 of the Code stipulates that the Code would override other laws, including an instrument having effect by virtue of any such law. Mr Vasisht submitted that this has been interpreted in various judgments. However, he drew our attention to the judgment of the Hon'ble Supreme Court in ***Macquarie Bank Limited v Shilpi Cable Technologies Limited,***[63] (paragraph 46) that the *non-obstante* clause will not override the Advocates Act, 1961, as there is no inconsistency between the Act and the Code. If there is no disharmony between two statutes, then both the statutes must be given effect to.

4.33. Mr Vasisht relied on ***Ebix Solutions Private Limited v Committee of Creditors of Educomp Solutions Ltd & another,***[64] (paragraphs 116, 184 & 185), wherein the Hon'ble Supreme Court held that any juridical creation of a procedural or substantive remedy that is not envisaged by the statute would not only violate the principle of separation of powers, but also run the risk of altering the delicate coordination that is designed. Further, no such power can be vested with the Adjudicating Authority under its residuary jurisdiction in terms of section 60(5)(c) of the Code.

4.34. What the Applicant is asking the Adjudicating Authority to do, is to exercise the jurisdiction that the Adjudicating Authority does not have, to bring further action to a standstill. The Code does not permit this at all. When section 32A was incorporated, it was stated that cases will continue even against the Corporate Debtor. Hence, this application *per se* is not maintainable.

4.35. Mr Vasisht emphasised that the Applicant is an ex-promoter, shareholder, and chairman-cum-managing director of the Corporate Debtor. What the Applicant wants to say that nothing should be done which will get anyone in trouble. As a shareholder, one would want the company to be investigated

[63] (2018) 2 SCC 674 decided on 15 December 2017

[64] 2021 SCC Online SC 707 decided on 13 September 2021

thoroughly to see what went wrong. As a management personnel, one would want to hide their misdeeds, if any.

4.36. Mr Vasisht drew our attention back to the RBI Directions and submitted that one must keep in mind that the RBI Directions does not really provide for punishments. It only mandates reporting. If any punishment is going to be there, it will follow the due process of law. Somehow an impression has sought to be created that there is some overlapping but it is not so. If the authorities find that there are certain acts which will have to go under the Code, then it will go. It is the relevant court that will decide.

4.37. Offence has been defined under section 3(38) of General Clauses Act, 1897 as *"an act or omission made punishable under any law for the time being in force."* If the bankers conclude that something wrong has taken place, then the bankers are supposed to go to the Police or CBI. Therefore, nothing restricts the bankers under the Code from such action being taken. In support of his contention, Mr Vasisht placed reliance on ***SA Venkataraman v Union of India,***[65] (Paragraph 15) wherein the Hon'ble Supreme Court observed that the words ***"prosecution"*** and ***"punishment"*** does not have a fixed connotation and they are susceptible of both a wider and a narrower meaning, but in Article 20(2) both these words have been used with reference to an ***"offence"*** as defined in the General Clauses Act, 1897.

4.38. Reliance was also placed on ***Directorate of Economic Offences v Binay Kumar Singhania,***[66] (paragraph 43) wherein it has been held that the promoter, partner, director, manager, member, employee, or any other person responsible for the management of the corporate debtor shall be liable for the default in repayment of deposit fraudulently and such individual cannot take any advantage of section 14 of the Code. Section 14 of the Code is not applicable to any criminal proceeding, or any penal action taken pursuant to

[65] AIR 1954 SC 375 decided on 30 March 1954

[66] MANU/NL/0169/2021 decided on 04 May 2021

the criminal proceedings or any Act having essence of crime or crime proceeds.

4.39. To strengthen his contention, Mr Vasisht relied on the judgment passed by Hon'ble NCLAT in ***Varssana Ispat Limited v Deputy Director, Directorate of Enforcement,***[67] (paragraph 8). It was held that section 14 of the Code is not applicable to criminal proceedings or to any penal action taken pursuant to the criminal proceeding or any Act having essence of crime or crime proceeds.

4.40. Responding to the citations relied on by the Applicant, Mr Vasisht submitted that in ***SBI & others v Rajesh Agarwal & others***,[68] even the opportunity of personal hearing given by the Hon'ble High Court for the State of Telangana at Hyderabad *vide* its order dated 10 December 2020 in WP No.19102/2019 had been stayed.

4.41. Mr Vasisht then sought to dispel the impression was given that the RBI recognises section 238 of the Code in the RBI Circular dated 19 December 2017, there was never any doubt about it. This circular has no meaning in any manner whatsoever, he submitted.

4.42. Mr Vasisht then made submissions with reference to the cases cited by the Ld AG & Senior Counsel for the Applicants, and sought to distinguish them as follows: -

(a) ***Duncan (supra)***. was the next case that was cited by the Applicants. Under the Tea Act, 1953 there were certain requirements to be done. All that was held in this judgment was that the Code will have an overriding effect, but this has nothing to do with this case. One very important point was that the company will be protected from its own management.

(b) In ***Venkata Subbarao Kalva (supra),***[69] paragraph 2, sub-paragraph 7 captures the allegations. In paragraph 9, it is stated that Resolution

[67] MANU/NL/0195/2019 decided on 02 May 2019

[68] SLP (C) No.3931/2021 decided on 15 April 2021 (unreported)

[69] 2020 SCC OnLine NCLAT 5814 dated 13 February 2020

Professional had reason to believe that the directors did not exercise due diligence and there may be a few suspicious transactions. In paragraph 12, the Adjudicating Authority directed the liquidator to furnish a copy of the forensic audit report dated 18.09.2019 to the respondents. If there was a *prima facie* case for further investigation, then he can approach the Central Government with supporting evidence, seeking further investigation into the matter through SFIO or other authority.

(c) In ***Union of India through SFIO v Maharashtra Tourism Dev Corp Ltd,***[70] the appeals were preferred against the order of the Adjudicating Authority for directing SFIO investigation. In this background, it was held in that the Adjudicating Authority's order was modified by referring the matter to Secretary MCA to get the matter investigation by following the procedure under section 213.[71]

(d) In ***M Srinivas v Ramanathan Bhuvaneswari,***[72] (para 16 and 17), there was a forensic audit report on record (paragraph 7). Various irregularities were pointed out.

One argument of the Applicant was that some part of the record was read, to say that the report is inconclusive. But it is for the bankers to say that in spite of all material not being made available, whether they still found enough material pointing to fraud, which is good enough for the bankers to act upon.

(e) ***Embassy Property (supra)***[73] was dealing specifically on the aspect of fraud addressed by section 65(1) of the Code. Although the NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate on criminal aspects concerning fraud, as in, for example, punishing the offender, although there it can order clawback or disgorgement of the amounts.

4.43. On the contention raised with respect to the delay in submission of the report, Mr Vasisht urged us to take notice of four dates: the time period starts from

[70] 2019 SCC OnLine NCLAT 1414 decided on 02 December 2019

[71] Paragraph 7 of the judgment

[72] 2019 SCC OnLine NCLAT 1001 decided on 24 July 2019

[73] (2020) 13 SCC 308 : 2019 SCC OnLine SC 1542 decided on 03 December 2019

the red flagging of the account. A scheme was being propounded, a stay order was granted on 21 October 2020, which was vacated on 07 September 2021. It was only thereafter that the bankers initiated the steps. If the bankers were also to be technical about it, the report came in within three months *i.e.,* 23 September 2021 to 17 November 2021.

5. *Submissions of Mr Ramji Srinivasan, learned Senior Counsel for the Respondent No.5*

5.1. Mr Ramji Srinivasan submitted that in so far as KPMG was concerned, the role was very limited. If the Adjudicating Authority looks at the frame of the application that was made earlier, it proceeded on the misconception that the investigation is continuing while another event had intervened in the form of the CIRP commencement. Mr Ramji Srinivasan submitted that so far as KPMG is concerned, the prayer was to ask KPMG not to continue the investigation, but the investigation is so the application has become infructuous qua Respondent No.5. Ultimately, the delay is not something that arises out of insolvency. If there is a delay, it is up to the RBI to deal with it.

5.2. The stretched argument by the Applicant is that the audit is in relation to insolvency. Wide as it may be, the Hon'ble Supreme Court has stated that it cannot be a "catch-all." Mr Ramji Srinivasan submitted that timeline misconception, based on which the application came to be filed, is not correct as things turned out. As a matter of fact, the banks were already in receipt of the report, and the bankers had further acted on the report itself. The Applicant in the final hearing cannot enlarge the scope of the application itself. There is no amendment to the IA, unless, *proprio vigore*, they wish to address the court on some other issues.

5.3. In so far as the jurisdiction is concerned, there has to be some cause against KPMG. Mr Ramji Srinivasan submitted that if the cause was primarily against the banks, and KPMG was only incidental to the cause, this is also not workable at this stage, since the report was already with the banks. There is a disclaimer. On the day the bankers engaged KPMG, CIRP had not

commenced. The report contains contributions from the ex-management. This need not burden the Adjudicating Authority or the order itself. The only question is this: can the report process of KPMG continue? The process is now over, and the banks now have more material to refer and compare with the transactional audit commissioned by the Administrator.

5.4. Mr Ramji Srinivasan wondered whether, had the report had been commissioned and received one day prior to the commencement of the CIRP, would it have changed the nature of information that the banks have collected. The fact of the report being submitted after the CIRP, makes no difference. That's all there is to it. What the bankers do with the report, is not for KPMG to say. It is for the banks to consider the report at the appropriate time. Mere apprehensions cannot lead to a judicial intervention. Therefore, nothing survives in so far as the Respondent No.5 *i.e.,* KPMG is concerned

6. ***Submissions of Mr S. N. Mookherjee, learned Advocate General and Senior Advocate in reply to the Respondents***

6.1. Responding to the arguments of the Ld Sr Counsel appearing for the respondents, Mr Mookherjee, Ld AG & Senior Counsel appearing for the Applicants submitted that as follows:

6.2. On the argument of locus, the locus is itself derived from section 31 of the Code and has not been dealt with at all. The Applicant is a stakeholder of the Corporate Debtor, and therefore, the Applicant is entitled to file this application.

6.3. On the contention of whether the Adjudicating Authority has jurisdiction, Mr Mookherjee submitted that he had based his arguments on section 60(5) of the Code. In effect, the Applicant came under clause (c). The question is whether the issues raised by the Applicant is out of insolvency of the Corporate Debtor.

6.4. Mr Mookherjee submitted that the audit done by KPMG, in fact, relates to insolvency, although according to KPMG, all the three reports were completed

– the draft, the preliminary and the final, before the commencement of the CIRP. Mr Mookherjee put it in two platforms. First is that it relates to the affairs of the Corporate Debtor. This cannot be disputed. Second, which is of more importance, is that it is concerned with the alleged wrongdoings of the promoters. Then the question arises as to how it relates to insolvency. What will be the subject matter of the transactional audit are given in a broad species here – (1) preferential treatment; (2) undervalued transaction; (3) fraudulent transaction; (4) extortionate credit transaction; and (5) most important, defrauding of creditors. This transactional audit, therefore, covers the same things that the KPMG audit ought to have covered. So, this relates to insolvency.

6.5. Mr Mookherjee asserted that the KPMG audit is not only relating to insolvency, it also arises out of insolvency and is also inextricably connected with insolvency, because the CIRP is RBI-driven. It is the RBI which appointed the Administrator and commenced these proceedings. And the same Administrator is the Resolution Professional.

6.6. The forensic audit is being done or has been done under the RBI circular. So, the statutory framework for all audits which has now been chosen by the RBI is that provided by the Code. The moment the RBI is the mind and the entity behind the CIRP of the Corporate Debtor and it has opted for a resolution under the Code, it comes with the entire gamut of sections and the entire regulations. The constitution of the CoC and the decisions that are taken apropos conduct of audits and finding the culprits and taking proceedings, and seeking reliefs – both civil and criminal, should all be within IBC auspices and not *de hors* thereof. There was a conscious adoption of the framework of the Code within which there has to be a resolution with the financial creditors and the wrongdoers will be brought to book.

6.7. The Applicant is not asking to be excused for any wrongdoing. The Applicant only wants that now that the RBI has adopted the statutory framework of the Code for resolution as far as the Corporate Debtor is concerned, that statutory

framework of the Code is the only framework under which the audit should also be conducted and steps taken in furtherance thereof, including penal proceedings. If that is the situation, then the Adjudicating Authority has the jurisdiction to interdict any further steps based on the KPMG audit and subject the entire audit process to the Code.

6.8. Mr Mookherjee submitted that apart from the RBI having been the mover of the CIRP, it is necessary to be noted that the banks appointed KPMG under the RBI circular, it is the same banks who approved the appointment of the BDO auditors. Second, the KPMG itself said that their report is inconclusive and cannot be a definitive pronouncement.

6.9. Third, the Applicant does not even know which report is being relied on – the draft, the preliminary and the final – all having travelled to and from KPMG to the banks and back again. The Applicant is unaware as to what were the comments that were made in the report. Therefore, it is unlikely that the report would be fair. Nothing has been disclosed to show what steps have been taken under these reports. A submission has been made that by seeking the directions that the Applicant has, the Applicant is seeking to stall criminal proceedings.

6.10. On a reading of the circular, the CBI should first decide. There is nothing so far. In many cases, the CBI has come to the conclusion that there is no fraud. The Applicant's only issue is that the Applicant should be subjected to the rigours under the Code to unearth the truth.

6.11. Fourth, there has been no JLF meeting before red flagging. The report is completely misplaced inasmuch as the audit has not been done in accordance with the circular. Lastly, the process has not even been started. There is nothing to show that the final report has been considered and placed before the CBI. The process doesn't get completed merely by a report being prepared and sent.

7. *Supplemental submissions of Mr Ratnanko Banerji, learned Senior Advocate, in reply to the Respondents*

7.1. Responding to the submissions of the Respondents and supplementing the submissions of Mr S.N. Mookherjee, Mr Ratnanko Banerji, Ld Senior Counsel for the Applicant, submitted that the report concerns the affairs of the Corporate Debtor, if a promoter or director is a wrong-doer in that sense, all of these are taken care of within the statutory framework itself. It trumps over the normal framework.

7.2. As for ***Duncan (supra),*** it was under both the Tea Act and the Code. It was held therein that the Code trumped the Tea Act.

7.3. Regarding the argument that the Applicant was wearing two hats, one as promoter and another as director, Mr Banerjee stated that the argument fell right back on the Respondents. There are two questions to consider:

a. Who are the members of the CoC? They are the same persons who are the lenders.

b. Can the special law overcome the general law?

7.4. ***Swiss Ribbons Pvt Ltd and Ors v Union of India and Ors***[74] spoke about inherent powers. Ld Senior Counsel for the Respondent Nos.3 & 4 cited ***Pratap Technocrats (supra)*** and ***Ebix (supra)*** to cite that there was no equity jurisdiction with the Adjudicating Authority. Mr Banerji submitted that he is not on that point, but the issue is whether the inherent powers can be used to protect the Adjudicating Authority's jurisdiction. No one can overreach or take away any part of the Adjudicating Authority's jurisdiction. It is possible that the majority of the CoC might look at the report and decide that they do not want to proceed. That would not be enough to stop an application under section 43 of the Code. The investigating agency might still come in and say that there was no case. ***That*** will stop proceedings under the Code, Mr Banerji submitted.

[74] MANU/SC/0079/2019 decided on 25 January 2019

7.5. ***Gujarat Urja (supra)*** was on the question whether it involved the insolvency proceeding or not. It was found therein that it was not. The same issue in the present IA. Mr Banerji's contended that if it involved the Corporate Debtor and the promoters then it is within the Adjudicating Authority's jurisdiction.

7.6. ***Ebix (supra)*** was also on the principle that the Adjudicating Authority cannot deal with the criminal aspects. Mr Banerji pointed out that this is not the issue. The criminal proceedings have not yet started. The question is again, whether it should be allowed, at the same instance of creditors who are now sitting on the CoC.

7.7. ***Varssana Ispat (supra)*** was on the question of two distinct proceedings. If there are two distinct proceedings, one cannot ask the Adjudicating Authority to exercise jurisdiction.

8. ***Analysis and Findings***

8.1. We have heard Mr S.N. Mookherjee, learned Advocate General and Senior Counsel and Mr Ratnanko Banerji, the learned Senior Counsel appearing on behalf of the Applicant; Mr Abhinav Vasisht, learned Senior Counsel for the Respondent Nos.3 and 4; and Mr Ramji Srinivasan, learned Senior Counsel for the Respondent No.5. Mr Jishnu Saha, Ld Senior Counsel appearing for the Administrator/Respondent Nos.1 and 2, adopted the arguments of the Respondent Nos.3 & 4, to avoid prolixity.

8.2. There are four issues that have been highlighted by both the parties:

(a) Whether the Applicant has *locus*?

(b) Whether this Adjudicating Authority has jurisdiction?

(c) Whether the Code will prevail over the RBI guidelines?

(d) Whether two audits can continue simultaneously?

8.3. Before delving into the issues of the raised during the arguments of the IA, let us consider the reliefs sought for by the Applicant.

(a) Prayer (a) is for direction on the Respondent Nos.3 & 4 to withdraw or rescind the process of audit of the Corporate Debtor which was being conducted by the Respondent No.5/KPMG. Since that process was already over by the time the application was filed, prayer (a) has become infructuous.

(b) Prayer (c) seeks an *ad interim* order restraining Respondent Nos.3 & 4 from conducting or proceeding with the process of audit of the corporate debtor through the Respondent No.5/KPMG, during the CIRP of the corporate debtor. Since he audit process has already been completed and the report filed with the banks which commissioned the audit, even before filing of the present IA, this prayer has also become infructuous.

(c) Prayer (d) seeks a direction to the Respondent Nos.3 & 4 from disseminating the information contained in the audit report conducted by KPMG. This prayer has also become infructuous considering that the report had already been disseminated by the time the application was filed.

(d) Prayer (e) seeks an injunction restraining Respondent No.5 from continuing with the audit of the corporate debtor in terms of their appointment *vide* letter dated 13 April 2021. This prayer has become infructuous since the audit process had already been completed and the report disseminated before the IA came to be filed.

8.4. Thus, four of the five prayers sought for in the application had already become infructuous by the time the IA came to be filed. That leaves us with just one prayer – Prayer (b), which seeks an order setting aside the audit process conducted by KPMG in the light of initiation of CIRP. The answer to whether that prayer can be granted, will have to depend on our findings to the issues raised in para 8.2 *supra*.

On the issue of locus

8.5. The Applicant is admittedly one of the shareholders of SIFL and SEFL and was a member of the superseded Board of Management. While *locus* as a member of the superseded board may be in question, there is no question that the application is maintainable in the Applicant's capacity as a shareholder, as

he is an important stakeholder in the process. The question raised in the present case is one of law. Therefore, we answer that question in the affirmative.

On the issue of jurisdiction

8.6. The audit commissioned by the lenders was under the aegis of the applicable RBI circulars. RBI circulars have the statutory force, as is now settled by a five-member Constitutional Bench of the Hon'ble Supreme Court in ***Central Bank of India v Ravindra & others,***[75] wherein it was held that the RBI is one of the watchdogs of finance and economy of the nation, entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions.[76]

8.7. Mr SN Mookherjee and Mr Ratnanko Banerji tried their best to convince us that the Code will override the circulars issued by the RBI, to the extent that they are inconsistent with the Code. It was their case that once the CIRP commenced, there were enough provisions under the Code to investigate transactions which were fraudulent, preferential, undervalued or extortionate, and therefore, the previous audit or the audit report should not be taken cognisance of.

8.8. We are unable to convince ourselves to agree. At its highest, the trial of offences by a Special Court in terms of section 236 of the Code would be restricted to offences under the Code, as laid down by sub-section (1) thereof.[77] Fraud by a banking official, for instance, would not be an offence under the IBC, but under other laws. If indeed there is some involvement of bank officials, then there is little that the Adjudicating Authority can do since it does not exercise any jurisdiction over them under the Code. The scope, purpose and objective of the audit under the RBI is not only to look into the

[75] (2002) 1 SCC 367 : 2991 SCC OnLine SC 1266 decided on 18 October 2001

[76] Para 5 of the judgment *ibid*, @ page 403

[77] **236. Trial of offences by Special Court.–** (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

transactions from the perspective of the corporate debtor now functioning under an independent professional, but also to unearth criminality, if any, on the part of bank officials too. Therefore, to say that the KPMG audit should either be stopped, rescinded or otherwise consigned to the bin, is not something that commends itself to us.

8.9. We are acutely conscious of the string of caveats that the audit report contains. However, in the jurisdiction that we exercise, we do not have the wherewithal, expertise, or legal backing to go into the sufficiency of the material unearthed, the cooperation extended from the side of the ex-management to the KPMG audit team – or indeed the lack of it. While it is tempting to think of the Adjudicating Authority's jurisdiction as something that is to be exercised under equity, we must not succumb to it. We must be bound by the confines drawn by the legislature for the Adjudicating Authority.

8.10. Therefore, we hold that this Adjudicating Authority, with the powers vested under the Insolvency & Bankruptcy Code, 2016, lacks the jurisdiction to stop an audit commissioned under RBI circulars, the intent of which is altogether different.

On whether the Code will prevail over the RBI guidelines

8.11. The Code envisages that the Resolution Professional can determine whether any transaction within the lookback period of two years is preferential, undervalued, extortionate or a fraudulent transaction and the Resolution Professional can appoint an auditor to give a valuation report keeping in view the look back period. This is an audit that is performed solely from the perspective of the corporate debtor and its suspended management, and is restricted to the books of the corporate debtor.

8.12. On the other hand, an audit instituted by lenders under RBI's circulars deals with various aspects. Its stated purpose is to provide *"a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the Investigative agencies so that fraudsters are*

brought to book early, examining staff accountability and do effective fraud risk management. These directions also aim to enable faster dissemination of information by the Reserve Bank of India (RBI) to banks on the details of frauds, unscrupulous borrowers and related parties, based on banks' reporting so that necessary safeguards/preventive measures by way of appropriate procedures and internal checks may be introduced and caution exercised while dealing with such parties by banks."[78]

8.13. It was under this Circular that the Banks decided to appoint auditors to audit the financial statements from 2016. The Banks had already appointed KPMG to verify the financial statements of SIFL and SEFL from the year 2016 in order to determine if there was any fraud. The period within which BDO LLP could verify the financial books of SIFL and SEFL would be two years preceding the date on which SEFL and SIFL were admitted into CIRP.

8.14. Therefore, the Code and the RBI circulars work in different fields and are, in a manner of speaking, disjoint sets. The adequacy or otherwise of KPMG's audit report would no doubt be determined by the lenders. We do not see any possibility of conflict between the two. There is no question of one prevailing over the other.

8.15. We have noticed the apprehensions of the Applicant that the KPMG report has serious limitations for end-use, and that there was no effective enquiries made with the ex-management before the report was finalised. We have also noticed that the report was finalised by first submitting a "*draft report,"* followed by what is termed a *"preliminary report"* and a *"final report."* The allegation of the Applicant is that the report was tailored to suit the requirements of the lenders, who wanted to "implicate" the ex-management of the SREI entities. This is a matter that we cannot really examine, since we have held that we lack the jurisdiction to do so. The Applicant is, however, at

[78] Para 1.3 of RBI's Master Circular on Frauds, bearing No. DBS.CO.CFMC.BC.No.1/23.04.001/2016-17 dated 01 July 2016, updated as on 03 July 2017, and accessed here –

https://m.rbi.org.in/scripts/BS_ViewMasDirections.aspx?id=10477#4

liberty to raise all these issues, including the issue of whether the report is at all conclusive or not, whether it is tailor-made to suit the needs of the lenders, etc. at the appropriate judicial forum. The observations made in this order shall not come in the way of such judicial forum examining all these issues, and also any other grounds that the Applicant may wish to urge before such forum.

On whether two audits can continue simultaneously

8.16. We have already held that the scope and purpose of the two audits are not the same. The ultimate purpose of the audit commissioned by the Administrator should subserve the resolution of insolvency of the corporate debtor. The purpose of the audit under RBI circulars is not the same. Therefore, there can really be no objection to the two audits going on in parallel, notwithstanding the institution of CIRP against the corporate debtor.

8.17. Having held thus, this is really not an issue anymore, since the audit by KPMG is over and the report has already been submitted. Therefore, at this point in time, there is really only the audit commissioned by the Administrator that may be ongoing, if the report has not already been submitted.

Summary of findings

8.18. In sum, –

(a) Prayers (a), (c), (d) and (e) have become infructuous even prior to the filing of the application, and are dismissed as such.

(b) Prayer (b), which is essentially for setting aside the KPMG audit, cannot be granted by this Adjudicating Authority.

(c) The audit under the RBI circular and the audit under the IBC operate in different fields and are for different purposes. There is no conflict or repugnancy to attract the *non-obstante* clause in section 236 of the Code.

(d) The methodology, adequacy and end-use of the KPMG are all beyond the scope of this Adjudicating Authority acting under the IBC. These are left

to be decided by the appropriate judicial forum. The Applicant is at liberty to approach the appropriate legal forum for redressal of his grievances in this regard. The Applicant is free to raise all issue that may commend itself to him, before such forum.

Orders

8.19. **IA (IB) No.75/KB/2022 in CP (IB) No.295/KB/2021** is dismissed in accordance with the above observations. Interim orders shall stand vacated.

8.20. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

8.21. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

8.22. List the main CP for reporting progress on 25.07.2022.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

17 May 2022

GGRB[LRA]