

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

Coram:
SHRI P.S.N PRASAD,
HON'BLE JUDICIAL MEMBER
SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 444/JPR/2019
In CP (IB) No. 601(ND)/2018

IN THE MATTER OF:

M/S PACKWELL (INDIA) PVT. LTD.

... Petitioner/Operational Creditor

VERSUS

EMGEE CABLES AND COMMUNICATIONS LIMITED

...Respondent/Corporate Debtor

IA No. 444/JPR/2019

MEMO OF PARTIES

Satyendra P. Khorania,
Liquidator of M/s Emgee Cables and Communications Limited
R/O of Corporate Debtor:- F- 75/76, Udyog Vihar, Jaitpura,
Jaipur- 303704 (Rajasthan)

...Applicant/Liquidator

VERSUS

Deputy Director,
Directorate of Enforcement,
Zonal Office, IInd Floor, Jeevan Nidhi-II,
LIC Building, Bhawani Singh Road,
Jaipur- 302005 (Rajasthan)

Satyendra P. Khorania
Vs.

Deputy Director, Directorate of Enforcement

For the Applicant/Liquidator : **...Non-Applicant/Respondent**
Anubha Singh, Adv.

For the Non-Applicant/Respondent : Banwari Lal Takhar, Adv.

Order Pronounced On: 07.09.2020

ORDER

Per: Dr. P.S.N Prasad, Judicial Member

1. The Liquidator has moved the present Application under Section 35(1)(n) and 60 (5) read with Section 238 of IBC, 2016 for issuance of directions to the Deputy Directorate, Jaipur Zonal Office, Enforcement Directorate ('Respondent') to release the provisional attachment in relation to assets of the Corporate Debtor (M/s Emgee Cables and communications Limited) done vide order dated 12.12.2019, so that the properties which form the Liquidation Estate of the Corporate Debtor (M/s Emgee Cables and Communications Limited), may be sold in accordance with the applicable provisions of IBC.
2. Having made several other submissions, the Applicant has prayed for issue of necessary direction to the Respondent to release the provisional attachment of the movable and immovable properties belonging to the Corporate Debtor (M/s Emgee Cables and communications Limited) done vide order dated 12.12.2019 to enable the Liquidator to sell them being a part of the Liquidation Estate of ECCL and sought for issuance of

directions to other concerned authorities to give effect to the order of NCLT in respect of the properties belonging to the Corporate Debtor. The applicant has also sought directions to the Branch Manager, State Bank of India, Vidhyadhar Nagar, Jaipur to follow the instructions of the applicant in respect of operations of Account No. 61190502053. The applicant has also sought further instructions to the Liquidator to continue the process of liquidation during the pendency of the petition and any other further reliefs or order or direction which the Tribunal may deem fit and proper.

3. This application has been responded by the Deputy Director, Jaipur Zonal Office, Enforcement Directorate, wherein, the respondent has denied all the allegations and averments and contentions averred in the application filed by the applicant. The respondent has briefly narrated the intent and purpose of the scheme of Prevention of Money Laundering Act, 2002 and submitted that the provisional attachment vide order No. 30 dated 12.12.2019 has been issued by the respondent in accordance with Section- 5 of PMLA Act, 2002. Whether the Directorate of Enforcement has jurisdiction to attach the property of Corporate Debtor, wherein the insolvency proceedings under the supervision of Hon'ble NCLT have already been initiated under IBC?
4. The judgement relied upon by the respondent have been carefully considered and it need to be appreciated that the IBC which is a special

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legislation passed subsequent to PLMA Act has specific provisions which enables the said law to prevail over any other law for the time being in force.

5. The respondent contends that the winding up proceedings are governed under IBC, which is a pure law, however, PMLA, 2002 is a criminal law as it provides for confiscation of the proceeds of crime or value thereof and entails punishment. Hence, the aim and object of both the laws are different from one another and it is settled that criminal proceedings will override the civil proceedings. If any conflict arises during the implementation of law, it is important to note that the object of IBC is to consolidate law relating reorganisation and insolvency resolution of Corporate Persons, Partnership Firms and individual in time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit and balance in the interest of all stakeholders including the alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India for the matters connected therewith or incidental thereto.
6. It is pertinent to mention here that Section 238 of the Insolvency and Bankruptcy Code provides that the provisions of this code to override other laws. It is expressly provided in the Insolvency and Bankruptcy Code that it shall have the affect, notwithstanding, anything inconsistent

therewith contained in any other law for the time being in force or any instrument having effect by virtue of such law.

7. The Hon'ble Supreme Court of India in *Solidaire India Ltd. Vs. Fairgrowth Financial Services Pvt Ltd.* (2001) 3 SCC 71 held that where there are two special statues which contains non-obstante clause, the later statue must prevail. This is because at the time of enactment of later statue, the legislature was aware of the earlier legislation and its non-obstante clauses. If the legislation still confers the later enactment with non-obstante clause, it means legislature wanted that enactment to prevail. If the legislature does not want the later enactment to prevail then it could not and would not have to provide in the later enactment that the provisions of earlier enactment will continue to apply.
8. Therefore, in view of Supreme Court Judgement as the Insolvency and Bankruptcy Code is the later enactment, no provision has been made regarding prevalence of PMLA. It can therefore be construed that the intention of the legislature is that the Insolvency and Bankruptcy Code prevails, so that the resolution of Corporate Debtor by maximising its value which can be received by the Creditors and stakeholders moreover, according to Insolvency and Bankruptcy Code (Amendment Ordinance), 2019, the intention of the legislature is very clear that IBC would prevail as the object clause of the above amendment states that: -

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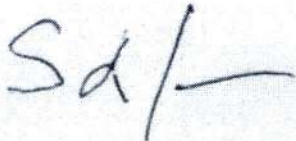
Deputy Director, Directorate of Enforcement

“Whereas a need was felt to give the highest priority in repayment to last mile funding to Corporate Debtors to prevent insolvency in case the company goes into corporate insolvency resolution process or liquidation, to provide immunity against the property of such corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions and to fulfil the critical gap in the corporate insolvency framework, it has become necessary to amend certain provisions of The Insolvency And Bankruptcy Code, 2016.”

In JSW Steel vs. Mahendra Kumar Khendalwal & Anr, the Hon’ble NCLAT vide order dated October 25, 2019 had prohibited the Directorate of Enforcement from attaching any property of the ‘Corporate Debtor’ after considering the affidavit filed by the Union of India wherein the Union of India had made it very clear “that any threat of attachment of the assets of corporate debtor or subjecting the corporate debtor to proceedings by investigating agencies for wrong doing of the previous management will defeat that very purpose and scheme of CIR process, which inter-alia includes resolutions of insolvency and revival of the company, and the efforts of the bank to realize dues from their NPAs would get derailed”.

9. It is observed that if even after initiation of proceeding under this Code the creditors are still required to knock other doors, which is time consuming and financially deleterious, it would defeat the object of the Insolvency and Bankruptcy Code, 2016.

10. Having regard to the above material and having heard the arguments, we direct the respondent to withdraw the provisional attachment of the movable and immovable properties belonging to the Corporate Debtor (M/s Emgee Cables and communications Limited) vide order dated 12.12.2019, so that the liquidator can take them being part of the Liquidation Estate of ECCL. A copy of this order is also marked to sub-registrar concerned to give effect to this order and remove the noting of attachment, if any, in the records in respect of properties belongs to the Corporate Debtor. The application filed by the Liquidator being IA No. 444/JPR/2019 is allowed.



**SH. RAGHU NAYYAR,
TECHNICAL MEMBER**



**DR. P.S.N. PRASAD
JUDICIAL MEMBER**

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