

JUDGEMENT

Per Justice N. Seshasayee, Member (Judicial)

Collated Facts:

1. The present set of twin appeals are preferred by the Liquidator of M/s Siddhi Vinayak Logistics Ltd., challenging the Common Order dated 19.07.2022 passed by the Adjudicating Authority (NCLT, Ahmedabad) dismissing his applications in IA No. 453 of 2019 and IA No. 773 of 2021 in CP (IB) No. 89 of 2017.
2. To provide a brief overview of this case, the issue involved in these appeals relates to the authority of the Enforcement Directorate to withdraw the amount from a bank account of the CD which the former had attached earlier prior to the commencement of CIRP of the CD, but transferred it during the subsistence of moratorium. Liquidator contends that this sum must be part of the liquidation asset of the CD, but it was negated by the Adjudicating Authority principally on the ground of perceived lack of jurisdiction in the Adjudicating Authority.

Facts:

3. The genesis of the dispute lies in the investigation which the Directorate of Enforcement has commenced pursuant to the FIRs registered against the Corporate Debtor, alleging bank-fraud and diversion of loan funds by the Corporate Debtor and its promoters. In furtherance thereof, vide

communications dated 24.04.2017 the ED issued a notice under Section 50 of the Prevention of Money Laundering Act (PMLA, for short) to various debtors/customers of the Corporate Debtor and directed them not to transact with or release monies to the Corporate Debtor. In short, this is the setting:

- a) On 08.06.2017, ED issued an Order of provisional attachment, attaching movable and immovable assets of the CD and related entities/persons.
- b) On 24.10.2017, this provisional order of attachment was confirmed by the Adjudicating Authority constituted under the PMLA in terms of Sec.8(4) of the said Act.
- c) In between, i.e., after the provisional order of attachment and the subsequent order of confirmation of the said Order, on 12.09.2017, the CD was drawn into CIRP pursuant to an Order of the Adjudicating Authority under the IBC in CP (IB) No. 89 of 2017. Consequently, moratorium under Sec. 14 of the IBC came into operation. In effect, the second mentioned Order confirming provisional attachment of the CD's assets was passed during the moratorium.
- d) Subsequently, on 12.12.2018, the Appellate Tribunal under the PMLA, set aside the earlier order of attachment. The Enforcement Directorate promptly challenged this before the Bombay High Court and it is pending. It may however, be mentioned that the High Court

did not stay the operation of the Order of the Appellate Tribunal under the PMLA.

- e) While things stood thus, on 02.08.2018, during the subsistence of the moratorium of the CD, the Enforcement Directorate withdrew a sum of ₹.2,29,10,131.06 from the account of the corporate debtor with M/s ICICI Bank.
 - f) The CIRP against the CD failed and on 19.11.2018 its liquidation was ordered.
 - g) When the liquidation process was underway, on 18.06.2019, the Enforcement Directorate issued a fresh order of Provisional Attachment of 6,170 vehicles belonging to the Corporate Debtor. This Order of attachment came to be partially confirmed vide its order dated 03.12.2019, when the Adjudicating Authority under the PMLA approved the attachment of only 1,344 vehicles and not the remaining 4,826 vehicles which were already traced by the Liquidator and have not been taken possession of.
4. The Liquidator would now file two applications under Sec.60(5) of the IBC, the details whereof are:
- a) I.A No. 453 of 2019, inter alia, for the withdrawal of the provisional orders of attachment dated 08.06.2017 and 18.06.2019 and for remittance/refund of ₹2.29 crores withdrawn by the ED from the account of the Corporate Debtor.

- b) I.A No. 773 of 2021, for quashing and setting aside the communications of the ED, dated 24.04.2017 issued under Sec.50 of the PMLA and consequential directions to the debtors/customers of the Corporate Debtor, including Ashok Leyland Ltd., Haldia Petrochemicals Ltd., Sonalika International Tractors Ltd. and Hindustan Coca Cola Beverage Pvt. Ltd. to release the admitted outstanding dues payable to the Corporate Debtor.

The ground on which the liquidator rested his plea is that the actions of ED were in direct violation of the moratorium under Section 14 of the IBC and that they had the effect of frustrating CIRP/liquidation by depriving the Corporate Debtor of its receivables and assets.

5. The ED opposed these applications and contended that the proceeding under the PMLA are independent criminal proceedings relating to “*proceeds of crime*”, that the PMLA is a special statute with overriding effect on the IBC and that the tribunals constituted under the IBC lacked jurisdiction to interfere with the attachment proceedings or actions undertaken under the PMLA.
6. The defence of the ED prevailed with the Adjudicating Authority and accordingly, both applications of the liquidator came to be dismissed vide the common order with a direction to the liquidator to approach the appropriate forum, which is now under challenge.

Arguments

7. The learned Counsel for the appellant contended:

- a) that the Adjudicating Authority committed a manifest error in declining jurisdiction under Section 60(5) of the IBC, despite the dispute arising directly out of the alleged violation of the moratorium imposed under Section 14 of the Code.
- b) that the present proceedings do not require adjudication upon the legality or validity of proceedings under the PMLA but are confined only to the issue whether the Directorate of Enforcement could lawfully withdraw monies from the account of the Corporate Debtor during the subsistence of the moratorium.
- c) that once the CIRP commences, all assets and receivables of the Corporate Debtor will be under the statutory protection of Section 14 and consequently no authority could continue coercive action against the assets of the Corporate Debtor. The withdrawal of ₹.2,29,10,131.06 from the bank account of the Corporate Debtor during the currency of the moratorium was ex facie contrary to Section 14(1)(a) of the Code and constituted unlawful depletion of the insolvency estate. The Hon'ble Supreme Court in **P. Mohanraj and Sundaresh Bhatt** [(2021) SCC 258] has held that while statutory authorities may continue adjudicatory proceedings, coercive recovery or enforcement actions in violation of Sections 14 or 33(5) of the Code are impermissible in law, but the impugned

Order however, overlooked both the effect of Sec.14 and also the ratio in ***Mohanraj case***.

- d) on facts, the Adjudicating Authority has failed to appreciate that vide its order dated 12.12.2018, the Appellate Tribunal under the PMLA has set aside the earlier Order of attachment made under Sec.8(5) of the said Act. And, the Bombay High Court before which the Enforcement Directorate has challenged the aforesaid order of the appellate authority, has not stayed the operation of the said order either. Therefore, in the absence of any subsisting attachment, the Respondent could not continue to retain the monies withdrawn during the moratorium.
- e) that the subsequent coercive actions initiated by the ED were barred on principles analogous to res judicata, since the basis of the proceedings had already been considered by the Appellate Tribunal under the PMLA.
- f) so far as that the communications issued under Section 50 of the PMLA had the effect of preventing debtors/customers of the Corporate Debtor from releasing admitted dues payable to the Corporate Debtor and thereby frustrated the CIRP/liquidation process.
- g) that despite repeated requests and representations made by the Liquidator, the Respondent failed to withdraw the restraint

communications issued to the debtors/customers of the Corporate Debtor.

- h) the conduct of the Respondent defeated the object of the IBC by depriving the Corporate Debtor of its receivables and diminishing the value of the insolvency estate;
- i) At any rate, the appellant has not sought adjudication upon attachment proceedings under the PMLA but only enforcement of the statutory consequences flowing from Section 14 of the IBC, which falls within the jurisdiction of the Adjudicating Authority.

8. Learned Counsel for the Respondent Contended:

- a) that the proceedings initiated by the Directorate of Enforcement arose out of serious allegations of bank fraud, forgery, criminal conspiracy and diversion of loan funds involving an amount exceeding ₹.1600 crores and therefore constituted proceedings relating to “*proceeds of crime*” under the PMLA. Hence, the Corporate Debtor and its promoters were accused in multiple FIRs registered by the CBI concerning fraudulently availing credit facilities and diversion of fund from multiple banks which justify invoking the PMLA. And, the investigation under the PMLA revealed generation, layering and integration of proceeds of crime through various entities controlled by the promoters of the Corporate Debtor and therefore the attached properties represented tainted assets liable for attachment and confiscation under the PMLA.

- b) that the Provisional Attachment Order dated 08.06.2017 was issued prior to commencement of CIRP and was subsequently confirmed by the Adjudicating Authority under the PMLA on 24.10.2017. And, the withdrawal of ₹2,29,10,131.06 on 02.08.2018 was effected pursuant to powers available under the PMLA in respect of attached properties and therefore could not be treated as an unlawful recovery action.
- c) that proceedings under the PMLA are independent criminal proceedings relating to proceeds of crime and operate in a completely distinct field from insolvency proceedings under the IBC.
- d) Neither the Adjudicating Authority nor this Appellate Tribunal possesses jurisdiction to interfere with attachment proceedings initiated under the PMLA or with actions taken by authorities constituted thereunder. Section 60(5) of the IBC at no time be interpreted as conferring an all-pervasive jurisdiction upon the NCLT/NCLAT to examine decisions taken by statutory authorities exercised in public law. Reliance was placed on the ratio in **Embassy Property Developments Pvt. Ltd. Vs State of Karnataka & Others** [2019 SCC OnLine SC 1542], **Gujarat Urja Vikas Nigam Limited v. Amit Gupta & Ors.**, [(2021) 7 SCC 209].
- e) Not only the IBC and the tribunals constituted thereunder have different purposes to achieve from that which is intended by IBC, by no stretch of interpretation can the Enforcement Directorate be termed as a creditor within the meaning of Sec.5(20) and (21) of the

IBC for the tribunals to invoke its jurisdiction in matters concerning the working of PMLA. At any rate, Section 14 of the IBC has no application to criminal proceedings or penal actions having the character of proceedings concerning proceeds of crime and therefore attachment proceedings under the PMLA remain unaffected by moratorium. Reliance was placed on Embassy Property Developers case, **Directorate of Enforcement Delhi V. Axis Bank** [2019 SCC Online Delhi 7854], **Kiran Shah, R.P. of KSL Industries Vs Enforcement Directorate, Kolkata**, [Com. Appeal (AT)(Ins) 817 of 2021].

- f) Section 41 of the PMLA expressly bars jurisdiction of civil courts and other authorities in matters falling within the competence of authorities constituted under the PMLA.

Discussion & Decision

9. The facts and the arguments being what they are (as stated above), the critical aspect of the controversy relates to the legality of attaching the assets of the corporate debtor by the Enforcement Directorate either during the moratorium clamped under Sec.14 of the Code, or during liquidation process in the context of Sec.33(5) thereof. In short, the dispute is not appellant Vs the Enforcement Directorate, but IBC Vs PMLA, when both the legislations are in action.
10. The facts in controversy give rise to three issues:

- a) Whether the Order of attachment and physical removal of certain assets of the CD by the Enforcement Directorate when the CD was under moratorium is legally sustainable?
 - b) whether in view of the appellate authority constituted under the PMLA vacating the Order of attachment whose correctness though being challenged before the High Court, yet inasmuch as the High Court has not stayed the operation of the Order of the appellate authority, is it justifiable for the Enforcement Directorate to continue to retain the amounts of the CD that it has taken possession of?
 - c) The last issue is the sustainability of the notice issued by the Enforcement Directorate under Sec.50 of the PMLA to the debtors of the corporate debtor directing them not to make payments to the CD.
11. It requires to be reminded with a strong dose of emphasis that the PMLA, 2002, was enacted to fulfill India's obligations under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Financial Action Task Force (FATF) Recommendations, and the United Nations Convention against Transnational Organized Crime. These international initiatives required the countries to criminalize money laundering, confiscate proceeds of crime, and strengthen international cooperation. The genesis of PMLA is rooted here with an intent to prevent money laundering and to combat organized economic

terrorism besides actual terrorist- financing, and to protect the integrity of our financial system. Set in the context, the attachment of proceeds of crime or relatable to it under the PMLA is in aid of its eventual confiscation, which, it may be said, is a legislative structure for tracking and hunting such ill-gotten assets. The intent is evident: there shall be no tolerance, no premium for engaging in the crime which the Parliament is keen to forbid. If this aspect of PMLA is placed alongside an analysis of the objective of the IBC, it is gatherable that notwithstanding the laudability of the objective that provides centrifugality to the functioning of the Code, it still remains only as a statute for resolving the insolvency situation of a debt-ridden company - just one company. If this is unlayered more, it exposes the reality of a conflict between the interest of few creditors of a company in CIRP versus the national interest. While the former is compromisable, which, at any rate happens through the haircuts imposed during the distribution of the proceeds of a successful CIRP, or liquidation, which every creditor of a CD knows, accepts, and is prepared for, national interest at all times remains uncompromisable.

12. This apart, the PMLA in its working neither differentiates nor discriminates the companies that are drawn into a CIRP and those which are considered financially safe by its creditors. It must be emphasised that Parliament did not legislate IBC with an intent to create a holy Ganges out of the IBC to wash the corporate debtor of its sin of criminality under the PMLA, or as a mechanism for legitimizing any ill-gotten wealth of the CD. There is

nothing in the code, that enables accommodating the wealth which is sourced by and out of a crime, in the resolution or liquidation process of a corporate debtor. The legislative intent behind the scheme of IBC only aims to deal with the issue of corporate insolvency, either in a CIRP or in a liquidation process, and to pay off the creditors of the corporate debtor through the sale proceeds of the legitimate assets of the corporate debtor either as a going concern or as liquidated assets, as the case may be, and not out of the ill-gotten wealth of the CD. Otherwise, and as indicated earlier, IBC would unwittingly become a camouflage, a shield, to save the ill-gotten wealth of the corporate debtor and create a classification within the non-discriminatory character of the PMLA. Set on this plane, if the operational space of Sec.14 of the Code during the CIRP, or Sec.33(5) during liquidation, is tested, it becomes evident that these provisions legislatively intended to gyrate around the legitimately acquired assets of the corporate debtor and not with those that fall within the shadow of crime under the PMLA. This in turn leads to a concomitant conclusion that, if the purpose behind Sec.14 is to freeze the existing liability of the corporate debtor as on the date when it is admitted to CIRP as part of the legislative strategy to preserve the status quo for a convenient resolution of insolvency of the CD, then operation of Sec.14 must be limited to those litigations and proceedings, both pending and prospective, either civil or criminal, which hold the likelihood of adding on to the existing debt-liability of the corporate debtor and not others. Needless to state that those

crimes which spring from penal statutes of public law nature, with no prospect of adding to the debt-liability of civil nature of the CD, cannot be allowed to be impacted by the moratorium, even if they affect the net asset of the CD available for CIRP or liquidation. See: **Deputy Director, Enforcement Directorate Vs Axis Bank** [2019 SCC OnLine Delhi 7854], **Varrsana Ispat Ltd., through its RP Vs Deputy Director, Directorate of Enforcement** [Comp.Appeal (AT) 493 of 2018] confirmed by the Hon'ble Supreme Court in C.A.(s) 5546 of 2019, and relied on by this tribunal in **Kiran Shah, R.P. of KSL Industries Vs Enforcement Directorate, Kolkata,** [Com. Appeal (AT)(Ins) 817 of 2021] and **Ashok Kumar Sarawagi, RP of Kohinoor Steel Private Ltd., Vs Enforcement Directorate & another** [Com.Appeal (AT)(Ins) No:411 of 2022].

13. The appellant however, placed considerable reliance in the authority of the Hon'ble Supreme Court in **P. Mohan Raj & Others Vs Shah Brothers Ispat Pvt. Ltd.,** [(2021)6 SCC 258], where the Court has held that a proceeding under Sec.138 of the Negotiable Instrument Act would fall within Sec.14 of the Act, but the correctness of the same is now doubted by another bench of the Supreme Court recently in **Dineshchand Surana Vs UCO Bank,** [(2026) ibclaw.in 402 SC], and the issue has now been referred to a larger bench.
14. It now on the above plane, the controversy on jurisdiction of the tribunals constituted under the IBC to travel into the working of other statutes, more

particularly the PMLA, to be tested. This is no more res integra as the issue now stands settled in the celebrated authority of the Supreme Court in ***Embassy Property Developments Private Limited Vs State of Karnataka and Others*** [(2020)13 SCC 308], where it was held that the jurisdiction of the Adjudicating Authority is limited by the extent to which it is required to be exercised for the purposes of working of the IBC and no more. After all, both IBC and the PMLA, are legislations of the Parliament and as shown earlier, they operate in different domains with different objectives to achieve, and do not overlap in their respective operations. Indeed, the IBBI has also taken note of the issue on jurisdiction, and hence in paragraph 2 of its Circular No. IBBI/CIRP/87/2025, dated 04th November, 2025, it has advised the resolution professionals that “*where the assets of the corporate debtor are attached by the ED under the provisions under PMLA, the Insolvency Professional may file an application before the Special Court under Sections 8(7) or 8(8) of the PMLA for restitution of such assets*”. Necessarily, the tribunals constituted under the IBC are not the forums which can entertain any plea against the ED.

15. In the course of arguments, Sec.32A(2) of the Code was also referred to, but for the present we do not consider a need to discuss it, since Sec.32(A) operates only where there is a successful insolvency resolution process.
16. The writing is on the wall for the appellant: whether to attach or not to attach the properties of a corporate debtor is for the Enforcement

Directorate to decide, and where there has been any such attachment by the ED, the adjudicatory mechanism created under the PMLA alone will have jurisdiction to deal with any challenge to it. This will also include any notice issued under Sec.50 of the PMLA. So far as those assets which have been relieved by the appellate authority under the PMLA goes, even though no order of stay has been passed by the Bombay High Court, the fact remains that the correctness of the Order of the appellate authority is being tested there, which again fall within the framework for working the adjudicatory process under the PMLA, the appellant may have to approach the High Court.

17. To conclude, we find no merit in the appeals and dismiss the same as we concur with the conclusion of the Adjudicating Authority. No costs.

Pending I.A.s, if any, also stand disposed of.

[Justice N. Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

rs/beena