IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISIDCTION
APPELLATE SIDE

C A N 688 OF 2022
IN
W.P.A 1389 OF 2017

In the matter of:
An application for modification and/ or variation of the order dated 16th September, 2021

And

In the matter of:
An application under Article 226 of the Constitution of India;

And

In the matter of:
Ajoy Kumar Das & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT IN REPLY

I, Devendra Singh, son of late Sh. Daryao Singh, aged about 58 years, by religion Hindu, by occupation Professional, having his office at Assotech Business Cresterra, Office No. 216, 2nd Floor, Tower-1, Sector-135,

Noida, Uttar Pradesh- 201305, do hereby solemnly affirm and declare as under:

1. That I am the Resolution Professional of the Respondent No. 27. I have been appointed as the Resolution Professional by the Hon'ble National Company Law Tribunal vide order dated 24.11.2020 and am fully conversant with the facts and circumstances of the present case upon perusing all the related papers and documents and also competent and authorised to affirm this affidavit.

2. The instant affidavit is being filed by me in reply to the affidavit filed by the Writ Petitioners opposing the application filed by me being CAN No.688 of 2022.

3. At the outset, the Deponent/Applicant denies each and every submissions and contentions made by the Writ Petitioners in the affidavit, dated November 2022 ('said Affidavit'), except for which is a matter of record. It is humbly submitted that the contents of the Application be read as part and parcel to the instant affidavit as the Applicant is not reiterating the contents of the same for the sake of brevity.

4. It is submitted that the Hon'ble National Company Law Tribunal, Delhi ('NCLT') vide order dated 25.01.2019 (revived on 01.10.2020) has initiated Corporate Insolvency Resolution Process ('CIRP') against the Alchemist Township India Limited ('Corporate Debtor') and the Applicant herein has been appointed by the Hon'ble NCLT as the Resolution Professional of the Corporate Debtor. The Hon'ble NCLT has imposed moratorium in respect of the Corporate Debtor under Section 14 of the Insolvency & Bankruptcy Code, 2016 ('Code').

5. The Applicant herein has filed the Application being CAN No.688/2022, for (a) modification of the Order of this Hon'ble Court, dated 16.09.2021, vide which this Hon'ble Court has restrained the Hon'ble NCLT to not to pass any final order during the pendency of the instant Writ Petition and (b) to keep the instant proceedings in abeyance qua the Corporate Debtor as moratorium has been imposed by the Hon'ble NCLT under Section 14 of the Code.

6. The Applicant herein is briefly reproducing the submissions as made in the Application in response to which the Writ Petitioners have filed the Affidavit in opposition dated November 2022:

   a. A Petition under Section 7 of the Code was filed by one of the Financial Creditor of the Corporate Debtor and the Hon'ble NCLT vide order dated 25.01.2019 (revived on 01.10.2020), initiated CIRP against the Corporate Debtor. The Hon'ble NCLT also imposed moratorium under Section 14 of the Code prohibiting institutions of Suits, or continuation of pending suits or proceedings against the Corporate Debtor before any Court of law, Tribunal, Arbitration Penal or, any other authority. Thus, due to imposition of the moratorium under Section 14 of the Code, the instant Writ Petition ought to be kept in abeyance qua the Corporate Debtor/ Respondent No. 27;

   b. The Hon'ble NCLT vide order dated 24.11.2020, appointed the Applicant herein as the Resolution Professional of the Corporate Debtor;

   c. After the appointment as the Resolution Professional of the Corporate Debtor, the Applicant herein has been receiving claims

running into thousands of numbers every day and the same are being collated and verified in terms of the provisions of the Code. As on date the Applicant herein has verified and collated approximately 8 Lacs claims of Financial Creditor of the Corporate Debtor;

d. The Applicant has also prayed to this Hon'ble Court in the Application to direct the Writ Petitioners who have any claim against the Corporate Debtor to file their respective claims with the Applicant herein in order to avoid any over lapping recoveries against the Corporate Debtor;

e. The Applicant has also placed on record the steps being undertaken by the Applicant in order to successfully culminate the CIRP of the Corporate Debtor. The Applicant has not only collated and verified huge number of claims but has also approached various Forums and Courts in order to get the copy of the record of the Corporate Debtor from the custody of the Directorate of Enforcement which were seized by Directorate of Enforcement on 19.09.2019. The Applicant has also initiated legal proceedings against the Debtors for recovery of dues of the Corporate Debtor. The Applicant has also published Form G whereby prospective Resolution Applicant were invited to submit their Expression of Interest ('EoI') in order to submit a Resolution Plan in the case of the Corporate Debtor.

7. It is submitted that the Writ Petitioners in their Affidavit dated November 2022 ('said Affidavit'), have opposed the prayers of the Applicant without any legal force in their submissions. The Writ Petitioners in the said Affidavit have made immaterial submissions

regarding the events that have taken place in respect of the Alchemist group of companies. Even the events referred to by the Writ Petitioners in the said Affidavit have taken place prior to initiation of CIRP of the Corporate Debtor i.e. prior to 25.01.2019 (revived on 01.10.2020) and thus, the same have no bearing on the reliefs sought in the Application of the Applicant herein. However, no allegations whatsoever has been averred by the Writ Petitioners against the Applicant i.e. Resolution Professional of Corporate Debtor or the process being carried out by the Applicant herein under the provisions of the Code for conducting the CIRP of the Corporate Debtor.

8. It is submitted that Writ Petitioners without any evidence have made a bald submission that the Sarada Group of Companies have transferred their fixed assets in the Corporate Debtor after discovery of fraudulent ponzi scheme of Sarada Group came into the light. No evidence whatsoever has been produced by the Writ Petitioner supporting their aforementioned false averment.

9. It is submitted that the Writ Petitioners have also alleged that the instant CIRP proceedings have been initiated by the Financial Creditors who are in control of the suspended management of the Corporate Debtor. The Writ Petitioners prior to raising the abovementioned contention ought have taken into consideration that pursuant to initiation of CIRP against the Corporate Debtor, all the power and control of the erstwhile management gets suspended and the Resolution Professional is placed in charge of the Corporate Debtor. The Resolution Professional in terms of the provisions of the Code, take steps to maximize the assets of the Corporate Debtor only on the direction / prior approval of the Committee of Creditors ('CoC'),

which consists of all the Financial Creditors of the Corporate Debtor. Thus, the aforementioned averment of the Writ Petitioners cannot be taken into consideration to deny the reliefs sought in the Application of the Applicant.

10. The Writ Petitioners have also submitted that the CIRP has been initiated only with the motive to deprive the Writ Petitioner and other innocent and helpless investors from redeeming their investment in the Corporate Debtor. In this regard, it is submitted that the Writ Petitioners have failed to understand that successful culmination of the CIRP of the Corporate Debtor would reap more benefit to all the Financial Creditors of the Corporate Debtor, rather than liquidating the assets of the Corporate Debtor by thee *One Man Committee* appointed by this Hon'ble Court.

11. It is submitted that the Applicant herein is a court appointed Resolution Professional of the Corporate Debtor and has been appointed to resolve or liquidate the Corporate Debtor in terms of the provisions of the Code and its allied regulations.

12. Further, the CIRP is a time bound process and modification of the Order, dated 16.09.2021, is necessary and vital for the purposes of the ongoing CIRP as no prospective resolution Applicant will submit any plan till the time the Order, dated 16.09.2021, is modified by this Hon'ble Court.

13. It is submitted that the Order, dated 16.09.2021, passed by this Hon'ble Court is causing grave prejudice to the ongoing CIRP of the Corporate Debtor and same will render the entire scheme of Code a futile exercise.

14. At the cost of brevity, it is again submitted that the Prospective Resolution Applicants in case of the Corporate Debtor herein are not submitting Resolution Plans due to the Order of this Hon'ble Court, dated 16.09.2021. As a consequence of the aforementioned Order being in force, the Hon'ble NCLT has adjourned the matter of the Corporate Debtor pending before it on several occasions. Even the Applicant herein has also been constrained to seek various extensions / exemptions from the period of CIRP of the Corporate Debtor from the Hon'ble NCLT Hon'ble due to the aforementioned order being in force. It is noteworthy that the time period of completion of CIRP is now expiring on 16.10.2023 and thus the immediate modification of the Order, dated 16.09.2021, is critical. Copies of the order of Hon'ble NCLT are being annexed herewith and collectively marked as Annexure "A/1".

15. It is submitted that the legal position is well settled that the Insolvency and Bankruptcy Code, 2016 is a complete Code in itself and in case of any inconsistency, the provisions of the Code shall override. It is in the said background that the Applicant in its Application has relied on Section 63 and 231 of the Code, which clearly states that no civil court shall have jurisdiction in respect of matter in which the Hon'ble Adjudicating Authority/Hon'ble NCLT has been empowered to pass any order.

16. Further, the Writ Petitioners have failed to make out any case for non-grant of the reliefs as sought in the Application of the Applicant herein. Thus, in light of the facts and submissions made in the Application being CAN No.688/2022 and submissions made the instant affidavit, it is prayed that the relief's as sought in the Application be granted.

17. The statements made in paragraphs 1 to 14 of the foregoing affidavit are all true to my knowledge on the basis of the relevant documents and the rest are my respectful submissions before this Hon'ble Court.

Prepared in my office

Devendra Singh

DEPONENT is known to me

Advocate Clerk to

Solemnly affirmed before me

on this the day of September, 2023

COMMISSIONER

I certify that all annexures are legible

Advocate

Attested

PREM PRAKASH

Notary Public

25 SEP 2023