[2023] 15 S.C.R. 225 : 2023 INSC 963

SANJAY KUMAR AGARWAL
v.
STATE TAX OFFICER (1) & ANR.

(Review Petition (Civil) No.1620 of 2023)
In
(Civil Appeal No. 1661 of 2020)

OCTOBER 31, 2023

[A. S. BOPANNA AND BELA M. TRIVEDI*, JJ.]

Issue for consideration:

A Batch of five Review Petitions was filed by the Review Petitioners, aggrieved by the common judgment and order dated 06.09.2022 passed by the Supreme Court in Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020. Whether the Review Petitioners were able to make out any case within the ambit of Order XLVII of Supreme Court Rules, read with Order XLVII of CPC, for reviewing the impugned judgment.

Supreme Court Rules, 2013 – Or. XLVII – Code of Civil Procedure, 1908 – Or. XLVII – Review Petitioners placed heavy reliance on the observations made by a two Judge Bench of the Supreme Court in C.A. No. 7976 of 2019 (Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others) and submitted that the court in the impugned judgment had failed to consider the waterfall mechanism contained in Section 53, as also failed to consider other provisions of the IBC – Propriety:

Held: The said submission of the review petitioners was outrightly rejected for the simple reason that any passing reference of the impugned judgment made by the Bench of the equal strength could not be a ground for review – It is well settled proposition of law that a co-ordinate Bench cannot comment upon the discretion exercised or judgment rendered by another co-ordinate Bench of the same strength – If a Bench does not accept as correct the decision on a question of law of another Bench of equal strength, the only proper course to adopt would be to refer the matter to the larger Bench, for authoritative decision, otherwise the law would be thrown into the state of uncertainty by reason of conflicting decisions – The

* Author

submissions made by the Review Petitioners that the court in the impugned decision had failed to consider the waterfall mechanism as contained in s.53 and failed to consider other provisions of IBC, are factually incorrect – As evident from the bare reading of the impugned judgment, the Court had considered not only the Waterfall mechanism u/s. 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets – Therefore, the well-considered judgment sought to be reviewed does not fall within the scope and ambit of Review. [Paras 20, 24, 27]

Review – Grounds of Review:

Held: (i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record; (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so; (iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review; (iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected"; (v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise"; (vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided; (vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions; (viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review. [Para 16]

Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others [2021] 1 SCR 681 **: (2021) 3 SCC 1 – followed.**

Parsion Devi and Others vs. Sumitri Devi and Others [1997] 4 Suppl. SCR 470 **: (1997) 8 SCC 715;** *Shanti Conductors Private Limited vs. Assam State Electricity Board and Others* [2019] 16 SCR 252 **: (2020) 2**

SCC 677; *Shri Ram Sahu (Dead) Through Legal Representatives and Others vs. Vinod Kumar Rawat and Others* **(2021) 13 SCC 1;** *Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another* **R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345-8346 of 2018;** *Jai Sri Sahu vs. Rajdewan Dubey and Others* **[1962] SCR 558 : AIR 1962 SC 83;** *Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) Through L.Rs.* **[1975] 3 SCR 834 : (1975) 2 SCC 232;** *Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others* **[2010] 13 SCR 621 : (2010) 13 SCC 336 – relied on.**

Union of India vs. Nareshkumar Badrikumar Jagad & Others **(2019) 18 SCC 586;** *M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi* **[1980] 2 SCR 650 : (1980) 2 SCC 167;** *Sajjan Singh and Ors. vs. State of Rajasthan and Ors.* **[1965] SCR 933 : AIR 1965 SC 845;** *Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others* **C.A. No. 7976 of 2019;** *Ghanashyam Mishra and Sons Private Limited through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others* **(2021) 9 SCC 657;** *Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another* **(2022) 2 SCC 401 – referred to.**

INHERENT JURISDICTION: Review Petition (Civil) No.1620 of 2023 in Civil Appeal No.1661 of 2020.

From the Judgment and Order dated 06.09.2022 in C. A. No.1661 of 2020 of the Supreme Court of India.

With

Rev. Pet (C) No.1621 of 2023 in C.A. No.1661 of 2020, Rev. Pet (C) No. 1622 of 2023 in C.A. No.1661 of 2020 and Rev. Pet (C) No.236 of 2023 in C.A. No.2568 of 2020 and Rev. Pet (C) No.1623 of 2023 in C.A. No.1661 of 2020.

Naveen Pahwa, Dhruv Mehta, Harish N Salve, Ramji Srinivasan, Maninder Singh, Sumesh Dhawan, Jaideep Gupta, Siddharth Bhatnagar, Sr. Advs., M/s. Lawfic, M.s Vishnu Sankar, Atul Sharma, Sriram Parakkat, Vikram Choudhary, Aditi Sharma, Aditya Santosh, Ankur Kashyap, Ayush Agarwala, Ms. Megharanjani Chandu, Rishab Agarwal, Ajith S Ranganathan, Rohit Rajershi, Aman Bajaj, Ms. Preety Choudhary, Shyam R Agarwal, Arnav Narain, Rajesh Srivastava, Gaurav Verma, Neeraj Dutt Gaur, Sanjay Singh, Sanjay Kapur, Ms. Megha Karnwal, Surya Prakash, Devesh Dubey, Arjun Bhatia, Ms. Mayuri Raghuvanshi, Vyom Raghuvanshi, Ms. Akanksha Rathore, Dhruv Sharma, Ms. Namrata Saraogi, Karthik Pandey, Ms. Aastha Mehta, Ms. Deepanwita Priyanka, Ms. Prerna Mohapatra, Ms. Yasha Goyal, Vatsala Kak, Mahesh Agarwal, Raghav Dembla, Shaurya Shyam, Ms. Geetika Sharma, E. C. Agrawala, Vikas Mehta, Ms. Rashi Rampal, Arvind Thapliyal, Dhruv Devan, Surya Kapoor, Ms. Saravana Vasanta, Siddhant Grover, Siddharth Pandey, Ms. Pracheta Kar, Aditya Sidhra, Nadeem Afroz, Kunal Chatterji, Advs. for the appearing parties.

The Judgment of the Court was delivered by

BELA M. TRIVEDI, J.

1. This batch of five Review Petitions seeks to review the common Judgment and Order dated 06.09.2022 passed by this Court in Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020. Both the said appeals were preferred by the State Tax Officer-appellant.

2. Civil Appeal No. 1661 of 2020 was preferred by the Appellant-State Tax Officer against the Respondent-Rainbow Papers Limited (Corporate Debtor), being aggrieved by the Judgment and Order dated 19.12.2019 passed by the National Company Law Appellate Tribunal (hereinafter referred to as the 'NCLAT'), dismissing the Company Appeal (At) (INs) No. 404 of 2019 filed by the appellant. The said company Appeal was filed against the order dated 27.02.2019 passed by the Adjudicating Authority, rejecting the Application being I.A. No. 224/271/272/337 of 2018 and P-01/2019 in CP No. (IB) 88/9/NCLT/AHM/2017 filed by the appellants, in which it was held that the appellant cannot claim first charge over the property of the

Corporate Debtor, as Section 48 of the Gujarat Value Added Tax 2003 (hereinafter referred to as the 'GVAT Act') cannot prevail over Section 53 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as the IBC).

3. Civil Appeal No. 2568 of 2020 was preferred by the appellant- State Tax Officer against the Respondents- Mr. Chandra Prakash Jain and M/s. Mekaster Engineering Ltd., being aggrieved by the Order dated 23.01.2020 passed by the NCLAT in Company Appeal (At) (Ins) No. 1193 of 2019. The NCALT by the said judgment and order had dismissed the said Appeal of the appellant on the basis of the judgment and order dated 19.12.2019 passed in Company Appeal (At) (Insolvency No. 404 of 2019) (which was the order under challenge in Civil Appeal No.1661 of 2020).

4. This Court while allowing the said Appeals vide the impugned order dated 06.09.2022 held as under:

"56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(l)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act. are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority.

58. We are constrained to hold that the Appellate Authority (NCLAT) and the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant. As observed above, delay in filing a claim cannot be the sole ground for rejecting the claim.

59. The appeals are allowed. The impugned orders are set aside. The Resolution plan approved by the CoC is also set aside. The Resolution Professional may consider a fresh Resolution Plan in the

light of the observations made above. However, this judgment and order will not, prevent the Resolution Applicant from submitting a plan in the light of the observations made above, making provisions for the dues of the statutory creditors like the appellant.

60. There shall be no order as to costs".

5. The following five Review Petitions have been filed by the Review Petitioners being aggrieved by the said common judgment and order dated 06.09.2022 passed by this Court.

(i) The Review Petition (Civil) No. 1620 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the petitioner – Sanjay Kumar Agarwal, who happened to be the Liquidator of Biotor Industries Limited (previously known as Jayant Oils and Derivatives Private Limited) ('Corporate Debtor') a registered dealer under the Gujarat Value Added Tax 2003 Act (hereinafter referred to as the 'GVAT Act') and the Central Sales Tax Act, 1956 (hereinafter referred to as the 'Sales Tax Act'). The Review Petitioner was not a party to the proceedings of Civil Appeal No. 1661 of 2020, however, has filed the Review Petition claiming to be an "aggrieved person" on the ground that the impugned order dated 06.09.2022 passed by this Court would have direct effect on the proceedings pending between the Review Petitioner and the Gujarat Sales Tax Authority before the Gujarat High Court in Special Civil Application No. 23256 of 2019.

(ii) The Review Petition No. 1621 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner – Ramchandra Dallaram Choudhary, who happened to be the Resolution Professional (hereinafter referred to as the RP) of the Corporate Debtor, "Rainbow Papers Limited" – and was the respondent in the proceedings before the National Company Law Tribunal (hereinafter referred to as the 'NCLT') in Intervention Application No. P-01 of 2019 in CP No. 88/9/NCLT/AHM/2017 and was respondent no. 2 before the NCLAT in Company Appeal (At) (Ins) No. 404 of 2019). According

to the Review Petitioner, he was not made party in the Civil Appeal No. 1661 of 2020 filed before this Court and therefore was aggrieved by the said order.

(iii) The Review Petition (Civil) No. 1622 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner State Bank of India, on behalf of the Consortium of lenders of the Biotor Industries Limited, a company under liquidation. The Review petitioner was not a party to the proceedings of Civil Appeal No. 1661 of 2020, however, claims to be an "aggrieved person" as according to the Review Petitioner, the impugned judgment had an effect over the proceedings pending between the Review Petitioner and the Sales Tax authorities, Vadodara in Writ Petition being SCA No. 23256 of 2019 before the Gujarat High Court.

(iv) The Review Petition (Civil) No. 236 of 2023 in Civil Appeal No. 2568 of 2020 has been filed by the Review Petitioners – Chandra Prakash Jain and Anr., Resolution Professional of M/s. Mekaster Engineering Ltd., and M/s. Mekaster Engineering Ltd (Corporate Debtor), who were the respondents in Civil Appeal No. 2568 of 2020 filed by the Appellant – State Tax Officer. According to the petitioners, they are aggrieved by the common impugned order dated 06.09.2022 passed by this Court as the same was passed without taking into consideration the law laid down by this Court and the provisions of IBC.

(v) The Review Petition (Civil) No. 1623 of 2023 in Civil Appeal No. 1661 of 2020 has been filed by the Review Petitioner-Indian Overseas Bank, which was one of the members of the Committee of creditors constituted subsequent to the commencement of Corporate Insolvency Resolution Process (CIRP) of the M/s. Rainbow Papers Limited (Corporate Debtor). The Review Petitioner was not a party to the proceedings in Civil Appeal No. 1661 of 2020, however, is seeking review being aggrieved by the impugned judgment dated 06.09.2022.

6. This Court vide the order dated 13th November, 2022, had allowed the Applications seeking permission to file Review Petitions and also allowed the applications seeking Intervention/ Impleadment.

Scope of Review:

7. At the outset, it may be stated that the power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under Article 145.Supreme Court in exercise of the powers conferred under Article 145 of the Constitution of India has framed the Supreme Court Rules, 2013. The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither Order XLVII CPC nor Order XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Even a third party to the proceedings, if he considers himself to be an "aggrieved person," may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect.[1] In view of the said legal position, the Review Petitioners who claimed to be the "aggrieved persons" by the impugned judgment dated 06.09.2022, were permitted to file Review Petitions and were heard by the Court.

8. Before adverting to the contentions raised by the learned counsels for the parties, let us regurgitate the well settled law on the scope of review as contemplated in Order XLVII of the Supreme Court Rules read with Order XLVII of CPC.

9. In the words of **Krishna Iyer J.**, (as His Lordship then was) "a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result…… A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace."[2]

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1 (2019) 18 SCC 586, ***Union of India vs. Nareshkumar Badrikumar Jagad & Others***

2 (1980) 2 SCC 167, ***M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi***

10. It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.[3]

11. In ***Parsion Devi and Others vs. Sumitri Devi and Others***[4], this Court made very pivotal observations: -

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

12. Again, in ***Shanti Conductors Private Limited vs. Assam State Electricity Board and Others***[5], a three Judge Bench of this Court following ***Parsion Devi and Others vs. Sumitri Devi and Others*** (supra) dismissed the review petitions holding that the scope of review is limited and under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

13. Recently, in ***Shri Ram Sahu (Dead) Through Legal Representatives and Others vs. Vinod Kumar Rawat and Others***[6], this Court restated the law with regard to the scope of review under Section 114 read with Order XLVII of CPC.

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3 AIR 1965 SC 845, ***Sajjan Singh and Ors. vs. State of Rajasthan and Ors.***
4 (1997) 8 SCC 715
5 (2020) 2 SCC 677
6 (2021) 13 SCC 1

14. In ***R.P. (C) Nos. 1273-1274 of 2021 in Civil Appeal Nos. 8345-8346 of 2018 (Arun Dev Upadhyaya vs. Integrated Sales Service Limited & Another)***, this Court reiterated the law and held that: -

> "15. From the above, it is evident that a power to review cannot be exercised as an appellate power and has to be strictly confined to the scope and ambit of Order XLVII Rule 1 CPC. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions."

15. It is very pertinent to note that recently the Constitution Bench in ***Beghar Foundation vs. Justice K.S. Puttaswamy (Retired) and Others***[7], held that even the change in law or subsequent decision/ judgment of co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review.

16. The gist of the afore-stated decisions is that: -

    (i) A judgment is open to review *inter alia* if there is a mistake or an error apparent on the face of the record.

    (ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

    (iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

    (iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

    (v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

7 (2021) 3 SCC 1

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

Analysis:

17. Keeping in view the afore-stated legal position, let us examine whether the Review Petitioners have been able to make out any case within the ambit of Order XLVII of Supreme Court Rules, read with Order XLVII of CPC, for reviewing the impugned judgment.

18. We have heard Mr. Harish N Salve, Mr. Naveen Pahwa, Mr. Dhruv Mehta, Mr. Ramji Srinivasan, Mr. Siddharth Bhatnagar, and Mr. Sumesh Dhawan, respective learned Senior Counsels and other learned counsels for the Review Petitioners/ Intervenors, as also Mr. Maninder Singh, learned Senior Counsel and Ms. Aastha Mehta, learned Counsel for the Respondents.

19. The learned Senior Counsels and learned Counsels for the Review Petitioners/ Intervenors placing heavy reliance on the observations made by a two Judge Bench of this Court in ***C.A. No. 7976 of 2019 (Paschim Anchal Vidyut Vitran Nigam Limited vs. Raman Ispat Private Limited and Others),*** delivered on 17th July, 2023, submitted that the court in the impugned judgment had failed to consider the waterfall mechanism contained in Section 53, as also failed to consider other provisions of the IBC. They have relied upon the observations made by the co-ordinate Bench in the following paragraph: -

"49. Rainbow Papers (supra) did not notice the 'waterfall mechanism' under Section 53 – the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers (supra) was in the context of a resolution process and not during liquidation. Section

53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the court in Rainbow Papers (supra) or was missed altogether. In any event, the judgment has not taken note of the provisions of the IBC which treat the dues payable to secured creditors at a higher footing than dues payable to Central or State Government."

20. Taking recourse to the said observations made by the co-ordinate bench, the learned Counsels for the Review Petitioners have urged to review the impugned judgment. The said submission of the learned Counsels for the review petitioners deserves to be outrightly rejected for the simple reason that any passing reference of the impugned judgment made by the Bench of the equal strength could not be a ground for review. It is well settled proposition of law that a co-ordinate Bench cannot comment upon the discretion exercised or judgment rendered by another co-ordinate Bench of the same strength. If a Bench does not accept as correct the decision on a question of law of another Bench of equal strength, the only proper course to adopt would be to refer the matter to the larger Bench, for authoritative decision, otherwise the law would be thrown into the state of uncertainty by reason of conflicting decisions.

21. In ***JaiSri Sahu vs. Rajdewan Dubey and Others***[8], a Bench of four Judges have made very pertinent observations in this regard: -

"11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled."

8 AIR 1962 SC 83

22. In ***Mamleshwar Prasad and Another vs. Kanhaiya Lal (Dead) Through L.Rs.***[9], it was observed that: -

> "7. Certainty of the law, consistency of rulings and comity of courts – all flowering from the same principle – converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission."

23. A precise observations made by a three Judge Bench in ***Sant Lal Gupta and Others vs. Modern Cooperative Group Housing Society Limited and Others***[10], are worth noting –

> "17. A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel, Sub-Committee of Judicial Accountability vs. Union of India, and State of Tripura vs. Tripura Bar Association.)"

24. Apart from the well-settled legal position that a co-ordinate Bench cannot comment upon the judgment rendered by another co-ordinate Bench of equal strength and that subsequent decision or a judgment of a co-ordinate Bench or larger Bench by itself cannot be regarded as a ground for review, the submissions made by the learned Counsels for the Review Petitioners that the court in the impugned decision had failed to consider the waterfall mechanism as contained in Section 53 and failed to consider other provisions of IBC, are factually incorrect. As evident from the bare reading of the

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9 (1975) 2 SCC 232
10 (2010) 13 SCC 336

impugned judgment, the Court had considered not only the Waterfall mechanism under Section 53 of IBC but also the other provisions of the IBC for deciding the priority for the purpose of distributing the proceeds from the sale as liquidation assets.

25. To be precise, the Court in the impugned judgment had categorically reproduced Section 53 in Paragraph 20, other provisions of IBC along with the Regulations of 2016 in Paragraph 21, and the subsequent amendments in the Regulations of 2018, with regard to the submission of claims to be made by the creditors in Paragraphs 22 & 23 of the judgment. The Court in the impugned judgment has also considered the earlier decisions of this Court in case of ***Ghanashyam Mishra and Sons Private Limited through the authorized signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others***[11] in Paragraph 42. The decision in case of ***Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and Another***[12] in Paragraph 47, and thereafter observed as under: -

"48. A resolution plan which does not meet the requirements of SubSection (2) of Section 30 of the IBC, would be invalid and not binding on the Central Government, any State Government, any statutory or other authority, any financial creditor, or other creditor to whom a debt in respect of dues arising under any law for the time being in force is owed. Such a resolution plan would not bind the State when there are outstanding statutory dues of a Corporate Debtor.

49. Section 31(1) of the IBC which empowers the Adjudicating Authority to approve a Resolution Plan uses the expression "it shall by order approve the resolution plan which shall be binding ... " subject to the condition that the Resolution Plan meets the requirements of subsection (2) of Section 30. If a Resolution Plan meets the requirements, the Adjudicating Authority is mandatorily required to approve the Resolution Plan. On the other hand, Sub-section (2)

11 (2021) 9 SCC 657
12 (2022) 2 SCC 401

of Section 31, which enables the Adjudicating Authority to reject a Resolution Plan which does not conform to the requirements referred to in sub-section (1) of Section 31, uses the expression "may".

50. Ordinarily, the use of the word "shall" connotes a mandate/binding direction, while use of the expression "may" connotes discretion. If statute says, a person may do a thing, he may also not do that thing. Even if Section 31(2) is construed to confer discretionary power on the Adjudicating Authority to reject a Resolution Plan, it has to be kept in mind that discretionary power cannot be exercised arbitrarily, whimsically or without proper application of mind to the facts and circumstances which require discretion to be exercised one way or the other."

26. After considering the Waterfall mechanism as contemplated in Section 53 and other provisions of IBC for the purpose of deciding as to whether Section 53 IBC would override Section 48 of the GVAT Act, it was finally concluded in the impugned order as under: -

"55. In our considered view, the NCLAT clearly erred in its observation that Section 53 of the IBC over-rides Section 48 of the GVAT Act. Section 53 of the IBC begins with a non-obstante clause which reads: - "Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority. .....

56. Section 48 of the GVAT Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(I)(b)(ii), the debts owed to a secured creditor, which would include the State under the GVAT Act are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.

57. As observed above, the State is a secured creditor under the GVAT Act. Section 3(30) of the IBC defines secured creditor to mean a creditor in favour of whom security interest is credited. Such security interest could be created by operation of law. The definition of secured creditor in the IBC does not exclude any Government or Governmental Authority."

27. In view of the above stated position, we are of the opinion that the well-considered judgment sought to be reviewed does not fall within the scope and ambit of Review. The learned Counsels for the Review Petitioners have failed to make out any mistake or error apparent on the face of record in the impugned judgment, and have failed to bring the case within the parameters laid down by this Court in various decision for reviewing the impugned judgment. Since we are not inclined to entertain these Review Petitions, we do not propose to deal with the other submissions made by the learned Counsels for the parties on merits.

28. In that view of the matter, all the Review Petitions are dismissed.

Headnotes prepared by: Ankit Gyan

Result of the case:
Review Petitions dismissed.