



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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**THE DIRECTORATE OF ENFORCEMENT VS SH. MANOJ KUMAR AGARWAL & ORS.
COMPANY APPEAL (AT) (INSOLVENCY) NO.575& 576/2019 & COMPANY APPEAL (AT)(INSOLVENCY)
NO.576/2019**

DATE OF JUDGMENT: April 09th, 2021 (NCLAT-DELHI BENCH)

"IF A PROPERTY HAS BEEN ATTACHED IN THE PMLA WHICH IS BELONGING TO THE CORPORATE DEBTOR AND CIRP IS INITIATED, THE PROPERTY SHOULD BECOME AVAILABLE TO FULFIL OBJECTS OF IBC TILL A RESOLUTION TAKES PLACE OR SALE OF LIQUIDATION ASSET OCCURS"

Facts of the Case: -

The appeals have been filed by the Appellant being aggrieved by impugned order passed by the AA in the matter of Corporate Debtor. The Miscellaneous Application was filed by the RP of the Corporate Debtor and after hearing the parties the AA by the impugned order directed that the attachment order issued by the deputy Director, Directorate of Enforcement, under the provisions of Prevention of Money Laundering Act, 2002 (PMLA in short) which has been confirmed by the AA under PMLA was nullity and nonest in law in view of Sections 14(1) (a), 63 and 238 of IBC, 2016. By the impugned order the AA permitted the RP to take charge of the properties and deal with them under IBC as if there is no attachment order. The AA clarified that the attachment only in respect of the properties of Corporate Debtor were covered by this impugned order.

The appellant claimed that the impugned order needs to be set aside, as the properties were validly attached under the provisions of PMLA. It was stated that in another proceeding before another Bench of the same Tribunal in the matter of Sterling Biotech Ltd Vs Andhra Bank where quashing of attachment was sought, the concerned Bench did not interfere and observed that the appeal could be filed only under the provisions of PMLA. It was claimed that there is no moratorium applicable in criminal proceedings.

NCLAT Observations: -

The Tribunal stated that after the attachment when matter goes before the AA under PMLA, proceeding before Adjudicating Authority for confirmation would be civil in nature.



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In present matter, the Provisional Attachment took place before the corrigendum was issued. The CIRP started later. Once moratorium was ordered, even if the Appellant moved the AA under PMLA, further action before AA under PMLA must be said to have been prohibited. Even if confirmation has been done as stated to have been done, the same will have to be ignored. Section 14 of IBC will hit institution and continuation of proceedings before AA under PMLA. The CIRP will of course not affect prosecution before Special Court, till contingencies under Section 32A of IBC occur.

NCLAT stated that in regards to quasi-criminal proceeding against Corporate Debtor, applicability of Section 14 has been found. Considering this as well as the nature of proceedings that takes place before the AA under PMLA, it appears to us that even if the AA issues order of provisional attachment, the institution and continuation of proceedings before the AA for confirmation would be hit by Section 14 of IBC.

Alternatively, even if for any reason it was to be held that Section 14 of IBC would not help, it appears to us that Section 238 of IBC would still apply. Although it is argued that PMLA is a special statute and has an overriding effect still Section 238 of IBC is also a special statute and which is subsequent statute. If this Section is perused, the provisions of this Code would have effect notwithstanding anything inconsistent therewith contained “in any other law” for the time being in force.

Order: -

The appeals were disposed of by the Tribunal stating 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.

Verdict- Appeals Dismissed