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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 342/2021 & I.A. 14986/2021

MBL INFRASTRUCTURES LIMITED Petitioner

Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Abhishek Singh Pundir, Mr. Bankim Garg and Mr. Chaitanya Bansal, Advs.

versus

PILE FOUNDATION COMPANY Respondent

Through: Mr. Rajiv Ranjan Dwivedi with Mr. Vishal, Advs.

+ O.M.P. (COMM) 345/2021, I.A. 15189/2021 & I.A. 15190/2021

MBL INFRASTRUCTURES LIMITED Petitioner

Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Abhishek Singh Pundir, Mr. Bankim Garg and Mr. Chaitanya Bansal, Advs.

versus

MS PILE FOUNDATION COMPANY Respondent

Through: Mr. Rajiv Ranjan Dwivedi with Mr. Vishal, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **18.01.2022**

1. The primary contention of the petitioner, assailing the impugned arbitral award is that, during the pendency of the arbitral proceedings, CIRP proceedings were initiated against the petitioner by the National Company Law Tribunal (NCLT), and an Interim Resolution Professional (IRP) was appointed. Thereafter, the resolution plan was

O.M.P. (COMM) 342/2021 & connected matter

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approved and the company is back on its feet.

2. The contention advanced is that, by application of Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC), read with the judgment of the Supreme Court in *Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*¹, the claim of the respondent against the petitioner stood extinguished.

3. Section 31(1) reads thus:

“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.”

4. Among the categories of entities to which Section 31(1) refers, which includes “creditors”, and “other stakeholders involved in the resolution plan”, the expression “creditor”, unfortunately, is not defined in the IBC, though it defines the expression “financial creditor” thus:

“5(7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to”

5. The IBC is also, apparently, not forthcoming on the entities who could be regarded as “stakeholders”, within the meaning of Section 31(1). Section 31(1), to the extent it may be relevant in the present case, covers creditors and stakeholders who are involved in the



resolution plan.

6. A query was put to Ms. Anusuya Salwan, learned Counsel for the petitioner, as to whether a person who merely had an inchoate claim against the petitioner, would be covered by Section 31(1) and as to whether the claim of such person, subsequently arbitrated in its favour, would stand extinguished by operation of the said provision read with the judgment of the Supreme Court in *Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*¹.

7. This aspect becomes relevant because the learned arbitrator has considered and rejected this plea, as advanced before him, on the ground that, till the award was passed, the respondent could not be regarded as a creditor of the petitioner.

8. Ms. Salwan seeks a few days' time to examine the matter and enlighten this Court about the legal position.

9. Re-notify on 28th January, 2022.

C.HARI SHANKAR, J

JANUARY 18, 2022
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¹ 2021 9 SCC 657