

2023 LiveLaw (SC) 464

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
KRISHNA MURARI; J., SANJAY KUMAR; J.**

19 MAY, 2023

GLUCKRICH CAPITAL PVT. LTD. *versus* THE STATE OF WEST BENGAL & ORS.

Insolvency and Bankruptcy Code, 2016; Section 66 - the remedy against third party is not available under Section 66 of IBC, and in such circumstances, it is for the Resolution Professional or the successful resolution applicant to take such civil remedies against third party for recovery of dues payable to corporate debtor, and the civil remedies which may be available in law are independent of the said Section. (Para 10)

MISCELLANEOUS APPLICATION NO. 1302 OF 2023 (INTERLOCUTORY APPLICATION NO. 102537 OF 2023) IN SPECIAL LEAVE PETITION (CRL.) NO. OF 2023 (DIARY NO. 6732 OF 2023)

(Arising out of impugned final judgment and order dated 24-02-2023 in D No. No. 6732/2023 passed by the Supreme Court of India)

For Petitioner(s) Mr. Santosh Paul, Sr. Adv. Ms. Anzu. K. Varkey, AOR

For Respondent(s) Mr. Ashish Batia, AOR

ORDER

This is an application seeking clarification of judgment and order dated 24.02.2023 passed by this Court wherein the Special Leave Petition (Criminal) Diary No. 6732 of 2023 filed by the applicant was dismissed.

2. The applicant, an unsecured financial creditor of M/s. Leading Hotels limited ('LHL'), which is facing insolvency proceedings under the Insolvency and Bankruptcy Code, 2016, approached this Court by filing the captioned Special Leave Petition (Criminal) Diary No. 6732 of 2023, challenging an interim order dated 30.11.2022 passed by Delhi High Court in Criminal M.C. No. 6408 of 2022 extending the transit anticipatory bail granted to the Respondents herein, who are stated to be suspended directors of 'LHL'.

3. Vide judgment and order dated 24.02.2023 which was dismissed on the ground that the applicant (petitioner in the Special Leave Petition (Criminal) Diary No. 6732 of 2023) had no locus in the matter, as he was neither the informant nor a party to the proceedings, pending before the High Court and is totally unconnected with the first Information Report lodged by the financial creditors who were also the members of the committee of creditors. The applicant has again approached this Court by means of the instant application seeking clarification of the aforesaid order.

4. Learned counsel for the applicant submits that the judgment and order dated 24.02.2023 dismissing the Special Leave Petition (Criminal) Diary No. 6732 of 2023 may be clarified to the effect that it shall not come in the way of the applicant herein, persuading the Resolution Professional to consider initiation of proceedings for recovery under Section 66 of IBC against the persons who, *prima facie*, appear to be primarily responsible for the fraudulent affairs of the corporate debtors, and also qua other persons and organizations with whom any business was carried out by the corporate debtor, fraudulently and illegally with mala fide intention.

5. It is further submitted that the judgment and order dated 18.01.2023 passed in WP(C) (PIL) No. 04 of 2023 in the case of **Smt. Sudipa Nath Vs. Union of India & Ors.** passed by Tripura High Court has wrongly relied upon the judgment of this Court in the

case of ***Usha Ananthasubramanian vs. Union of India***¹ and has erroneously held that Section 66 of the IBC cannot be invoked against other persons, entities or organizations with which there was any business transaction by the corporate debtor, but only the persons who were responsible for the conduct of business of the corporate debtor can be proceeded against.

6. We have considered the arguments advanced by the learned counsel for the applicant and perused the record.

7. In our considered opinion, in the name of seeking a clarification, the endeavor of the applicant herein is to indirectly get over with the judgment and order dated 18.01.2023 in WP(C) (PIL) 04 of 2023 passed by Tripura High Court. Such an endeavor, in the guise of a clarification, cannot be permitted.

8. We may also observe that the Tripura High Court has rightly relied upon the observations made by this Court in a binding precedent, in ***Usha Ananthasubramanian Vs. Union of India***, which pertains to a matter under Section 339(1) of the Companies Act, 2013 which is *pari materia* with Section 66 of IBC. The High Court in the case of ***Sudipa Nath (Supra)*** has rightly observed that :-

“13..... That Section 66 (1) also directed towards making such persons personally liable for such fraudulent trading to recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on NCLT to pass such orders against other organizations/legal entities (other than corporate debtors) with whom such business was carried out against any person responsible in such other organizations/legal entities for carrying on business with corporate debtor. For the said purpose, the ratio of the judgment of the Hon'ble Supreme Court in Usha Ananthasubramanian (supra) in the context of section 339 (1) one of the companies Act, 2013 as extracted above would clearly apply even in the context 66(1) of IBC. Accordingly, an application under Section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organization / legal entities. Such legal action is independent of Section 66(1).”

9. Learned counsel appearing for the respondents has pointed out to us that even the NCLT in other similar matters has taken the same view following the judgment of this Court in ***Usha Ananthasubramanian (Supra)***. Reference has been made to the order dated 09.02.2023 passed in an application in CP(IB) No.4258/(MB) 2019.

10. We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law. The remedy against third party, however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.

11. In view of the above facts and discussions, the application for clarification is wholly misconceived and, accordingly, stands dismissed.