IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

IA/417(AHM)2022 in CP(IB) 89 of 2017

Order under Section 60(5) r.w Rule 11 of NCLT,2016

IN THE MATTER OF:

DRS Warehousing (North) Pvt Ltd ....**Applicant**
V/s
Office of Sub register & Ors ....**Respondent**

Order delivered on: 16/01/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

-Sd-	-Sd-
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, AHMEDABAD

IA/417(AHM)2022 in
CP(IB)/89(AHM)2017

[*An application under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.]*

In the matter of ***Siddhvininayak Logistics Ltd.***

DRS WAREHOUSING (NORTH) PRIVATE LIMITED
Through its authorised signatory
Vidyanand Jha
Having office at:
Plot 53, 53/1 Vishweshwar Nagar Road,
Goregaon East, Near Pravasi Indsl Est.,
Mumbai-400063

… Applicant

Vs

1. **OFFICE OF SUB REGISTRAR**
   Kamptee Registrar Office
   Administartive Building,
   Tehsil Office, Taluka Kamptee,
   Nagpur-441401.

2. **ENFORCEMENT DIRECTORATE**
   Kaiser 1, Hind Building Ground
   Floor, Currimbhoy Road, Ballard Estate,
   Mumbai-400001.

3. **LIQUIDATOR OF SIDDHIVINAYAK**
   LOGISTICS LTD.
   MR. DUSHYANT DAVE
   Having Registered address at Plot no. 14 15,
   Bhatpore GIDC, ONGC Plant, Hazira,

Surat- 394510, Gujarat.

....Respondents

Order Pronounced on 16.01.2024

CORAM:
SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Apurva Vakil, Adv. a/w. Ms. Priyal Parikh, Adv.
: Mr. Harsh Parekh, Adv.

For the Respondent : Ms. Grishma Ahuja, Adv. a/w. Ms. Aaksha Sanjani, Adv.
: Mr. Shalin Jani, Adv. for R-3
: Ms. Shaby Alvi, Proxy Adv. i/b. Mr. Ankit Shah, Adv. For R-2 (ED)

O R D E R

1. The present application is filed on 28.03.2022 under section 60(5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking the following relief(s):

   a. This Hon'ble Tribunal be pleased to direct Respondent No. 1 to register the sale deed for the property bearing Survey/ Khasara No. 341, admeasuring 2.00 hectares (4.941 Acres), Bhogwatdar Class I, At Mouza-Gumthala, Tehsil-Kamptee, Dist- Nagpur in favour of the applicant without insistence of NOC from the Respondent No. 2;

Or in the alternative

b. This Hon'ble Tribunal be pleased to direct Respondent No. 2 to grant its "No Objection" to the Applicant & Respondent No.1 in respect of property bearing Survey/ Khasara No. 341, admeasuring 2.00 hectares (4.941 Acres), Bhogwatdar Class 1, At Mouza-Gumthala, Tehsil- Kamptee, Dist- Nagpur for registration of the sale deed in favour of the applicant.

In the alternative

c. This Hon'ble tribunal be pleased to set aside the auction dated November 20, 2021 for the sale of the said Property through e-auction advertisement dated October 19, 2021 and direct the Respondent No. 3 to refund the amount of Rs. 2,70,12,871 (Rupees Two Crore Seventy Lakh Twelve Thousand

Eight Hundred and Seventy One only) with interest @ 22 per annum.

d. Any other relief as this Hon'ble tribunal may deem fit in the interest of justice.

2. An affidavit in support of the application is sworn by Mr. Vidyanand Jha on behalf of DRS Warehousing (North) Pvt. Ltd., duly authorized vide Board Resolution dated 31.01.2022.

3. **<u>Facts of the Case are as follows</u>**:

I. It is submitted by the applicant that the Liquidation order dated 19.11.2018 was passed against M/s. Siddhi Vinayak Logistics Private Limited in I.A. No.411 of 2018 wherein Mr. Dushyant Dave was appointed as Liquidator.

II. It is submitted by the applicant that the Liquidator published an advertisement dated 19.10.2021 for sale of multiple properties including property in question being Land Survey/Khasara No. 341, admeasuring 2.00 hectares (4.941 Acres), Bhowatdar Class I, At Mauza-Gumthala, Tehsil-Kamptee, Dist-Nagpur (hereinafter referred to as **"property"**) through e-auction which was to be conducted on 20.11.2021.

III. It is submitted by the applicant that aforesaid property was originally owned by one Shri Krishnana Ramkrishna and the same was verified by Applicant from land records. Further, M/s. Siddhi Vinayak Logistics Private Limited purchased the said property from erstwhile owner vide registered sale deed dated 25.08.2011 with all common rights and amenities attached with the property.

IV. It is submitted by the applicant that pursuant to advertisement the applicant submitted its bid and was declared as highest bidder. The said property was sold to applicant for consideration of Rs.2,70,12,871.

V. It is submitted by the applicant that after paying entire consideration he had sought to execute a sale deed with Liquidator of the Company. However, when the applicant proceeded to register the sale-deed, the office of the Sub- registrar vide letter dated 28.01.2022 **(Annexure-F)** informed the applicant that the directorate of enforcement has issued directions vide letter dated 10.04.2017 **(Annexure-G)** to not allow creation of any third-party interest or registration of any agreement to sale, lease deed, sale deed in respect of the said property, without obtaining the NOC from the office of Enforcement Directorate. A copy of letter of Enforcement Directorate was provided by office of Sub- registrar to the Applicant.

VI. It is submitted that the Applicant vide letter dated 31.01.2022 **(Annexure-H)** requested the office of ED to issue no objection certificate/letter in favour of the applicant for registration of the sale deed. However, the office of ED is not issuing the no objection certificate/letter and hence, the office of

Sub Registrar is not registering the sale deed in the favour of the Applicant.

VII. It is submitted by the applicant that the Official Liquidator had a duty to prepare an asset memorandum containing the value of the assets. Clause (f) of sub regulation 2 of regulation 34 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 stipulates the inclusion of "any other information that may be relevant for the sale of the asset". Regulation 13 of the said Regulations (supra) enjoins upon the liquidator to submit a preliminary report to the Adjudicating Authority with the Asset Memorandum. The applicant submits that the information in respect of the said attachment/notice by the ED was not informed by the Official Liquidator at the time of issuance of the action advertisement for the sale of the property.

VIII. The applicant submits that the Applicant is a bonafide purchaser and has paid entire sale consideration of Rs.2,70,12,871/- for the purchase of property. Despite having fulfilled the condition of sale, the applicant is deprived of the benefit of the sale transaction.

IX. It is submitted by the applicant that by virtue of Section 238 of the Code, provisions of the Insolvency and Bankruptcy Code 2016 shall have precedence over the provisions of the Prevention of Money Laundering Act, 2002. Therefore, the respondent No. 1 is duty bound to register the sale deed of the aforesaid property.

X. The applicant submits that the attachment order passed by Respondent No. 2 are set aside by the Competent Court **(Annexure-I Colly)**.

XI. The Respondent No.3 informed the applicant vide letter dated 01.02.2022 **(Annexure-J)** to file appropriate application before this Hon'ble Tribunal and that the Respondent No.3 shall cooperate with the applicant.

XII. Therefore, the present application seeking direction to Respondent No.1 to register the sale deed in favour of the applicant.

4. The Respondent No. 2 filed its reply to the application on 23.11.2022 before this Tribunal and made following submissions:

I. It is submitted that the CBI, BS&FC, Mumbai, registered a FIR bearing no. RCBSM2015E2007 dated 06.08.2015 invoking Sections 420, 468, 471, 120(B) of Indian Penal Code, 1860 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against M/s, Siddhi Vinayak Logistics Ltd (M/s. SVLL), S/Shri Rupchand Baid, Deepak Kumar Baid, Rajkumar Baid, Smt Laxmi Devi Baid all Directors of M/s SVLL and others.

As the offences under the aforesaid sections fall under scheduled offences covered in Paragraph 1 and 8 of Part A of the schedule to the PMLA. 2002, so the Directorate of Enforcement, Mumbai Zonal

Office, opened the case vide an ECIR bearing No. MBZO/10/2016 dated 16.11.2016 against the following persons/entities:

1) M/s. Siddhi Vinayak Logistic Limited (M/s. SVLL);

2) Shri Rupchand Baid, Director of M/s. SVLL

3) Shri Deepak Kumar Rupchand Baid, Director of M/s. SVLL;

4) Shri Raj Kumar Rupchand Baid, Director of M/s. SVLL;

5) Smt. Laxmi Devi Baid, Director of M/s. SVLL;

6) Shri Ravi Kothari, Director of M/s. SVLL;

7) M/s Addplus Distributors Pvt Ltd;

8) M/s P. R. Niryat Pvt Ltd;

9) M/s Advance Metal Corporation Pvt Ltd:

10) M/s Trishul Motors:

11) M/s Transport Solution India Pvt Ltd and

12) Other unknown persons, including officers of Bank of Maharashtra and private persons/entities.

II. It is submitted that the CBI, BS&FC, Mumbai, further registered four other FIRs in addition to FIR bearing no. RCBSM2015E2007 dated 06.08.2015 which are as follows:

(i) RCBSM2016E0022 dated 29.07.2016,

(ii) RCBSM2016E0025 dated 09.08.2016,

(iii) RCBSM2017E0008 dated 07.04.2017 and

(iv) RCBSM2018E0010 dated 04.09.2018)

The said FIRs were filed on the basis of complaint filed by Bank of Baroda (BOB), Oriental Bank of Commerce (OBC), Indian Overseas Bank (IOB) and Bank of India (BOI) respectively, invoking various sections including Sections 120B r/w 420, 468, 471 of IPC, 1860 and 13(2) r/w 13(1)(d) of the PC Act, 1988 against M/s. SVLL, S/Shri Rupchand Baid. Deepak Kumar Baid, Rajkumar Baid, Smt Laxmi Devi Baid, all Directors of M/s SVLL and others. Each FIR is based on the complaint filed by individual bank about cheating and forgery causing wrongful loss to bank by the said company SVLL & it's directors.

III. It is submitted that the scrutiny of the aforesaid five FIRs revealed that M/s SVLL and other persons were party to the criminal conspiracy to cheat the above said banks by inducing them to sanction vehicle loans under various schemes and working capital loans on the basis of false assurances and tampered/forged vehicle registration documents. Further, part of said loans were diverted and not used for intended purpose and finally the loan accounts became NPA. The total amount involved is Rs. 1609.78 Crores. The amount involved for the respective banks are as under:

(i) Bank of Maharashtra:- Rs.836.29 Crores

(ii) Oriental Bank of Commerce: Rs. 380.96 Crores

(iii)Bank of Baroda:- Rs.303.76 Crores

(iv) Indian Overseas Bank :- Rs.45.38 Crores

(v) Bank of India :- Rs.43.39 Crores

IV. On the basis of the above FIRS, Enforcement Directorate has registered a case under PMLA,2002 vide ECIR/10/MBZO-II/2016 against M/s Siddhi Vinayak Logistic Limited and others.

V. It is submitted that the investigations made under PMLA, 2002 revealed that the payment to the suppliers of vehicles/body builders i.e. M/s. Tata Motors Ltd., M/s. Ashok Leyland Ltd., M/s. Antony Commercial Vehicle Pvt. Ltd, Tranztar Commercial Vehicle Applications Ltd. etc, were generally against the pending dues of M/s SVLL towards these parties. Thus, the amount given by bank was not used for the intended purpose but diverted for other expenses. It is also revealed that M/s. SVLL, as a part of its modus operandi, has routed the loan amount through various accounts and brought back majority of the same in various accounts of M/s SVLL. The said amount is further utilized for various expenses.

VI. It is submitted that, M/s SVLL and Shri Rupchand Baid had knowingly and intentionally involved in process/activities of acquisition, possession, use/concealment of POC and hence appear to have committed offence of money laundering as defined under section 3 of the PMLA, 2002. Therefore, the properties acquired/held by them are liable for attachment as value of any such property in terms of Section 2(1)(u) of the Act. Accordingly, the Directorate has issued a PAO dated 08.06.2017, wherein, moveable and immovable assets of M/s. SVLL and its directors / family members of Shri Rupchand Baid family were attached to the value of Rs. 19.62 Crores. The said Provisional Attachment Order was confirmed by the Adjudicating Authority, PMLA, New Delhi vide its order dated 24.10.2017. Further, the said Provisional Attachment Order was set aside by the Appellate Authority, PMLA vide its Order dated 12.12.2018; that the Enforcement Directorate has filed appeals bearing no.

APPA/673/2019, APEAL/940/2019 and APPA/672/2019 before Hon'ble High Court of Bombay against the order of Hon'ble Appellate Authority and the same are pending before the Hon'ble Bombay High Court.

VII. It is submitted that only the special court constituted under Section 43 of the PMI. Act, 2002 is vested with the powers of either to release or confiscate the attached properties. Thus, NCLT has no jurisdiction to enter into the attachment or confirmation or release of proceed of crime generated out of the commission of scheduled offence and therefore, NCLT has no jurisdiction to issue any such orders, thereby, directing ED to release the properties attached under PMLA, 2002. if Prosecution Complaint is filed before the PMLA, Special Court. That the applicant should move to the Special Court, PMLA under sub-section 8 of Section 8 of PMLA for the same.

VIII. It is submitted that the Special Court under PMLA is final authority to decide criminality of money laundering. The Prosecution Complaint 08/2017 dated 19.06.2017 in respect of Provisional Attachment Order dated 08.06.2017 was filed and whereas, the Hon'ble NCLT, Ahmedabad Bench vide it's order dated September 12, 2017 instituted the Corporate Insolvency Resolution Process of the Corporate Debtor on the basis of the application filed by Punjab National Bank. It is humbly submitted that criminal proceedings were initiated earlier than the Hon'ble NCLT Order and therefore, the subject matter falls outside the jurisdiction of Hon'ble NLCT.

IX. It is further submitted that the applicant has not chosen a right legal platform to address his grievance, if any as matter under PMLA, 2002 cannot be decided by Hon'ble NCLT.

X. It is also submitted that Respondent No. 3 has misguided and mislead the applicant and has not provided all facts related to the said parcel of land to the applicant.

5. The Respondent No. 3 also filed its reply to the application on 25.07.2022 before this Tribunal and made following submissions:

   I. It is submitted that the Applicant had participated in the E-auction for sale of property and was declared as Successful Bidder. Thereafter, the Applicant paid entire consideration amount and sale deed was executed between the Applicant and the Respondent No.3.

   II. It is submitted that sub registrar refused to register the sale deed of property in favour of the Applicant in view of letter issued by ED office. The Respondent No. 3 became aware about the communication of ED only after such refusal of sub registrar to register the sale deed.

   III. The allegation of the Applicant that no information with respect to attachment/notice addressed by Respondent No. 2 to Respondent No.3 was provided to Applicant is denied as the Respondent No. 3 was not in receipt of any such letter as the same was issued prior to commencement of CIRP. Further, the Hon'ble Appellate Tribunal vide its order dated 12.12.2018 has set aside the Provisional Attachment Order and the Dy. Directorate of Enforcement has challenged the said order before the Hon'ble High Court of Judicature at Bombay which is pending adjudication.

IV. It is submitted that the order dated 12.12.2018 has in fact been followed by the Hon'ble Court of Special Judge for PMLA, Greater Bombay at Bombay in PMLA Case No. 8/2017. The said Court has passed an order below Exh.49 dated 12.02.2019 wherein it was observed that the order of attachment by Adjudicating Authority under PMLA dated 24.07.2017 was set aside by order dated 12.12.2018 and therefore, there is no order under section 8(3) of the PMLA Act in existence. Therefore, the Respondent No. 3 was well within his rights and duties for selling the property in question as there was no attachment of Enforcement Directorate over the property. Hence, the prayer no. 19(C) in the present application ought not to be granted.

V. It is submitted that all the relevant documents including copy of order dated 12.12.2018 and necessary co-operation for registration of property was provided to the Applicant.

VI. It is submitted that sale transaction is genuine transaction and Respondent No.3 does not oppose to grant prayers given in 19(A) and 19(B) of the application.

6. During the hearing held on 07.11.2023, the counsel for the Applicant informed this Tribunal that inspite of service of notice no one appeared on behalf of Respondent No.1 (Sub Registrar). Further, on perusal of order dated 17.08.2022 and 21.11.2022 it is observed that no one has appeared for Respondent No.1 and that no reply is filed till date. Therefore, right to file reply of Respondent No.1 was closed and vide order dated

07.11.2023 the said Respondent was proceeded **ex-parte**.

7. We have heard the learned counsel for the parties and perused the material available on record.

8. It is noted that the property in question was sold by Respondent no. 3 to Applicant by conducting e-auction of which entire consideration has been paid by Applicant and sale deed dated 27.01.2022 was executed between Applicant and Respondent no. 3. The said sale deed could not be registered in view of directions issued by Respondent No.2 through letter dated 10.04.2017 to the Respondent No.1. The Respondent No.2 had passed a provisional attachment order dated 08.06.2017. Subsequently, CIRP was initiated against the Corporate Debtor by order dated 12.09.2017. The Adjudicating Authority, PMLA confirmed the provisional attachment order dated 08.06.2017. However, in view of moratorium the provisional attachment order was set aside by the Hon'ble Appellate Tribunal, PMLA vide order dated

12.12.2018 the relevant para of the said order is reproduced below:

> *"On the grounds stated above it is held that the proceeding u/s 8 of PMLA, 2002 before the Adjudicating Authority is a civil proceeding and the Adjudicating Authority should have stayed the proceedings on passing of the moratorium order by the NCLT. The continuation of the proceedings from the date of commencement of the moratorium order is contrary to the intention of the legislature hence the consequential order of confirmation of PAO is contrary to law. Hence liable to be set aside."*

9. The Respondent No. 2 thereafter filed an application under section 8(7) for confiscation of property before Hon'ble Court of Special Judge for PMLA who rejected the said application vide order dated 12.02.2019 by stating that *"The bare reading of sec.8(7) of the PML Act makes it clear that this section would be applicable when there is an order of adjudicating authority confirming the attachment of the property. The order of the Hon'ble Appellate Tribunal vide order dated 12/12/2018 set aside the order of Adjudicating Authority. The said order of attachment by the*

adjudicating authority dated 24/10/2017 was set aside and therefore as on date there is no order u/s. 8(3) of the PML Act in existence."

10. During the hearing held on 22.09.2023, it was brought to our notice by the Ld. Counsel for the parties that appeal preferred against order dated 12.02.2019 with Hon'ble Bombay High Court in 2019 is at admission stage and delay in filing the same is not yet condoned.

11. It is relevant to mention here that once the Corporate Insolvency Resolution Process is initiated the moratorium comes into play and that the provisions of IBC have an overriding effect over other laws, in case of inconsistency.

Section 14 of IBC reads as under:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) 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;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Section 238 of IBC reads as under:

"238. 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."

12. In the matter of ***Directorate of Enforcement Vs. Sh. Manoj Kumar Agarwal, Resolution Professional & Ors. (Company Appeal (AT) (INSOLVENCY) NO.575/2019 the Hon'ble NCLAT*** has held as follows:

> *"In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."*

13. In the matter of ***Nitin Jain Liquidator PSL Limited Vs. Enforcement Directorate , W.P. (C) 3261/2021, CM APPLs. 3220/2021, 41811/2021, 43360/2021,***

43380/2021 the Hon'ble Delhi High Court has held as follows:

> *"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."

14. On perusal of facts in the present matter it becomes amply clear that there was no stay operative as on the date of auction of the property. Further, in view of the above provisions of law and decisions, it can be said that Liquidator has acted appropriately in discharging his duties. The Respondent No.1 was required to ignore impugned letter dated 10.04.2017 **(Annexure-G)** issued by the Respondent No.2 as either on the date of auction of the property or registration no stay was operating**.** Therefore, the sale of property by Respondent No. 3 to the Applicant is considered to be a defect free transaction.

15. In view of the above we pass following orders:

    a) The Respondent No.1 i.e. Sub Registrar, Kamptee Registrar Office, Administrative Building, Tehsil Office, Taluka Kamptee, Nagpur is directed to register the sale deed as neither any impediment nor stay was operative on the date of auction of the property and none exists as on date.

b) The Applicant is directed not to further alienate the property in question until the final outcome of the proceedings pending before Hon'ble Bombay High Court.

Accordingly, **I.A. No. 417 of 2022** is disposed off.

-Sd-	-Sd-
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Arati/LRA