

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

IA/2041/2021

IN

CP No. 1168/(IB)-MB-V/2020

Under Section 60(5) of the Insolvency and
Bankruptcy Code, 2016

Piyush Kisanlal Jani

.....Applicant/Resolution Professional

V/s

Directorate of Enforcement

.....Respondent

In the matter of

Mangalam Vanijya Private Limited

Office No. 14, 1st Floor, Plumber House, 557, J.
S. S. Road, Chira Bazar, Mumbai - 400002

... Petitioner/Financial Creditor

V/s

Reward Business Solutions Private Limited

Caculo Enclave St. Inez Panaji Goa -403001.

... Respondent/Corporate Debtor

Order Pronounced on: 18.12.2023

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Sanjiv Dutt, Member (Technical)

Appearances through Hybrid Mode:

For the Applicant/Resolution Professional: Adv. Neha Bhide (Physical Mode)

For the Respondent: Adv. Ashish Kamat (Video Conference)

ORDER

Per: Reeta Kohli Member (Judicial)

Brief Facts of the case

1. The Applicant in this case was appointed as the Resolution Professional of the Corporate Debtor at the meeting of the Committee of Creditors held on 28.04.2021. This Application is filed by the Applicant Resolution Professional with the prayer of getting two assets of the Corporate Debtor, namely Current Account bearing *Bank Account Number 3179xxxxxxxx309* maintained with Union Bank of India, Fort Branch and Property situated at Unit Nos. 801 and 802, Tower B, Peninsula Business Park, Lower Parel, Mumbai, released from Provisional Attachment by the Enforcement Directorate (ED). The abovementioned assets were provisionally attached by the ED under section 5(1) of Prevention of Money Laundering Act, 2002 (PMLA 2002) on 27.11.2020 vide Provisional Attachment Order No. 15/2020.
2. The contention of the Counsel for the Applicant/Resolution Professional is that as per section 5(3) of PMLA 2002, the provisional attachment stands valid until the expiry of 180 days from the date of the order or till it is confirmed [under Section 8(3)] by the ED, whichever is earlier. In the instant case, the said 180 days had lapsed on 26.05.2021 and the provisional attachment was never confirmed by the ED. Therefore, it is argued that ED had become *functus officio* vis a vis the said properties of the Corporate Debtor.

The Counsel representing the Applicant/Resolution Professional submitted that in view of the fact that no Attachment Order under Section 8(3) of PMLA, 2002 had been issued so far by the ED, therefore, on expiry of 180 days from the date of Provisional Attachment Order, the order had become non-existent. It is contended that the asset has already stood released on account of failure of ED to confirm the provisional attachment within the statutory time limit of 180 days as expressly and clearly mentioned in Section 5(3) of the PMLA, 2002. The Counsel further submitted that the indulgence of extension of time granted by the Hon'ble Supreme Court in view of Covid 19 is not available to ED. To substantiate this argument, reference was made to the case of **Hiren Panchal and Anr. Vs. Union of India and Ors [WPA 9699 of 2022]** wherein the Hon'ble Supreme Court has held that extension of time limit on account of the Covid 19 Pandemic will not extend the statutory time limit of 180 days available to the ED under the PMLA, 2002 to confirm an order of provisional attachment.

3. On the other hand, the Counsel for the ED has vehemently argued that National Company Law Tribunal (NCLT) lacks the jurisdiction to entertain this Application. The Counsel submitted that PMLA 2002 being a Special and Central Act would supersede IBC, 2016. The Counsel further submitted that ED has already approached the Hon'ble Delhi High Court for relaxing the statutory time limit of 180 days as the order of provisional attachment could not be confirmed within the said period of 180 days on account of Covid 19 pandemic. The said subject matter is thus said to be subjudice before the Hon'ble High Court. Hence, in view of this fact also, the Hon'ble NCLT ought not to grant any indulgence in the present Application.

Issues

The questions for consideration in the present case are as follows:

1. *Does non-issuance of confirmation of Provisional Attachment Order within 180 days [on account of Covid 19 Pandemic] imply the release of Provisionally Attached Property?*

2. *Whether PMLA 2002 would prevail over IBC, 2016?*

Order

4. In view of the above facts and circumstances and after appreciating the fact that Resolution Professional is duty bound to ensure maximization of assets of the Corporate Debtor and also in view of the fact that he is duty bound to consolidate all the assets of the Corporate Debtor, the Present Application for the release of the Attached Properties is well within the objectives of IBC, 2016.
5. Additionally, from perusal of the judgement of the Hon'ble Supreme Court in **Hiren Panchal and Anr. Vs. Union of India and Ors. [WPA 9699 of 2022]**, it is crystal clear that the extension of the stipulated time limit of 180 days under PMLA 2002 with respect to provisional attachment cannot be claimed on account of Covid 19 Pandemic. Thus, the lapse of statutory time limit of 180 days under section 5(1) of PMLA 2002, automatically implies release of the property from provisional attachment if not confirmed by the ED under section 8(3) of the PMLA, 2002. The ED though can/may exercise its right to confirm the provisional attachment within the said time limit of 180 days only and no further.

Thus, the first issue stands resolved with the answer that non-issuance of confirmation of Provisional Attachment Order within 180 days even though on account of Covid 19 Pandemic, implies the release of Provisionally Attached Property.

6. As far as the issue of relative primacy of PMLA, 2002 vis a vis IBC, 2016 is concerned, the important relevant provisions of both the statutes deserve to be appreciated. Non Obstante Clause of PMLA, 2002 and Non Obstante Clause of IBC, 2016 deserve to be appreciated in the backdrop of the objectives of the statutes.

Section 71 of PMLA Act, 2002 which reads as follows:

“The Provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

Section 238 of the IBC,2016 which reads as under:

“The Provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Even though both the statutes are Special Legislations and in view of the fact that both the statutes have Non Obstante Clauses, thus the one later in point of time shall get precedence over the former. The legislature at the time of introducing Non Obstante Clause under IBC, 2016 was well aware of the Non Obstante Clause of PMLA, 2002 thus making it evident that Section 238 of IBC, 2016 has to get precedence over section 71 of PMLA, 2002. Otherwise also Section 238 of IBC, 2016 further states *“any instrument having effect by virtue of any such law”* means supremacy is granted to IBC 2016 over any other law.

7. A further perusal of both these statutes makes it abundantly clear that there has to be harmonious construction of both the statutes. Sections 31 and 53 of IBC, 2016 and Section 8(8) of PMLA, 2002 both aim to protect the legitimate interests of the Secured Creditors/Financial Creditors. The ultimate beneficiaries under both statutes are the Secured Creditors/ Financial Institutions. In the case of IBC 2016 secured creditors file their claims before the Resolution Professional. Section 31 of IBC, 2016 provides for approval of Resolution Plan in CIRP whereas Section 53 of IBC provides for Distribution of assets. Similarly, under Section 8(8) of PMLA, 2002 the Special Court may direct the Central Government to restore the confiscated property or part thereof to the claimant having legitimate interest therein. The object of IBC, 2016 is to expedite the insolvency process and to secure maximization of value of assets of Corporate Debtor for distribution to all stake

holders. PMLA, 2002 contemplates combating money laundering, confiscating properties obtained through ill-gotten means and dealing with proceeds of crime. Thus in view of the larger objectives of both the statutes, both deserve to be read harmoniously keeping in view the larger purpose and objectives of the Acts.

In addition the Hon'ble NCLAT in **The Directorate of Enforcement vs. Manoj Kumar Agarwal And Ors. [(2021) ibclaw.in 182 NCLAT]** has held that there is no conflict between PMLA 2002 and IBC 2016 and even if a property belonging to the Corporate Debtor has been attached under the provisions of PMLA, 2002 and thereafter if CIRP is initiated, the property should become available to fulfil objects of IBC, 2016 till a resolution takes place or sale of liquidation assets occurs in terms of Section 32A of IBC, 2016.

The Hon'ble High Court of Delhi in the case of **Rajiv Chakraborty Resolution Professional of EIEL vs. Directorate of Enforcement [(2022) ibclaw.in 257 HC]** has held that Section 32A of IBC being a later enactment would "exclude the operation of PMLA". In case of tussle between two special laws it becomes duty of the Court to determine the actual intent and scope of the two enactments. Further, the Court observed that Section 32A of the IBC was inserted through 1st Amendment (2020) which being the last expression of intent of the Legislature paved a way to the primacy of IBC over and above the PMLA. In this regard, it has been categorically stated that "through Section 32A, the Legislature has authoritatively spoken of the terminal point where after the powers under the PMLA would not be exercisable".

Thus, the second issue too stands resolved with the answer that IBC, 2016 and PMLA, 2002 are capable of harmonious construction but in case of conflict between the two, IBC, 2016 would prevail over PMLA, 2002.

8. In the present case, Corporate Insolvency Resolution Process (CIRP) under IBC, 2016 was initiated against the Corporate Debtor on 18.02.2021 as a result of a petition filed against it by the Financial Creditor under Section 7 of IBC, 2016. Thus, in view of the CIRP process being initiated it becomes the duty of the Resolution Professional to

consolidate all the assets of the Corporate debtor to fulfil the objects of IBC, 2016. Admission of the Corporate Debtor into CIRP brings Section 14 of IBC, 2016 into operation. The aforementioned section deals with imposition of moratorium on the commencement of CIRP which resultantly imposes a prohibition on a certain set of legal actions in relation to the properties under CIRP and Section 14(1)(a) categorically prohibits the following:

“The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.”

9. Thus, it is evident that no other court or authority has the power to pursue any action in relation to properties under CIRP. Furthermore, by virtue of section 63 of IBC, 2016 the jurisdiction for commencement of CIRP against the Corporate Debtor and all matters connected therewith and incidental thereto lies with the Hon’ble NCLT and Hon’ble NCLAT. Section 63 reads as follows:

“No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code.”

10. In the present case, the Provisional Attachment Order of ED dated 27.11.2020, with respect to the properties under CIRP had become non-existent on 26.05.2021, on the lapse of 180 days from the date of the aforementioned order as ED had failed to confirm the provisional attachment within the stipulated period of these 180 days as required under section 8(3) of PMLA, 2002.

Since the Resolution Professional is duty bound to consolidate all assets of the Corporate Debtor vis a vis CIRP, invoking the jurisdiction of this Hon’ble

Tribunal is the legally correct course to adopt for securing the control and custody of the properties of the Corporate Debtor.

11. Thus on detailed perusal of the Pleadings and Submissions of both the parties and after taking into consideration the relevant provisions of law and judgements of the Hon'ble courts, we are of the considered opinion and accordingly order that the two assets of the Corporate Debtor in question, namely, Current Account bearing Bank Account Number 3179xxxxxxxx309 maintained with Union Bank, Fort Branch and Property situated at Unit Nos. 801 and 802, Tower B, Peninsula Business Park, Lower Parel, Mumbai deserve to be put in control and custody of the Resolution Professional to ensure continuation of CIRP process in consonance with the objects of IBC 2016. Thus IA 2041 of 2021 is allowed and the prayers are granted.

SD/-

SANJIV DUTT
MEMBER (TECHNICAL)

SD/-

REETA KOHLI
MEMBER(JUDICIAL)