

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IA(IBC)/100(KOB)/2022

IN

IBA/19/KOB/2019

*(Under Section 60(5), Rule 11 of the NCLT Rules, 2016 to lift the
provisional attachment of the directorate of enforcement)*

Order delivered on: 30th June, 2022

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Anil Kumar. B, Member (Technical)**

Applicant: -

C.A. Jasin Jose, Liquidator,
Ponmattom, Madassery, Mookkanoor P.O.
Angamaly, Kochi-683677

Versus

Respondent: -

Directorate of Enforcement
Ministry of Finance, Cochin Zonal Office,
Kanoos Castle A.K. Seshadri Road,
Mullassery Canal Road West,
Cochin-682011

Parties/Counsel present (through video conference)

For Applicant/Liquidator ... Shri Harikumar G Nair, Akhil Suresh,
Advocates

For Respondent ... Smt. Govindu P Renuka Devi, Learned
Prosecutor

ORDER

Per: Ashok Kumar Borah, Member (J)

This IA(IBC)/100/KOB/2022 has been filed under Section 60(5) of IBC, 2016, and Rule 11 of the NCLT Rules, 2016 by C.A. Jasin Jose, Liquidator of M/s. Atlas Gold Township (India) Pvt. Ltd. against Directorate of Enforcement, Ministry of Finance seeking the following relief: -

- I. Declare that the attachments over the Scheduled Property detailed in Annexure 1 (Provisional attachment order No.03/2022 dated 06.04.2022) are void abintio.
- II. Direct the 1st Respondent to lift the attachments over the scheduled property detailed in Annexure 1

The brief facts of the case as stated in the pleadings are as under: -

2. The Applicant stated that he was appointed as Liquidator of M/s. Atlas Gold Township (India) Pvt. Ltd. (hereinafter the Corporate Debtor) by this Tribunal vide Order dated 04/06/2021 in IA(IBC)/75/KOB/2021. It was further stated that the Corporate Debtor is a guarantor to the credit facilities availed by M/s. Atlas Jewellery Pvt Ltd (the Principal Borrower) from the South Indian Bank Limited (hereinafter referred as Financial Creditor).

3. It is stated that a complaint before Thrissur East Police Station was filed by the FC against the Principal Borrower, Mr.M.M. Ramachandran and Mrs. Indira Ramachandran, on charges of manipulation of stock accounts, forgery of documents, showing inflated stocks in actual possession in order to meet the sanction terms & conditions. Subsequently FIR was registered under Sections 403,406,409,420,468,471 & 34 of IPC. As the offence under Sec.420 & 471 of IPC are scheduled offences under Prevention of Money Laundering Act,2002(PMLA Act), investigation under PMLA Act was initiated by Respondent and thereafter vide order bearing No.PAO No.03/2022 dated 06.04.2022, provisional attachment was ordered by the ED over the movable and immovable property including the property in the name of the Corporate Debtor which are stated as Annexure 2 in this IA. The applicant has stated that the said property was purchased by the CD during 2010 and that it happened before the crime was committed i.e from the year 2013 to 2018 and that the same cannot be considered as proceeds of the crime. The same properties were also mortgaged to FC on 23.03.2013 as security for loan to Principal Borrower.
4. The applicant further stated that the criminal complaint was filed by the FC against the Principal Borrower after availing the loan and the

impugned provisional attachment order has stalled the liquidation proceedings which shall further reduce the value of the Corporate Debtor.

5. The applicant has relied on Section 32A of the IBC read with regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and a Judgement of the Hon'ble High Court of Delhi in **Nithin Jain, Liquidator PSL Limited Vs Enforcement Directorate**(MANU/DE/3563/2021) wherein it was held that the approval of the measure to be implemented in the liquidation process by the Adjudicating Authority must be held to constitute the trigger event for the statutory bar enshrined in Section 32A coming into effect and that the power vested with Enforcement Directorate to order provisional attachment will stand foreclosed.
6. The Respondent Enforcement Directorate filed a preliminary reply/objection to the IA seeking permission to file additional replies/written submissions, if necessary.
7. In the objection, it was stated that the application is prima-facie liable to be rejected and dismissed as the Applicant has efficacious remedy before the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (Hereinafter referred to as "PMLA, 2002"). They further stated that under Section 71 of the Prevention of Money

Laundering Act, 2002 (PMLA) has an overriding effect over the other existing laws in the matter of dealing with "money-laundering" and "proceeds of crime". Pursuant to the Provisional Attachment Order No. 03/2022 dated 06.04.2022 issued, an Original Complaint No. 1724/2022 was filed by them before the Adjudicating Authority, PMLA at New Delhi on 02.05.2022 which is pending adjudication. Hence if the applicant is aggrieved by the attachment of the property under the provisions of PMLA, 2002, the applicant has an efficacious remedy to approach the Hon'ble Adjudicating Authority (PMLA) at New Delhi. Since there is alternative remedy available to the applicant, the respondent stated that the present application filed by the Applicant is a gross misuse of the process of law.

8. The respondent pointed out Section 5 of PMLA, 2002 wherein any property of any person may be attached if the Director or any other officer not below the rank of Deputy Director authorised by him for the purpose of this Section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under the Act. On this basis, the respondent on 06.04.2022, on the basis of the material

placed before him, arrived at a reasonable belief that the movable and immovable property belonging to various persons and entities as stated in the PAO are “property which is involved in money laundering” in terms of Section 2(l)(u) of PMLA, 2002 and were provisionally attached under Section 5(1) of PMLA, 2002 vide Provisional Attachment Order No. 03/2022 dated 06.04.2022 in ECIR/KCZO/05/2019.

9. The respondent further stated the facts and procedures adopted in the proceeding under PMLA which led to this Provisional attachment order as follows:-

“Based on a Complaint received from Mary Sunitha Jose, AGM, The South Indian Bank Limited, Thrissur Main Branch, the Kerala Police, Thrissur East PS, Thrissur had registered F.I.R No. 776/2018 dated 05.10.2018 against (i) M/s. Atlas Jewellery, (ii) Shri M.M. Ramachandran and (iii) Smt. Indira Ramachandran under Sections 403, 406, 409, 420, 468, 471 and 34 of Indian Penal Code, 1860 (Hereinafter referred to as “IPC, 1860”) for cheating. As per the F.I.R, the suspected persons during the period from 21.03.2013 to 26.09.2018 cheated The South Indian Bank Limited, Main Branch, Round South, Thrissur, Kerala. They planned and presented forged documents to the bank and availed loan worth Rs. 242.40 Crores for business purposes and have not repaid the money. The case was transferred to Crime Branch and was re numbered as Cr. 38/CB/TSR/19 dated 05.02.2019 and is being investigated upon. As the offence under Sections 420 and 471 of IPC Act, 1860 are Scheduled Offences under the PMLA, 2002, prima facie, it appears that the above persons have committed an offence punishable under the provisions of PMLA, 2002, which requires a detailed investigation. Hence, ECIR/KCZO/05/2019 dated 1 was recorded and investigation under the provisions of PMLA, 2002 and the Rules framed thereunder was initiated to investigate the offence of money- laundering as defined under Section 3 of PMLA, 2002 and punishable under Section 4 of the Act.

The respondent stated that Mr. MM Ramachandran and Ms. Indira Ramachandran are presently in Dubai and the former has underwent detention in Dubai and have not appeared inspite of summons issued to them.

As per the investigations conducted by ED, the application dated 01.03.2013 was submitted by M/s. Atlas Jewellery Private Limited, and vide Order dated 21.03.2013, South Indian Bank Limited, sanctioned a sum of Rs. 148 Crores as Cash Credit Open Loan (CCOL) towards Working Capital and two Fully Secured Term Loans (FSL) of Rs. 7 Crores and Rs. 10 Crores respectively for the business needs of the company. Further vide Sanction Order dated 27.03.2015, the CCOL Limit of Rs. 220 Crores, Term Loan I to the extent of Rs. 4.90 Crores (reduced balance) and Term Loan II to the extent of Rs. 7.33 Crores (reduced balance) was issued in respect of M/s. Atlas Jewellery Private Limited. As on 13.01.2016, a total amount of Rs. 242,40,93,614.21/- was outstanding amount in respect of M/s. Atlas Jewellery Private Limited. The following Personal Guarantee Agreements and Corporate Guarantee Agreements were executed against the facilities granted: -

- (i) Personal Guarantee Agreement dated 23.03.2013 executed by Shri M.M. Ramachandran and Smt. Indira Ramachandran;
- (ii) Corporate Guarantee Agreement dated 23.03.2013 executed by M/s. Atlas Gold Township (India) Pvt. Limited, X1/305 H, Opp. CIAL, Vappalassery, Nedumbassery, Kerala — 683 572;
- (iii) Corporate Guarantee Agreement dated 23.03.2013 executed by M/s. RI Kanth property Developers Pvt. Ltd, 1/4232 D, Souparnika, Meyana Thazath, People Road, West Hill (PO), Calicut - 673 005;
- (iv) Corporate Guarantee Agreement dated 07.09.2013 executed by M/s. Atlas Golden Land and Developers Pvt. Ltd., Plot No. 91, Sai Kripa Building, 37/192, Ground Floor, Gandhi Nagar, Kadavanthra PO, Kerala — 682 020.

In addition to the above, 12 properties (including that of M/s. Atlas Gold Township (India) Private Limited) were submitted as Collateral Securities and mortgaged to the Bank. Out of the above 12 properties, 6 properties were sold by the Bank and the remaining 6 properties were not sold by the Bank. It was found that M/s. Atlas Jewellery Private Limited and its Directors Shri M.M. Ramachandran, his Wife Smt. Indira Ramachandran made unlawful gain with a corresponding loss to the extent of Rs. 242.40 Crores to the South Indian Bank Limited, from 21.03.2013 to 26.09.2018. The South Indian Bank Limited thereafter

initiated the recovery proceedings and the hypothecated assets viz. Diamond Ornaments, Gold Ornaments, Silver, Watches, etc. were sold by the bank by way of Auction and realised amount of Rs. 19.28 Crores (Rs. 12.00 Crores plus Rs. 7.28 Crores). Out of 12 items of immovable properties mortgaged, 6 items of immovable properties were sold in SARFAESI sale resulting in the realisation of amounts totalling to Rs. 93.96 Crores. Remaining properties were not able to be sold by the Bank. Hence out of the total loss of Rs. 242.40 Crores, Rs. 113.24 Crores (Rs. 19.28 Crores plus Rs. 93.96 Crores) were realised by the bank. The outstanding proceeds of crime is Rs. 129.16 was pending as proceeds of the crime under PMLA.

Following matters were noticed in the course of investigation by ED :-

- i. Shri M.M. Ramachandran had made an investment of Rs. 100 Crores towards purchase of 5 Crores Equity shares of M/s. Atlas Jewellery India Limited at a price of Rs. 20/- per Equity Share (inclusive of a Share Premium of Rs. 10 per Equity Share).
- ii. As per investigation and order under SEBI in the matter of M/s. Atlas Jewellery India Limited, it observed similarities among the four Dubai based companies that owners of the four Dubai based entities are ex-employees of M/s. Atlas Jewellery, there exists strong connection between the four Dubai based companies and the Promoter of M/s. Atlas Jewellery India Limited and the four Dubai based companies are inter se connected with each other and are also connected with Shri M.M. Ramachandran and Atlas Jewellery Private Limited. Apart from the above Foreign Direct Investment of Rs. 100 Crores from Shri M.M. Ramachandran, M/s. Atlas Jewellery India Limited had received F.D.I to the extent of Rs. 65,02,90,662/— from Al Mareija Precious Metal and Bullions (FZE), Al Juraina Precious Metals 8: bullions (FZE), Mankool General Trading (PZE) and Al Layyah General Trading (FZE), all are Dubai based companies towards allotment of 4,64,49,333 Equity Shares of M/s. Atlas Jewellery India Limited of Rs. 10/- each was allotted at Rs. 14/- per share including premium of Rs. 4/- per share on preferential basis.
- iii. Further, the investment was also made by M/s. Atlas India Private Limited towards purchase of 16,36,044 Equity Shares of M/s. Atlas Jewellery India Limited.
- iv. Shri M.M. Ramachandran had entered into an escrow agreement (the "Escrow Agreement") with Axis Bank, Ahmedabad, Gujarat (the "Escrow Agent") and the Manager to the Offer, pursuant to which the Acquirer have deposited Rs. 14,00, 00,000/- (Rupees Fourteen Crores Only), being more than 25% of the Offer Size ("Cash Escrow"), in the

escrow account. The Cash Escrow constitutes the escrow account in terms and subjected to the conditions set out in the Escrow Agreement. The above amount of Rs. 14 Crores was initially deposited in the form of Fixed Deposit by Shri M.M. Ramachandran during the year 2014, which was periodically renewed and the same is presently lying in the form of 4 Term Deposits totalling to Rs. 18,05,67,435/—.

The suspected firm/persons are accused of commission of an economic offence. Both Shri M.M. Ramachandran and M/s. Atlas India Private Limited have made investment towards purchase of Equity Shares of M/s. Atlas Jewellery India Limited (AJIL), New Delhi during the crime period. Shri M.M. Ramachandran is the Promoter of M/s. Atlas Jewellery India Limited (AJIL), New Delhi and is the ultimate beneficiary.

Shri M.M. Ramachandran is also holding directorship in various companies viz.

- i. M/s. Atlas Jewellery Private Limited
- ii. M/s. R.I. Kanth Property Developers Pvt. Ltd.,
- iii. M/s. Atlas Golden Land and Developers Pvt. Ltd.
- iv. M/s. Atlas Gold Township (India) Private Limited,
- v. M/s. Atlas Animation Infotainment and Media School Private Limited,
- vi. M/s. Atlas Holiday Private Limited

The respondent therefore concluded that Shri M.M. Ramachandran, his wife Smt. Indira Ramachandran & the companies in which they are Promoter / Director have sufficient details / incriminating documents / evidences pertaining to proceeds of crime & properties related to proceeds of crime and that they are in possession of records / properties related to money laundering or property related to crime, at their business addresses on which basis ED conducted searches under Section 17 of PMLA, 2002 on 20.01.2022, 22.01.2022 & 23.01.2022 at (i) Business Premises of M/s. Atlas Jewellery India Limited, (ii) Bank Lockers of Bank of Maharashtra in the name of M/s. Atlas Jewellery India Limited which resulted in recovery and seizure of Indian Currency, Gold, Silver, Diamond Jewellery and Silver articles totally worth Rs. 12,58,90,334/-. During the course of investigation, ED found that Shri M.M. Ramachandran and his associates / companies were holding several movable and immovable properties in their names. Apart from all of the above part of proceeds of crime were also found to be lying with various bank accounts with Axis Bank and South Indian Bank. It is submitted that on the basis of the above facts and other materials, the Deputy Director, on having reasons to believe that the properties mentioned in Paragraph 9 of the Provisional Attachment

Order No. 03/2022 dated 06.04.2022 in ECIR/KCZO/OS/ 2019, were derived / acquired out of proceeds of crime, out of the total proceeds of crime of Rs. 242.40 Crores or value thereof, which are involved in Money Laundering under PMLA, 2002 and that these properties are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III of PMLA 2002, had ordered for Provisional Attachment of the said properties being the proceeds of crime, under Section 5(1) of the said Act. The Deputy Director has recorded his reasons to believe under Section 5(1) of PMLA, 2002 at Para 8 of PAO No. 03/2022. Investigation is under progress with respect to the identification of the remaining proceeds of crime and attachment thereof.

The respondent pointed out the objective of Prevention of Money-Laundering Act, 2002 that it is the prevention of laundering of proceeds generated out of scheduled offences by confiscating the proceeds involved or derived from such offences. The intention of the act is not to let the properties involved in Money-Laundering be available for enjoyment of either the offenders themselves or for the members of their family but to confiscate the properties involved in money-laundering to the Government of India.

The Enforcement Directorate thus investigated the matter under PMLA and inter alia concluded that the proceeds of crime involved in the scheduled offence are to the extent of Rs. 242.40 Crores. The Bank initiated the recovery proceedings and have realized in total an amount of Rs. 113.24 Crores by way of selling the hypothecated assets and mortgaged immovable properties. The proceeds of crime in the hands of the said M/s. Atlas Jewellery Private Limited and its Directors Shri M.M. Ramachandran & his Wife Smt. Indira Ramachandran or in the hands of any other person & companies to whom it might have travelled through.

The proceeds of crime mean and includes any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a

scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in the value held within the country. Thus, the proceeds of crime would include the value of any such property. In the absence of availability of proceeds of crime, the value thereof is liable to be attached in the hands of the said M/s. Atlas Jewellery Private Limited and its Directors Shri M.M. Ramachandran and his Wife Smt. Indira Ramachandran & their associates. The movable & immovable

properties listed in at Para Nos. 6.5, 6.8, 6.9, 6.10 & 6.11 of the Provisional Attachment Order (PAO) No. 03/2022 dated 06.04.2022 standing in the names of Shri MM. Ramachandran, Shri M.M. Ramachandran & Smt. Indira Ramachandran & their associates, and indicated in the Schedule of Properties at Para 9 of the said Provisional Attachment Order are therefore liable for attachment by the Enforcement Directorate. Further, the offence of money laundering is a continuing offence, considering when in fact, possession of part of Proceeds of Crime shall also be treated as offence of money laundering. As per the definition under Section 2(1)(u) of PMLA "Proceeds of Crime" are either the property derived or obtained as a result of criminal activities relating to a scheduled offence or the value of such property. The statute thus entitles the attachment of proceeds of crime which are either generated as the result of criminal activities relating to scheduled offence or the equivalent value of such properties. By virtue of the above-said powers that the Directorate of Enforcement has issued Provisional Attachment Order No. 03/2022 dated 06.04.2022."

10. The respondent further contended that the judgement in the matter of **Nithin Jain, Liquidator PSL Limited Vs Enforcement Directorate**(MANU/DE/3563/2021) stands challenged before the Hon'ble High Court of Delhi by filing LPA 512/2021 & CM APPL. 47429/2021 and this fact was suppressed by the applicant herein. Moreover, the said Judgement cannot be applied to the present case since no sale has taken place in the instant matter. It was emphasized that if the application is allowed, it will affect further investigation and other proceedings under Sections 5 and 8 of the PMLA, 2002 as the subject property in the matter falls within the ambit of 'value of any such property' and that if the Application is allowed, the same will set a precedent which would have a

far fetching consequence that can hinder the investigation by the Directorate of Enforcement in similar matters which would thereby vitiate the very purpose of PMLA, 2002.

11. We have heard Shri. Akhil Suresh, learned counsel for the applicant Liquidator and Smt. Govindu P Renuka Devi, Learned Prosecutor who appeared for the respondent through Video Conference and perused the entire case records/documents. In this aspect, it is profitable to quote Section 32A of the IBC code which is as under:-

“Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report

submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”

We also look at Section 5 of PMLA having an overriding effect under section 71 of PMLA as under :-

“Attachment of property involved in money-laundering. —

(1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding 9 [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

[Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession,

referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment. Explanation.— For the purposes of this sub-section “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).”

12. On a plain reading of these Sections we could see that both these Sections have overriding effect. However we are inclined to refer the object of IBC,2016 which entails a speedy resolution of the corporate dispute and also the settled position of law that Section 32A of IBC, 2016 which is enacted subsequent to the enactment of Section 5 of PMLA provides for the legislative intent formed that a statute which is

enacted subsequently shall prevail over the latter. However, this Tribunal is not a Writ Court to decide upon the constitutional validity of the statutes at hand. This Tribunal is empowered under IBC, 2016 to its processes and as far as the powers of this tribunal goes, we are of the opinion that we are empowered to issue processes and conduct proceedings under the provisions of IBC and section 32A grants us sufficient jurisdiction for this purpose.

13. We have also perused the judgement relied on by the learned counsel for the applicant, and the operative portion of the judgement in Nitin Jain Liquidator PSL Limited(Supra) is thus:-

“102. Accordingly and for all the aforesaid reasons, this writ petition shall stand allowed in the following terms. The Liquidator is held entitled in law to proceed further with the liquidation process in accordance with the provisions of the IBC. The respondent shall hereby stand restrained from taking any further action, coercive or otherwise, against the liquidation estate of the corporate debtor or the corpus gathered by the Liquidator in terms of the sale of liquidation assets as approved by the Adjudicating Authority under the IBC. The Court grants liberty to the petitioner to move the Adjudicating Authority for release of the amounts presently held in escrow in terms of the interim order passed in these proceedings. Any application that may be made in this regard by the Liquidator shall be disposed of by the Adjudicating Authority bearing in mind the conclusions recorded hereinabove.”

The learned counsel for the applicant liquidator stated that the value of property attached in question, that is of the Corporate Debtor is Rs.927.64

lakh and the other properties in the provisional attachment order are of the personal nature and of other corporate bodies which are not a subject matter herein. We also see that the current case at hand is a case in rem and not in personem and the Tribunal has jurisdiction over the said property in question.

14. The above judgement of Delhi High court is under appeal to Hon'ble Supreme Court and the effect of overriding provisions under PMLA and IBC are also being put to question as to its finality.

15. We also see that the order of PMLA is provisional and not final as it is pending adjudication by the Adjudicating Authority under the PMLA. Hence there is a statutory remedy available with the applicant which has not been exhausted by the applicant till date.

16. For the above said reasons, we are of the considered opinion that the applicant has not exhausted the remedy available before the Adjudicating Authority under the PMLA when the liquidator has adequate powers available in the matter of liquidation proceedings. Hence we dismiss this application with liberty to the applicant to approach the Adjudicating Authority under the PMLA for appropriate remedies, if he is so advised.

Dated this the 30th day of June, 2022

Sd/-
(Anil Kumar. B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

rkb