

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
SPECIAL BENCH**

6

**CORAM: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF HYDERABAD BENCH,
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 06.05.2020 AT 11.00 A.M.
THROUGH VIDEO CONFERENCING:**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 54/2020 in CP (IB) No. 43/7/HDB/2018
NAME OF THE COMPANY	Leo Meridian Infrastructure Projects and Hotels Ltd
NAME OF THE PETITIONER(S)	Andhra Bank
NAME OF THE RESPONDENTS(S)	Leo Meridian Infrastructure Projects and Hotels Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature
Mr. V. Sethu Madhava Rao, Mr. Mallela Leela Prasad,	Advocate		
Mr. Ram Kumar Relhan, Resoluiton Professional	R P		

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-Mail & Telephone No.	Signature
Ms. Anjali Agarwal for R1, R2 & R4 in IA No. 54/2020	Advocate		
Mr. Krishna C V Grandhi	Advocate for RP		

ORDER


IA 54/2020 in CP (IB) No. 43/7/HDB/2018 is listed for orders today.

Member (J) and Member (T) are connected through video conference.

Counsel for Applicant and Counsel for Respondent are present and proceedings conducted through video conference.

Orders pronounced today vide separate orders. IA is dismissed.

Member (T)
(through Video Conference)


Member (J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

**IA No.54 of 2020
in
CP (IB) No.43/07/HDB/ 2018**

In the matter of section 60(5) of the
Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the NCLT Rules,
2016.

In the Matter of

Sri Raj Kumar Ralhan
Resolution Professional for
Leo Meridian Infrastructure Projects
& Hotels Limited
Bearing Reg. No.IBBI/ IPA-001/ IP-P00981/ 2017-18/11614
Flat NO.801, tower 01
Kalypso Court, Jaypee Greens Wish Town
Uttar Pradesh – 201304.

..

Applicant

AND

1. Deputy Director
Enforcement Directorate
Hyderabad Zonal Office, 3rd Floor
Shakar Bhawan, Basheerbagh
Hyderabad – 500004.
2. Director
Directorate of Enforcement
Headquarters Office, 6th Floor
Lok Nayak Bhawan, Khan Market
New Delhi – 110003.
3. Sub Registrar
Sub Registrar office
Shamirpet Mandal, Shamirpet
Medchal-Malkajgiri District
Hyderabad – 500078.
4. Sub Registrar
Sub Registrar Office
K. Kotapadu, Visakhapatnam District
Andhra Pradesh – 531034.

..

Respondents

In the matter of:

Andhra Bank
SCF Branch, the Belvedere
6-3-891 & 892
Raj Bhavan road, Somajiguda
Hyderabad-82
Regd Office at Pattabhi Bhawan
5-9-1, Saifabad, Hyderabad.

.. Financial Creditor

AND

Leo Meridian Infrastructure Projects & Hotels Ltd
H.N.6-3-996, Behind Van Heusen Show Room
Somajiguda Circle, Raj Bhawan Road
Hyderabad – 500082.

.. Corporate Debtor

Date of order : 06.05.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Parties / Counsels Present:

For the petitioner : Shri M/s Krishna C.V. Grandhi.

For the Respondents : Ms. Anjali Agarwal, Advocate.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heard on : 24.02.2020, 27.02.2020 & 03.03.2020.

ORDER

The present application is filed by the applicant/ Resolution Professional for the corporate debtor seeking, inter alia, removal of provisional attachment imposed by the Provisional Attachment Order No.05/ 2019 in Ref. No.ECIR/ 05/ HYZO/2015 dated 30.12.2019.

2. AVERMENTS MADE IN THE APPLICATION:

2.1 The respondent/ corporate debtor is a private limited company engaged in various activities in hospitality.

leisure and tourism industry. The corporate debtor has a flagship brand 'Leonia', ('resort' for brevity), the largest leisure hotels in India, situated near Hyderabad at Bommaraspet Village. The resort has facilities, such as, leisure, health, business, entertainment, recreation, etc. consisting of 4 hotels and villa resorts of 462 keys, a 3,00,000 sq ft international convention and sporting facility with a capacity of over 6000 guests, over 50 indoor and outdoor banqueting venues. It has various other amenities as mentioned in paras 2 and 3 of the application.

2.2 The corporate debtor is under CIRP vide order dated 09.04.2019 (ANNEXURE-1) passed by the Tribunal and moratorium is in effect as on date of application. Shri B. Naga Bhushan has been appointed as Interim Resolution Professional, who filed report dated 02.05.2019, stating that the claims against the corporate debtor had been collated and that the Committee of Creditors (COC) constituted on 01.05.2019 in compliance of section 18 of the I&B Code. In its first meeting held on 08.05.2019 the CoC recommended replacement of Interim Resolution Professional and appointment of Resolution Professional under section 24 of I&B Code. In its second meeting dated 22.05.2019, CoC approved appointment of Shri Raj Kumar Ralhan as Resolution Professional under section 22(2) of the I&B Code and the Tribunal has confirmed the said appointment vide order dated 13.06.2019 (ANNEXURE-2).

2.3 It is averred in para 7 of the application that the Provisional Attachment Order No.05/ 2019 in Ref. No.ECIR/ 05/ HYZO/2015 dated 30.12.2019 (ANNEXURE-3) is primarily based under section 5(1) of Prevention of Money Laundering Act, 2002 ('PMLA'), to attach assets of the corporate debtor, specifically the land, buildings, capital works in progress, plant, machinery, furniture, etc. Such Provisional Attachment Order is valid for 180 days.

2.4 It is averred in para 8 of the application that the said Provisional Attachment Order has been passed by respondent no.1 notwithstanding the corporate debtor undergoing CIRP vide order dated 09.04.2019 (Annexure-1).

2.5 The said Provisional Attachment Order is violative of the moratorium in the following terms:

- (A) That the Tribunal has declared moratorium with regard to corporate debtor under section 14 of the IBC. The moratorium was declared and it is in effect as on date. The directions enjoined are :
- (i) Prohibiting 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, transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
 - (ii) The moratorium shall have effect from 09.04.2019 till completion of CIRP or till the Tribunal approves Resolution Plan under section 31(1) or passes an order for liquidation of corporate debtor under section 33, whichever is earlier.
 - (iii) The moratorium is in full effect now, which strictly prohibits and bars any transfer, encumbrance, alienation or disposition of any of the assets of the corporate debtor.
 - (iv) The Provisional Attachment Order creates an encumbrance. Thus, it violates the Moratorium under section 14 of the I&B Code.
 - (v) The moratorium is the mechanism to safeguard, protect and preserve the assets of the corporate debtor and it further sees to revive the corporate debtor through resolution.

3. DECISIONS RELIED ON BY THE APPLICANT :

3.1 The applicant relied on the following decisions:

- (i) SWISS RIBBONS PVT LTD AND OTHERS Vs. UNION OF INDIA AND OTHERS, MANU/SC/ 0079/2019, wherein the Hon'ble Supreme Court has held that one of the primary objectives of the corporate insolvency process is resolution by way of value maximization of the assets of the corporate debtor.
- (ii) BINANI INDUSTRIES LIMITED Vs. BANK OF BARODA & ANOTHER, AT INSOLVENCY No.82 of 2018, wherein the Hon'ble NCLAT has reiterated the objectives of the I&B Code.
- (iii) REI AGRO, CA (IB) No.453/ KB/ 2018 in CP (IB) No.73/ KB/ 2017 (NCLT, KOLKATA), wherein it is held that "the properties and assets of the relevant corporate debtor have to be set free from the attachment order of the Enforcement Directorate to enable the liquidation of the said corporate debtor."
- (iv) PUNJAB NATIONAL BANK Vs. DIRECTOR, DIRECTORATE OF ENFORCEMENT, RAIPUR, FPA-PMLA-2633/ RP/ 2018, wherein the PMLA Appellate Tribunal held that,

"The proceeding before the Adjudicating Authority under PMLA is civil in nature and hence in view of section 14 of IBC, the proceedings before the Adjudicating Authority of PMLA cannot continue. .. This Tribunal is of the considered opinion that the proceeding u/s 8 of the 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."

- (v) BANK OF INDIA Vs. THE DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI, FPA-PMLA- 2173/ MUM/ 2018, wherein the PMLA Appellate Tribunal has reaffirmed the above view in the following terms:

"The proceedings under PML Act before the Adjudicating Authority are civil in nature and not criminal."

- (vi) SREI INFRASTRUCTURE FINANCE LIMITED Vs. STERLING SEZ AND INFRASTRUCUTURE LIMITED, M.A. 1280/ 2018 in C.P. 405/ 2018, NCLT, Mumbai has reiterated the nature of ED attachment proceedings as 'civil' that are barred by the

moratorium imposed under section 14 of the IBC. The Hon'ble Tribunal held that as per Section 14(1)(a) of the IBC, the moratorium on any kind of proceedings shall be imposed, particularly with regard to the attachment of the property. Conclusively, the Hon'ble Tribunal ordered the Resolution Professional to proceed and take charge of the properties and control and deal with them under IBC as if no attachment order existed.

It is thus, contended that respondent no.1 has acted in violation of section 14 of IBC by encumbering the assets of the corporate debtor through Provisional Attachment Order. It is contended that issuance of Provisional Attachment Order is a civil proceeding for the purpose of section 14 of IBC and covered under moratorium of corporate debtor.

- (vii) PR. COMMISSIONER OF INCOME TAX Vs. MONNET ISPAT AND ENERGY LTD., MANU/ SC/ 1018/ 2018, wherein the Hon'ble Supreme Court upheld the overriding nature of the IBC over other statutes in the following words:

"Given section 238 of the I&B Code, 2016 it is obvious that the Code will override anything inconsistency contained in any other enactment including the Income Tax Act."

- (viii) SREI INFRASTRUCTURE FINANCE LTD Vs. STERLING SEZ AND INFRASTRUCTURE LTD., (2019) 149 CLA 485, wherein the NCLT, Mumbai observed that section 238 of IBC shall prevail over section 71 of the PMLA.

- (ix) INNOVENTIVE INDUSTRIES LTD Vs. ICICI BANK AND ANOTHER, AIR 2017 SC 4084, wherein the Hon'ble Supreme Court has upheld that the provisions of IBC will prevail over other laws and that conflicting laws cannot impede the functioning of the CIRP in the following words:

"It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the

corporate insolvency resolution process under the Code.

- (x) KSL AND INDUSTRIES LIMITED Vs. ARIHANT THREADS LIMITED, (2008) 9 SCC 763.

3.2 In light of the above laws it is contended that the I&B Code will prevail over PMLA.

3.3 The applicant has also relied on newly enacted section 32-A of The Insolvency and Bankruptcy Code by way of Ordinance dated 24.12.2019, which seeks to provide a regime where liability of corporate debtor for an offence committed during pre-CIRP period shall cease.

4. REPLY DATED 20.01.2020 ON BEHALF OF RESPONDENTS
No.1 & 2.

4.1 By way of preliminary objections it is contended that the Tribunal does not have jurisdiction to interfere with the Provisional Attachment Order issued under section 5 of PMLA by the competent authority under PMLA. Said order can only be confirmed under section 8 of PMLA by the Adjudicating Authority. Section 5(1) of PMLA reads thus,

“Attachment of property involved in money-laundering.

—
5(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 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 one hundred and eighty days from the date of the order,”

4.2 In para 14 of the Reply it is stated that preamble to the PMLA states as follows:

“An Act to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto.”

The PMLA is enacted in furtherance of India's international obligations to implement the UN Resolutions calling up Member States to adopt national money laundering legislation and programmes.

5. **CASE LAWS RELIED ON BY RESPNDENT No.1 :**

- (i) DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, DELHI Vs. AXIS BANK & OTHERS, 2019 SCC ONLINE DEL 7854 (annexed as ANNEXURE R-2).
- (ii) Y.S. JAGAN MOHAN REDDY Vs. CBI, (2013) 7 SCC 439,
- (iii) VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, judgment dated 02.05.2019 in COMPANY APPEAL (AT) (INSOLVENCY) No.493 of 2018, rendered by NCLAT. (ANNEXURE R-3).
- (iv) VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT – order dated 22.07.2019 in Civil Appeal No.5546 of 2019 rendered by the Hon'ble Supreme Court of India. (ANNEXURE R-4).
- (v) ANDHRA BANK Vs. STERLING BIOTECH LTD., COMPANY APPEAL (AT) (INSOLVENCY) No.601, 612, 527 of 2019, vide judgment dated 28.08.2019 by NCLAT. (ANNEXURE R-5).
- (vi) RAI FOUNDATION THROUGH ITS TRUSTEE Vs. DIRECTOR, DIRECTORATE OF ENFORCEMENT, Writ Petition (Criminal) No.100/ 2005 decided on 20.02.2015, by DELHI HIGH COURT.
- (vii) THE VERA CRUZ (1884) 10 AC 59 at page 68. Also see MAXWELL on the Interpretation of Statutes, 12th Edition. Page 196-7.
- (viii) UPSEB Vs. HARI SHANKAR JAIIN, (1978) 4 SCC 16.
- (ix) ROTOMAC GLOBAL PRIVATE LTD Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, order dated 02.07.2019 in Company Appeal (AT)

(Insolvency) No.140 of 2019. (ANNEXURE R-7), as averred in para 37 of the Reply.

6. In para 20 of the Reply, the respondents relied on newly enacted section 32-A of The Insolvency and Bankruptcy Code by way of Ordinance dated 24.12.2019 (ANNEXURE R-6) to contend that it is only after a resolution plan covering such assets has been approved by the Tribunal under section 31 of the IBC that the Enforcement Directorate is precluded from proceeding against the assets of corporate debtor, for commission of offence prior to commencement of CIRP. Whereas in the present case there is no Resolution Plan covering the assets of the corporate debtor attached by the Enforcement Directorate vide the impugned Provisional Attachment Order dated 30.12.2019.

7. In para 42 of the Reply the respondents relied on its own File No.ECIR/ HYZO/5/2015 initiated on 28.05.2015 based on predicate FIR registered by CBI, BS & FC, Bengaluru vide FIR No.RC-02(E)/ 2015 dated 23.02.2015, under section 120-B read with section 468 and 471 of the IPC, 1860 against certain accused persons/ entities. Subsequently two more FIRs were registered. Details of all the three FIRs are given in a tabular form. Detailed analysis and critical appreciation of facts related to the said FIRs were given in the subsequent paras, viz. paras 43 to 57 of the Reply. The respondents reiterate their contention that the NCLT has no jurisdiction to entertain the application against the Attachment Order and it is only the Adjudicating Authority under PMLA who has overriding authority to entertain the issue in question.

8. In para 58(c) of the Reply too it is reiterated that the power of the Enforcement Directorate to attach property under section 5 cannot be trampled upon merely because CIRP process is underway or because moratorium has been imposed. In para 58(c) of the Reply it is stated that moratorium period does not preclude the Enforcement Directorate from proceeding against the assets of the corporate debtor in accordance with law. As per newly inserted section 32A(2) of the IBC, only after a resolution plan covering such assets has been approved by the Tribunal under section 31 of the IBC the Enforcement Directorate would stand

precluded from proceeding against the assets of corporate debtor, for commission of offence prior to commencement of CIRP provided all the conditions of section 32A of IBC are fulfilled. The applicant has wrongly interpreted the Provisional Attachment Order of the Enforcement Directorate. The said order has been issued in a money laundering investigation to preserve the proceeds of crime. The Enforcement Directorate has not disturbed the peaceful possession of the Resolution Professional.

9. In para 58(g) of the Reply it is contended that the Adjudicating Authority under PMLA has the authority to set aside or modify a Provisional Attachment Order issued by Enforcement Directorate under section 8 of PMLA.

10. COUNTER DATED 30.01.2020 ON BEHALF OF RESPONDENT No.4 - SUB-REGISTRAR, KOTAPADU, VISAKHAPATNAM DISTRICT.

10.1 Respondent no.4 relied on S.O.219(b) of Registration Manual issued vide G.O. M.S. No.620, Revenue (Registration-I) Department dated 28.09.2020 and G.O. M.S. No.497, Revenue (Registration-I) Department dated 07.04.2003, which reads as under:

“If Andhra Pradesh High Court or any other Civil Court restrains a person from alienating a property and if such orders are brought to the notice of the Registering officers or served on the Registering Officer, the Registering Office is estopped from going ahead with the Registration.”

10.2 It is averred in para 3 of the Counter that the applicant has neither sought any relief nor levelled any allegation against respondent no.4. It is also averred that the applicant has not submitted any documents for registration of the properties in question. Apparently respondent no.4 learnt about issuance of the Provisional Attachment Order No.05/ 2019 in Ref. No.ECIR/ 05/ HYZO/2015 dated 30.12.2019. Respondent no.4, adopts the Reply filed by respondents no.1 and 2- Enforcement Directorate.

10.3 Respondent no.4 sought exemption from personal appearance and also from submission of statement as regards the contents of the application and the Provisional Attachment Order in question inasmuch as the relief sought for by the applicant relates to respondents no.1 and 2 only.

11. WRITTEN SUBMISSIONS DATED 11.03.2020 FILED ON BEHALF OF RESPONDENTS No.1 & 2.

11.1 The respondents have furnished the status of the cases cited by the applicant herein in para VI of the Written Submissions. It is averred that the out of 9 cases cited by the applicant the Enforcement Directorate has either filed appeal against the order cited or in the process of examining the appealability. Status of cases cited is as follows:

• Number of cases where appeal is preferred and the matter is pending.	..	3
• Number of cases where appealability is being examined.	..	1
• Number of case laws cited by the Applicant which do not pertain to PMLA.	..	3
• Number of cases where PMLA delivered Order and appeal is not preferred.	..	2

• Total number of cases cited by the applicant	..	9

11.2 It is averred in paras VII(A)(1) and (2) of the Written Submissions that the NCLT has no power or jurisdiction to set aside an order passed by the Enforcement Directorate under PMLA. Besides, an alternate remedy is available within the PMLA itself. The Adjudicating Authority has to confirm the Provisional Attachment Order after issuing notice to the aggrieved party and after hearing the said party.

11.3 It is averred in paras VII(A)(3), (4) and (5) of the Written

can appear under section 8(2). In fact the Adjudicating Authority has issued notice to the corporate debtor with regard to the Provisional Attachment Order in question and the corporate debtor can appear and represent his case before the Adjudicating Authority. Even if the corporate debtor is not satisfied with the decision of the Adjudicating Authority, there lies an Appellate Tribunal under section 25 of the PMLA. In this context the respondents relied on decision in the case of G. SRINIVASAN Vs. THE CHAIRPERSON, W.P. No.530/ 2011 rendered by Madras High Court (at para 15).

11.4 It is averred in para 6 of the Written Submissions that the Hon'ble Apex Court has determined the jurisdiction of the NCLT in the case of EMBASSY DEVELOPERS PVT LTD Vs. STATE OF KARNATAKA AND OTHERS, 2019 SCC OnLine SC 1542 and contended that the NCLT has jurisdiction only under the Companies Act, 2013 an I&B Code, 2016 and nothing beyond that.

11.5 It is averred in para B, page 7 of the Written Submissions that the process of attachment is a quasi-criminal process, the ultimate object of which is confiscation after criminal trial. Thus, the attachment is merely a step-in-aid.

11.6 The respondents in para 3 (page 8) onwards of the Written Submissions relied on the following decisions and the ratio decidendi therein.

Para no.	Page no.	Citation	Ratio decidendi
3	8	Hon'ble Supreme Court's decision in Rohit Tandon Vs. Enforcement Directorate and Y.S. Jagan Mohan Reddy Vs. CBI, MANU/ SC/ 1403/ 2017. (para 15).	Economic offices constitute a class apart and need to be visited with different approach in the matter of bail.
C	8	Hon'ble NCLAT decision in Andhra Bank Vs. Sterling Biotech. (para 15)	" if it is based on the proceeds of crime, it is always open to the 'Enforcement Directorate'

			to seize the assets of the 'Corporate Debtor' and act in accordance with PMLA."
2	8	Hon'ble Delhi High Court's decision in Deputy Director Vs. Axis Bank. (para 146)	Role of the corporate debtor and risk in lifting an attachment order under PMLA.
3	9	The Hon'ble NCLAT decision in Global V. Deputy Director. (para 12)	" Thus, as the PMLA, 2002 or provisions therein relates to 'proceeds of crime' we hold that section 14 of 'I&B Code' is not applicant to such proceeding.
3	11	Decision of the Hon'ble NCLAT in JSW Steel Vs. Mahender Kumar Khandelwal and others. (para 44)	There cannot be any attachment/ confiscation of assets of corporate debtor by Enforcement agencies after approval of Resolution Plan.
E/2	11	Decision of the Hon'ble NCLAT in Rotomac Global Vs. Deputy Director. (para 14)	"As the 'PMLA, 2002' relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', we find not merit in this appeal. It is accordingly dismissed. .."
3.	11	Hon'ble Delhi High Court decision in Deputy Director Vs. Axis Bank. (paras 103, 105 and 147).	The argument of prevalence of other laws over PMLA is rejected.
4	12	Decision of Madras High Court in Shobana and others Vs. Assistant Director of Enforcement. (para 58)	Initiation of proceedings under PMLA are self-contained, in-built and independent procedure mainly to prevent the act

			of money-laundering and connected activities.
F	12	Decision dated 25.10.2019 of the Hon'ble NCLAT dated 15.10.2019 in JSW Steel Vs. Mahender Kumar Kahndelwal.	When assets seized are proceeds of crime, proceeds thereof will come within the meaning of 'operational debt' payable to Enforcement Directorate.
3	13	Decision of the Hon'ble Apex Court in Kanwar Singh Saini Vs. High Court of Delhi.	Interim order always merges in the final order to be passed in the case and if the case is ultimately dismissed, the interim order stands nullified automatically.

11.7 The respondents, in para D (page 9) of the Written Submissions discussed about after-effects of insertion of section 32A through Ordinance No.19 of 2019 dated 28.12.2019. It is contended by the respondents, by virtue of the aforesaid section, that there is no bar in attaching a property before approval of a resolution plan, viz. during moratorium.

12. WRITTEN SUBMISSIONS DATED 12.03.2020 FILED BY THE APPLICANT.

12.1 Preliminary objections about section 5(1) of the PMLA, as raised in para 7 of the application are reiterated in para 1 of the Written Submissions.

12.2 It is averred in paras 3 to 5 of the Written Submissions that the Hon'ble Appellate Tribunal has reiterated in many cases that proceedings before NCLT under I&B Code take primacy over proceedings under PMLA, as has been reaffirmed by the PMLA Appellate Tribunal in PUNJAB NATIONAL BANK Vs DEPUTY DIRECTOR, DIRECTORATE OF

ENFORCEMENT, RAIPUR, FPA-PMLA-2633/RP/ 2018, wherein it was reaffirmed by the PMLA Appellate Tribunal that the proceedings before the Adjudicating Authority under PMLA are civil in nature. The same view is reaffirmed by the PMLA Appellate Tribunal in BANK OF INDIA Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI, FPA-PMLA-2173/ MUM/ 2018.

12.3 It is thus submitted that it is of paramount significance to consider that the moratorium so declared strictly prohibits and bars any transfer, encumbrance, alienation or disposition of any corporate debtor's assets.

12.4 In paras 6 and 7 of the Written Submissions it is averred that section 238 of I&B Code shall have overriding effect over other laws. The Hon'ble Supreme Court in PR. COMMISSIOENR OF INCOME TAX Vs. MONNET ISPAT AND ENERGY LTD., MANU/ SC/ 1018/ 2018, has held as follows:

"Given section 238 of the Insolvency and Bankruptcy Code, 2016 it is obvious that the Code will override anything inconsistent contained in any other enactment including the Income Tax Act."

12.5 In para 8 of the Written Submissions, decision of the Hon'ble Supreme Court in the case of INNOVENTIVE INDUSTRIES LTD Vs. ICICI BANK & ANOTHER, (2017) AIR 2017 SC 4084 is relied on wherein it is held that:

"It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code."

12.6 In subsequent paras the following decisions are cited:

- (i) Decision of the Hon'ble Supreme Court in t KSL & INDUSTRIES LIMITED Vs. ARIHANT THREADS LIMITED, (2008) 9 SCC 763.
- (ii) Decision of the Hon'ble NCLAT in EDELWISS ASSET RECONSTRUCTION COMPANY LTD Vs. SYNERGIES DOORAY

AUTOMOTIVE LTD & ORS., Company Appeal (AT) (Insolvency)
Nos.169 – 173 of 2017.

(iii) REI AGRO, CA (IB) No.453/ KB/ 2018 in CP (IB) No.73/ KB/
2017 (NCLT, KOLKATA).

By virtue of the above submissions it is emphasized that section 238 of the I&B Code shall override the non-obstante clause under the PMLA Act.

12.7 In paras 13 and 14 of the Written Submissions the applicant averred that respondent no.1 has heavily relied on DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, DELHI Vs. AXIS BANK & OTHERS, 2019 SCC ONLINE DEL 7854. It is averred that the said case was initially dealt by PMLA Appellate Tribunal. The matter was carried to the Hon'ble Delhi High Court, which has remanded the matter to PMLA Appellate Tribunal for adjudication. On being remanded, the PMLA Appellate Tribunal reinstated the matter in the case of INDIAN OVERSEAS BANK & OTHERS Vs. JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT, NEW DELHI & ORS., FPA-PMLA-530/ DLI/ 2016.

12.7 In para 15 of the Written Submission the applicant averred that respondent no.1 has relied on ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT & OTHERS, IA No.4132 of 2019, and contended that the said case has application to the facts of the present case.

12.8 In para 16 of the Written Submission the applicant averred that respondent no.1 has relied on EMBASSY DEVELOPERS PVT LTD Vs. STATE OF KARNATAKA & ORS., 2019 SCC Online SC 1542. It is contended that the said case too has neither application nor bearing to the facts of the case.

12.9 In para 17 of the Written Submissions as regards the case rendered by the Hon'ble NCLAT in JSW Steel Vs. Mahender Kumar Khandelwal and others. (para 44) emphasis is laid on two issues : (i) there is an approved resolution plan in JSW, which is not so in the present case. (ii) the Hon'ble NCLAT in the said case has held that:

“151. However, the judgement passed by the Adjudicating Authority and this Appellate Tribunal will not come in the way of the Directorate of Enforcement or the ‘Serious Fraud Investigation Office’ or the Central Bureau of Investigation’ to proceed with investigation or to take any action in accordance with law against erstwhile promoters, officers and other of the ‘corporate debtor’. No costs.”

It is contended that in view of the above decision of the Hon’ble NCLAT the provisional attachment in question be removed with immediate effect.

12.10 In para 18 of the Written Submissions the applicant contended that the case of SARWAN SINGH AND ORS Vs. KASTURI LAL, MANU/ SCC/ 0071/ 1976 has no application to the facts of the present case.

13. The applicant submits that proceedings are of two kinds, viz.

- (i) Criminal proceedings against accused,
- (ii) Civil proceedings against the assets of the company to which they are promoters.

Criminal proceedings against the accused may proceed before the PMLA Adjudicating Authority. However, the provisional attachment in question is of civil nature as held by the Hon’ble PMLA Appellate Tribunal in PUNJAB NATIONAL BANK (supra) and BANK OF INDIA (supra).

14. We have heard the learned counsel for the Resolution Professional and also the learned counsel for respondents no.1 and 2. Respondent no.4 has filed separate counter.

15. The learned counsel for the applicant would contend that the Corporate Debtor is under CIRP vide order dated 09.04.2019. The Adjudicating Authority has passed moratorium order with effect from 09.04.2019. The learned counsel would further contend that the Resolution Professional has conducted the meetings of the CoC from time to time. While so, respondent no.1 issued a Provisional Attachment Order (PAO) in respect of all the assets of the Corporate Debtor vide Provisional Attachment Order No.05/ 2019 in Ref. No.ECIR/ 05/ HYZO/2015 dated 30.12.2019. The learned counsel would contend that the Provisional

which the property of the Corporate Debtor, which is under attachment cannot be transferred, disposed of, parted with or otherwise dealt with in any manner.

16. The learned counsel for the Resolution Professional would contend that respondent no.1 passed the Provisional Attachment Order despite moratorium declared by the Adjudicating Authority under section 14 of the I&B Code.

17. The learned counsel would contend that respondent no.1 cannot pass order of attachment in respect of the assets of the Corporate Debtor during moratorium. The contention of the learned counsel is that the effect of the Provisional Attachment Order is to create an encumbrance on the assets of the Corporate Debtor. The moratorium prohibits creation of any encumbrance over the assets of the Corporate Debtor. The learned counsel for the Resolution Professional has relied on decision of the Hon'ble NCLAT in the case of BINANI INDUSTRIES LIMITED Vs. BANK OF BARODA & ANOTHER, (AT) (INSOLVENCY) No.82 of 2018, and contended that the object of the Code is resolution. The purpose of resolution is for maximization of value of the assets of the Corporate Debtor. The learned counsel contended that respondent no.1 cannot pass order of attachment, which is against moratorium declared by the Tribunal. The learned counsel contended that the proceedings before the NCLT take precedence over the proceedings commenced by the authorities under the PMLA. In this connection the learned counsel relied on decision of the Appellate Tribunal under the PMLA in the case of PUNJAB NATIONAL BANK Vs. DIRECTOR, DIRECTORATE OF ENFORCEMENT, RAIPUR, FPA-PMLA-2633/ RP/ 2018. The same view was also reaffirmed by the Appellate Tribunal under the PMLA in the case of BANK OF INDIA Vs. THE DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, MUMBAI, FPA-PMLA- 2173/ MUM/ 2018. The learned counsel contended that the proceedings under the PMLA are of civil in nature. Therefore, such proceedings initiated against the Corporate Debtor are barred by moratorium order. In this connection, the learned counsel for Resolution Professional relied on the order passed by the NCLT, Mumbai in the case of SREI INFRASTRUCTURE FINANCE LIMITED Vs. STEELING SEZ AND INFRASTRUCTURE LIMITED, M.A.

1280/ 2018 in C.P. 405/ 2018. The learned counsel contended that the provisions of I&B Code have over-riding effect by virtue of section 238 of the I&B Code. Therefore, the attachment order issued under the PMLA is hit by section 14 of the I&B Code. Thus, the contention of the learned counsel is that the provisions of the I&B Code have over-riding effect over the proceedings of the PMLA. Once moratorium order is passed by the Adjudicating Authority, then the proceedings cannot be initiated against the Corporate Debtor for attaching the assets of the Corporate Debtor. The learned counsel therefore, requested the Tribunal to raise the Provisional Attachment Order, declaring the order as null and void.

18. The learned counsel for respondents no.1 and 2 filed Written Submissions. The contention of the learned counsel is that the present application is not maintainable before the Adjudicating Authority. The learned counsel contended that there is no jurisdiction vested on the NCLT to set aside any order passed by the Enforcement Directorate under the provisions of PML Act, which is an Act intended to punish for contraventions resulting in punishment and confiscation. If it is assumed that the NCLT has jurisdiction, even then there lies an alternative remedy available in PML Act itself. There is an Adjudicating Authority which is required to approve the Provisional Attachment Order after issuing notice to the aggrieved party and after hearing its objections, if any. The learned counsel has brought to the notice of the Tribunal the provisions of section 8(2) of the PML Act and contended that the aggrieved party can approach the Adjudicating Authority constituted under the PML Act against the Provisional Attachment Order. A notice was already issued to the Corporate Debtor by the Adjudicating Authority. As such the Resolution Professional can raise objections, if any, against the Provisional Attachment Order before the Adjudicating Authority. The learned counsel contended that the Hon'ble Apex Court has determined the jurisdiction of the NCLT in a decision rendered in the case of EMBASSY DEVELOPERS PVT LTD Vs. STATE OF KARNATAKA AND OTHERS, 2019 SCC OnLine SC 1542 (supra) and contended that the NCLT will have jurisdiction only within the ambit of section 60(5) of the I&B Code. The learned counsel contended that the Hon'ble Apex Court held that a decision taken by the Government or the Statutory Authority in relation to a matter which is in the realm of public law cannot, by any stretch of imagination, be brought

resolution” appearing in Clause (c) of subsection (5) of section 60. The learned counsel thus, contended that the NCLT is having jurisdiction to decide the disputes coming under the I&B Code and not any dispute arising under the PML Act. The learned counsel contended that process of attachment is not completely of civil nature, but it is quasi criminal process. The learned counsel contended that the PML Act is a special enactment intended to prevent laundering of illegal money which is an economic offence. The learned counsel has relied on the decision of the Hon’ble Apex Court in the matter of ROHIT TANDON VS. THE ED AND Y.S. JAGAN MOHAN REDDY VS. CBI, MANU/ SC/ 1403/ 2017 (supra) and contended that the economic offence is to be viewed seriously and to be considered as a grave offence, thus, affecting the economy of the country.

19. The learned counsel for the Enforcement Directorate would contend that section 14 of the I&B Code will not apply to the proceedings initiated under the PML Act. The learned counsel in this connection relied on a decision of the NCLAT in the case of ANDHRA BANK Vs. STERLING BIOTECH LTD., COMPANY APPEAL (AT) (INSOLVENCY) No.601, 612, 527 of 2019, vide judgment dated 28.08.2019 (supra), whereby the Hon’ble NCLAT upheld the independence of the Directorate of Enforcement by observing that:

“Insofar the assets of the ‘Corporate Debtor’ is concerned, if it is based on the proceeds of crime, it is always open to the ‘Enforcement Directorate’ to seize the assets of the ‘Corporate Debtor’ and act in accordance with the ‘Prevention of Money Laundering Act, 2002’ .. “

20. The learned counsel further relied on the decision of the Hon’ble Delhi High Court in the matter of DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, DELHI Vs. AXIS BANK & OTHERS, 2019 SCC ONLINE DEL 7854 (supra) and relied on para 146 of the judgment which is as follows:

“146. A Resolution Professional appointed under the Insolvency Code does not have any personal stake. He only represents the interest of creditors, their committee having appointed and tasked him with certain responsibility under the said law. The moratorium enforced in terms of Section 14 of Insolvency Code cannot come in the way of the statutory authority conferred by PMLA on the enforcement officers for depriving a person (may be also a

would defeat the objective of PMLA by opening an escape route. After all, a person indulging in money- laundering cannot be permitted to avail of the proceeds of crime to get a discharge for his civil liability towards his creditors for the simple reason such assets are not lawfully his to claim.”

21. The learned counsel for ED further relied on a decision of the Hon’ble NCLAT in the matter of ROTOMAC GLOBAL PRIVATE LTD Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, order dated 02.07.2019 passed by the Hon’ble NCLAT in Company Appeal (AT) (Insolvency) No.140 of 2019 (supra). The relevant para relied on by the learned counsel is quoted below:

“12. From the aforesaid provisions, it is clear that the ‘Prevention of Money-Laundering Act, 2002’ relates to ‘proceeds of crime’ and the offence relates to ‘money-laundering’ resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the ‘Prevention of Money Laundering Act, 2002’ or provisions therein relates to ‘proceeds of crime’, we hold that Section 14 of the ‘I&B Code’ is not applicable to such proceeding.”

22. The learned counsel further relied on the decision of the Hon’ble NCLAT in the matter of VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, judgment dated 02.05.2019 in COMPANY APPEAL (AT) (INSOLVENCY) No.493 of 2018, rendered by NCLAT (surpa) and contended that the Hon’ble NCLAT has ruled that PML Act relates to ‘proceeds of crime’ and the offence relates to money-laundering resulting in confiscation of property derived therefrom and therefore, section 14 of the I&B Code is not applicable to such proceeding. The learned counsel has relied on relevant para which is as follows:

“12. From the aforesaid provisions, it is clear that the ‘Prevention of Money-Laundering Act, 2002’ relates to ‘proceeds of crime’ and the offence relates to ‘money-laundering’ resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the ‘Prevention of Money Laundering Act, 2002’ or provisions therein relates to ‘proceeds of crime’, we hold that Section 14 of the ‘I&B

23. The learned counsel for Enforcement Directorate further contended that section 32A of the I&B Code is not applicable to the facts of the present case since the COC has not yet approved any Resolution Plan as on the date of issuing Provisional Attachment Order. In this connection the learned counsel has relied on section 32A(2) of the I&B Code, which is as follows:

“32 (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.”*

24. The learned counsel contended that by virtue of introduction of section 32A of the I&B Code what is clarified is that no action shall be taken against the property of 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. The learned counsel contended that section 32A of the I&B Code would apply to the cases where Resolution Plan is approved under section 31 of the I&B Code and it does not prohibit attachment during the currency of moratorium order passed under section 14 of the I&B Code. Thus, the learned counsel contended that in the present case there is no resolution plan approved by the COC on the date of issuance of Provisional Attachment Order and the attachment is not hit by section 14 of the I&B Code.

25. The learned counsel further relied on the decision of the Hon'ble NCLAT in JSW STEEL VS. MAHENDER KUMAR KHANDELWAL AND OTHERS. Relevant para thereof is as follows:

“44 (6) In so far as the corporate debtor or its assets are concerned, after the completion of the CIR Process, i.e. a statutory process under the IBC, there cannot be any attachment or confiscation of the assets of the Corporate Debtor by any enforcement agencies after approval of the Resolution Plan.”

26. The learned counsel contended that the NCLAT also held that there cannot be attachment after approval of the Resolution Plan.

27. The learned counsel further relied on para 14 of the decision of the Hon'ble NCLAT in the matter of ROTOMAC GLOBAL PRIVATE LTD Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra), which is as follows:

“14. As the 'Prevention of Money Laundering Act, 2002' relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', having no overriding effect of one Act over the other including the 'I&B Code', we find no merit in this appeal. It is accordingly dismissed. No costs.”

Thus, the learned counsel contended that attachment is valid and as such it cannot be set aside. Thus, the learned counsel would contend that the application deserves to be dismissed.

28. The short question for consideration is that whether respondent no.1 can issue Provisional Attachment Order against the assets of the Corporate Debtor during the currency of moratorium order passed under section 14 of the I&B Code. The admitted fact is that CIRP has commenced against the Corporate Debtor -company, viz. LMIPHL. The Provisional Attachment Order was issued on 30.12.2019 by attaching the assets of the Corporate Debtor under the relevant provisions of the PML Act. The attachment is challenged on the ground that the proceedings under the PML Act are of civil nature. Therefore, the proceedings are hit by moratorium order passed under section 14 of the I&B Code. The attachment will have effect on creating encumbrance over the assets of the Corporate Debtor which is prohibited by virtue of moratorium order. The Provisional Attachment Order is also challenged on the ground that the provisions of the I&B Code have overriding effect by virtue of section 238 of the I&B Code. So, any order passed under section 14 of the I&B Code will prevail against any order passed under the PML Act as regards the assets of the Corporate Debtor.

29. The learned counsel for the applicant has relied on the decision of the Appellate Tribunal under the PML Act in the matter of PUNJAB NATIONAL BANK Vs. DIRECTOR, DIRECTORATE OF ENFORCEMENT, RAIPUR, FPA-PMLA-2633/ RP/ 2018 (supra) and contended that the proceedings before the Adjudicating Authority under the PML Act is civil in nature and in view of section 14 of the I&B Code proceedings before the Adjudicating Authority under the PML Act cannot continue.

30. The learned counsel for respondent no.1 would contend that the decision of the Appellate Authority under the PML Act in the above case is not final and the same is under challenge before the Hon'ble High Court of Bombay, Nagpur Bench.

31. The contention of the learned counsel is that the provisions of the I&B Code will have overriding effect over other laws. By virtue of section 238 of the I&B Code, when an order under section 14 of the I&B Code is passed, then attachment cannot be effected under the PML Act.

32. As against this it is the contention of the learned counsel for the ED that the proceedings under the PML Act are different than the proceedings under the I&B Code. Proceedings are initiated under the PML Act in connection with involvement of proceeds of crime. Therefore, moratorium has no application.

33. The learned counsel for the ED has relied on several decisions. The important decision for our consideration is the judgment dated 02.05.2019 passed by the Hon'ble NCLAT in the matter of VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra), in COMPANY APPEAL (AT) (INSOLVENCY) No.493 of 2018 (supra). The above order cited by the learned counsel is at pages 191-199 of Volume-2 of the Reply Affidavit filed by respondents no.1 and 2. It is also the case of the learned counsel for respondent no.1 that the order of the Hon'ble NCLAT was also confirmed by the Hon'ble Apex Court. The order of the Hon'ble Apex Court in Civil Appeal No.5546 of 2019 is cited at pages 200-203 of Volume-2 of the Reply Affidavit.

34. It is an undisputed fact that when CIRP is pending against the Corporate Debtor the respondent no.1 has issued Provisional Attachment

the Corporate Debtor when moratorium order is in force. The issue involved is decided by the Hon'ble NCLAT in the case of VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT, judgment dated 02.05.2019 in COMPANY APPEAL (AT) (INSOLVENCY) No.493 of 2018 (supra). In para 12 the Hon'ble NCLAT held as follows:

“From the aforesaid provisions, it is clear that the ‘Prevention of Money-Laundering Act, 2002’ relates to ‘proceeds of crime’ and the offence relates to ‘money-laundering’ resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the ‘Prevention of Money Laundering Act, 2002’ or provisions therein relates to ‘proceeds of crime’, we hold that Section 14 of the ‘I&B Code’ is not applicable to such proceeding.”

35. The Hon'ble NCLAT further held in para 14 of the said order as follows:

“14. As the ‘Prevention of Money Laundering Act, 2002’ relates to different fields of penal action of ‘proceeds of crime’, it invokes simultaneously with the ‘I&B Code’, having no overriding effect of one Act over the other including the ‘I&B Code’, we find no merit in this appeal. It is accordingly dismissed. No costs.”

The Hon'ble NCLAT has dealt with the issue in detail in the judgment cited above.

36. The learned counsel for the ED further relied on the order passed by the Hon'ble Apex Court in the appeal preferred against the judgment of the Hon'ble NCLAT in the matter of VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra), wherein the Hon'ble Apex Court declined to interfere with the order passed by the Tribunal.

37. The learned counsel for respondent no.1 has also relied on the decision of the Hon'ble Appellate Tribunal in the matter of ROTOMAC GLOBAL PRIVATE LTD Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra). The issue involved in this case is also with reference to the Provisional Attachment Order issued under the PML Act, which belongs to the Corporate Debtor. Attachment was effected during

..... filed an application for release of the assets

of the Corporate Debtor. The application of the Liquidator was rejected by the Adjudicating Authority. Against such rejection an appeal was filed before the Hon'ble NCLAT. It is held in the order that the issue involved in the appeal squarely falls within the issue decided in the case of VARRSANA ISPAT LIMITED Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra) by the Hon'ble NCLAT. In the case of ROTOMAC GLOBAL PRIVATE LTD Vs. DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT (supra), the Hon'ble NCLAT held as follows:

“8. Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds.”

Thus, the Appellate Tribunal dismissed the appeal preferred by the Liquidator applying the principle laid down in the case of VARRSANA ISPAT LIMITED (supra). Thus, the PML Act relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', having no overriding effect of one Act over other laws including the I&B Code. So, there is no question of overriding effect. As such the present application filed by the Provisional Attachment Order is not maintainable and is liable to be dismissed.

38. Section 32A of the I&B Code was introduced in the I&B Code by virtue of Amending Ordinance dated 28.12.2019. Subsection (2) of Section 32A of the I&B Code reads as follows:

“32A.

(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 111 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

(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.

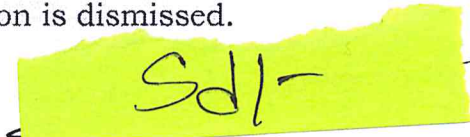
(3) Subject to the provisions contained in subsections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance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

39. The applicant cannot take shelter under section 32A(2) of the I&B Code, because when Provisional Attachment Order was passed there was no resolution plan approved by the COC, which was confirmed by the Adjudicating Authority under section 31 of the I&B Code. In the present case, no Resolution Plan is approved by the COC as on the date of the Provisional Attachment Order. Therefore, section 32A(2) of the I&B Code will not apply to the Provisional Attachment Order passed by respondent no.1. Thus, the present application filed by the Resolution Professional on behalf of the Corporate Debtor is liable to be dismissed.

40. In the result the application is dismissed.



NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)



RATAKONDA MURALI

MEMBER

(J)