



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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Mr. P. Eswaramoorthy Vs. The Deputy Commissioner of Income Tax (Benami Prohibition)
Company Appeal (AT) (CH) (INS) No. 188 of 2022
Date of NCLAT Judgement: March 13, 2023

Facts of the Case: -

The present appeal is filed by the liquidator (hereinafter referred as 'Appellant') of M/s Senthil papers and Boards Pvt. Ltd. ('CD') after being aggrieved by the AA order dated 29.03.2022.

After the Resolution Plan was rejected by CoC, liquidation order was passed by the AA dated 14.02.2019 and a Liquidator was appointed. The provisional attachments were made on 01.11.2019, meanwhile a show Cause notice was served by The Deputy Commissioner of Income Tax, Benami Prohibition (hereinafter referred as 'Respondent') dated 01.11.2019, to the CD, under the Prohibition of Benami Property Transactions Act, (PBPT), 1988.

The Respondent alleged that the land on which the factory of CD is located is a Benami Property. During Demonetization, ₹400 Crores in 'Old High Denomination Notes' were given to Senthil Group for the purchase of a Paper Mill in Coimbatore District, belonging to Smt. Sasikala, through her Intermediaries, etc.

The Income Tax Department also issued a Provisional Attachment Order dated 01.11.2019 under PBPT Act and attached the concerned asset of the CD during liquidation. The Appellant filed an application under Section 60(5) of IBC before the AA, seeking setting aside of the provisional attachment order and argued that IBC prevails over PBPT Act. The AA dismissed the application by order dated 29.03.2022 and observed that the remedy lies before an appropriate forum and not with the AA.

NCLAT's Observations:

The Appellate Tribunal, held that attachment made as per Section 24(3) of 'The Prohibition of Benami Property Act, 1988, cannot be a subject matter of proceedings under Section 60(5) of the IBC. A mere running of the eye of the ingredients of Section 60(5) of the Code, clearly indicates that it is not an all pervasive Section, conferring 'Jurisdiction', to an 'AA', to determine any questions, relating to the 'CD'.



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One cannot fall back upon Section 60(5) of the IBC, for seeking remedy, concerning the matter, relating to 'The PBPT Act, 1988'.

The AA is not a proper Fora to determine the controversies revolving around the Attachment of Property under the PBPT Act 1988. Thus, the application filed by the Liquidator seeking setting aside of Attachment Order per se are not maintainable in the eye of law.

The Appellate Authority further observed a 'Moratorium' imposed under Section 14 of the IBC, 2016, does not affect the Provisional Attachment Order, passed under The PBPT Act, 1988.

Order/Judgement: The view drawn by the AA in dismissing the applications including all IA's through its Impugned Order dated 29.03.2022 is free from 'Legal Infirmities'. Consequently, the 'Appeals' fail.

Case Review: Appeal is dismissed. No Costs. All Connected pending Interlocutory Applications, if any, are Closed.