

IN THE COURT OF SH.SHAILENDER MALIK, SPECIAL JUDGE (PC ACT), CBI-21: ROUSE AVENUE COURT COMPLEX, NEW DELHI

ED vs. P.K. Tewari & others
CT Cases No.22/2021

ORDER

1. An application u/s 8(8) of PML Act has been moved by applicant/ Liquidator (erstwhile resolution professional) of companies M/s Pearl Vision Pvt. Ltd. and M/s Pixion Media Pvt. Ltd. (hereinafter referred as corporate debtors), as appointed by Hon'ble National Company Law Appellate Tribunal (NCLT) vide order dated 22.08.2019. One of the accused in this case namely P.K. Tewari is stated to be suspended director in above mentioned corporate debtors.

2. In view of the orders from Hon'ble NCLT applicant /Liquidator is bound to liquidate the assets of corporate debtors. However since it was the allegation that accused P.K. Tewari along with his sons being directors of the above mentioned companies had taken the loan facility from group of banks including PNB, Indian Overseas Bank, Oriental Bank of Commerce, State Bank of India etc. during period from 2005 to 2011, allegedly with a view to cheat the consortium of banks by obtaining that credit facility allegedly on the basis of forged documents for buying broadcasting equipments for uplinking of signals to satellite and to set up a digital studio at Noida, Chennai, Mumbai and Kolkata. While giving details of the background, it is mentioned that different loan facilities were availed as per the details given in para 2.1 to 2.5. Since

loan could not be repaid and therefore Indian Overseas Bank in its capacity of lead bank of consortium, filed petition u/s 7 of Insolvency and Bankruptcy Code 2016 for initiating corporate insolvency resolution process. An applicant/liquidator was appointed as interim resolution professional and subsequently confirmed as resolution professional. Applicant stated to have obtained relevant information, documents for initiating CIRP and in that process it came into the notice that Enforcement Directorate on 27.12.2019 provisionally attached eleven properties of above mentioned companies out of which liquidator/applicant is concerned with the properties, as per the details given in para 2.11 which are :

(i) Unit No.1 to 7 on 21st Floor, Lotus Neelkamal Business Park, Off New Link Road, Mumbai-400053.

(ii) 1 to 7 on 19th Floor, Lotus Neelkamal Business Park, Off New Link Road, Andheri West, Mumbai-400053.

(iii) 6th Floor, No.41, Jeyanth Tech Park, 6th Floor, Mount Poonamalee High Road, Chennai-600089.

(iv) FC-13, Film City, Sector-16A, Noida, Dist. Gautam Budh Nagar, Uttar Pradesh.

(v) 202, 2nd Floor, Landmark Bandra (West), Mumbai-400050.

3. Provisional attachment of those properties including above mentioned five properties, were confirmed by Adjudicating Authority. Applicant/liquidator in the meantime filed an IA No.2866/2020 before Hon'ble NCLT u/s 35(1)(n) r/w Section 32A(2) of IBC 2016, seeking release of above said five properties provisionally attached. In the meantime once provisional attachment of those properties was confirmed,

Liquidator had also filed an appeal before Appellate Authority under PML Act which is stated to be under consideration.

4. It is stated that Hon'ble NCLT pleased to extend the liquidation period of corporate debtors for six months i.e. 20.01.2024 to 20.07.2024. It is submitted by Id. Counsel that such period has been further extended till 21.01.2025. It is further mentioned that auction purchaser had approached the Hon'ble High Court and same was allowed vide order dated 21.03.2024 (Annexure A-10).

5. In this factual background the liquidator seeks release of properties as enumerated in clause (a) of prayer clause.

6. This court need not to go into the grounds taken in the application because at the outset Id. SPP for the ED while appearing today has given the statement separately recorded to the effect that ED has no objection if the prayer of the liquidator/applicant herein may be allowed in terms of Section 8(8) of PML Act.

7. Ms.Riya Arora, Id. Counsel for A-1 P.K. Tewari however submits that such application is not maintainable as she submits that second proviso to section 8(8) of PML Act, such application can be entertained and allowed by Special Court only during the trial. Moreover Id. Counsel submits that out of the properties sought to be released by official liquidator, property at clause no.(ii) to (v) are admittedly belong to M/s Pearl Vision and that company is not the accused in the present proceedings.

8. Ms.Mayuri Raghuvanshi, Id. Counsel for applicant/official liquidator submits that by a common order of provisional attachment

Deputy Director of ED attached eleven properties of Pixion Media Pvt. Ltd as well as of Pearl Vision. It is submitted that official liquidator is concerned with only five properties as sought to be released in the present application. Ld. Counsel submits that since those properties were provisionally attached and attachment order was subsequently confirmed, therefore one of the remedy available with the liquidator was to approach this Court being Special Court holding trial of ED matter. Ld. Counsel submits that liquidation process is time bound and required to be concluded at the earliest as money involved is public money. Ld. Counsel further argued that Section 8(8) of PML Act empowers this court being Special Court to entertain and allow the application, more particularly when ED has no objection regarding the release of those properties for the purpose of liquidation. Ld. Counsel for the applicant further relied upon judgment of Hon'ble Supreme Court in **Directorate of Enforcement vs. JSW Steels Limited and others** (SLP No.29327/19 order dated 11.12.2024) and submitted that in effective order of the Apex Court it is laid down that properties of corporate debtors, provisionally attached in that matter can be ordered to be released in view of Section 8(8) of PML Act r/w Rule 3A of PML (Restoration of Property) Rules.

9. Having heard the submissions, although there is no much dispute in the application as only respondent/non-applicant in the present application is ED and ld. SPP for ED has given the statement to the effect that it has no objection if the properties as mentioned in the prayer clause may be ordered be released u/s 8(8) of PML Act. Accused P.K. Tewari is not the respondent/non-applicant in the present application, however

considering the submissions made by Id. Counsel appearing on behalf of that accused. First of all it be noted that proceedings of the money laundering case have been stayed on account of the fact that accused P.K. Tewari has taken the plea in terms of Section 329 Cr.PC on the ground of being of unsound mind. In an inquiry regarding that aspect, on two occasions medical board was constituted for assessing mental health of that accused and to assess whether accused can defend the proceedings as per law. After examining the medical board report, lately by order dated 15.01.2024 Id. Predecessor of this Court concluded that Sh.P.K.

Tewari is capable of entering into defence and can stand trial.

10. That order dated 15.01.2024 has been challenged in the Hon'ble High Court by way of CrI.MC No.1094/2024 wherein Hon'ble High Court on 09.02.2024 stayed the proceedings of the trial. In that manner proceedings are stayed.

11. Fact remains that the application moved on behalf of liquidator is required to be decided as it is not part of the proceeding/trial pending before this court and otherwise also the claim of the official liquidator appointed by Hon'ble NCLT has not been disputed by ED and the properties to be released are to be liquidated in time bound manner for giving effect to the judicial process.

12. So far as the argument of Id. Counsel appearing for accused P.K. Tewari regarding non-maintainability of the application, this court does not find that application cannot be maintained at this stage even when the charges have not been framed. Section 8 comes under Chapter III of PML Act, which provides regarding attachment of properties, adjudication

and confiscation regarding the same. Section 5 lays down regarding provisional attachment of any property by an officer not below the rank of Deputy Director, if he has reason to believe (a) any person is in possession of proceeds of crime; (b) such proceeds of crime are likely to be concealed, transferred or debt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds of crime. Section 6 provides regarding adjudicating authority composition and power of the same and Section 8 lays down regarding adjudication by Adjudicating Authority in case of provisional attachment, on complaint u/s 5(5) and on application u/s 17(4) or u/s 18(10) of PML Act.

13. Section 8(5) then provides that upon conclusion of the trial of offence of money laundering, Special Court if concludes that offence of money laundering has been committed, it shall order confiscation of the property, proceeds of crime to Central Government. It is in context of Section 8(5), sub-section (8) of Section 8 carves out exceptional situation providing that where a property stands confiscated to Central Government u/s 8(5), Special Court in such manner as may be prescribed, may direct Central Government to restore such confiscated property or the part thereof of claimant having legitimate interest in said property.

14. First proviso of Section 8(8) lays down that Special Court would not consider such claim unless it is satisfied that claimant acted in good faith and suffered loss despite having taken reasonable precautions and being not involved in offence of money laundering. **Second proviso** to Section 8(8) which is relevant here, lays down that “*Special Court may if it thinks fit, consider the claim of claimant for the purpose of restoration*”

of such property during the trial of the case in such manner as may be prescribed’.

15. Thus second proviso to Section 8(8), needs to be read with Section 8(5), which provides for confiscation of property to Central Government, upon conclusion of trial when Special Court concludes that offence of money laundering has been committed. As such Section 8(5) operates only when trial of offence of money laundering concludes and Special Court finds the offence having been made out, thereupon can order for confiscation of property.

16. However the purpose of second proviso to Section 8(8) is to lay down those situations when property which can be confiscated to State/ Central Government, at the conclusion of trial, can be ordered to be released even during the trial. Expression “trial” in second proviso to Section 8(8) when read with Section 8(5), simply means that any proceedings before the conclusion of the trial because Section 8 provides certain situations regarding confiscation of properties upon conclusion of trial. Therefore word ‘trial’ needs to be interpreted holistically and not technically. In the context of second proviso of Section 8(8) expression “trial” includes any proceedings pending before the Special Court till the conclusion of the trial. Therefore trial does not mean as it is normally understood to be the proceedings started only after framing of charge. No doubt generally speaking trial means proceeding started on framing of charge, however in the context of second proviso of Section 8(8) of PML Act, to be read in the context of Section 8(5) simply means that any proceedings when pending before Special Judge, when even actual trial

might not have started. Therefore in the opinion of this Court, this application under second proviso of Section 8(8) can be entertained even when the actual trial in the present case might not have started. This provision needs to be interpreted objectively. Because this second proviso was contemplated by the legislature to meet those situations wherein properties can be released even when the trial might not have concluded and order of confiscation has not been passed in terms of Section 8(5) of PML Act.

17. So far as the argument with regard to the fact that certain properties are of a company which is not the accused in the present case, can also not be entertained because those properties were provisionally attached by the ED in terms of Section 5(1) of PML Act, which means that IO of the ED had prima facie material that the said property was involved in money laundering or proceeds of crime were used for purchase of that property. Provisional attachment was subsequently affirmed by the Adjudicating Authority. In such circumstances when section 8 can be invoked, this court being Special Court can invoke sub section (8) of section 8 of PML Act for release of those properties of a company which may not be an accused presently.

18. Thus for the reasons discussed above application of the official liquidator is allowed and properties i.e. (i) Unit No.1 to 7 on 21st Floor, Lotus Neelkamal Business Park, Off New Link Road, Mumbai-400053; (ii) 1 to 7 on 19th Floor, Lotus Neelkamal Business Park, Off New Link Road, Andheri West, Mumbai-400053; (iii) 6th Floor, No.41, Jeyanth Tech Park, 6th Floor, Mount Poonamalee High Road, Chennai-600089;

(iv)FC-13, Film City, Sector-16A, Noida, Dist. Gautam Budh Nagar, Uttar Pradesh; and (v)202, 2nd Floor, Landmark Bandra (West), Mumbai-400050 are ordered to be released for giving effect to the order of Hon'ble NCLT. Application accordingly disposed off.

Announced in the open Court
on 29.01.2025

SHELENDER MALIK Digitally signed
by SHELENDER MALIK
Date: 2025.01.29
13:20:50 +0530

(Shailender Malik)
Spl. Judge (PC Act) CBI-21
RACC/New Delhi