



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. Shiv Charan & Ors. Vs. Adjudicating Authority under PMLA, 2002 & Anr.
and Directorate of Enforcement Vs. Mr. Shiv Charan & Ors.
W.P (L) NO.9943 OF 2023 AND W.P. (L) NO.29111 OF 2023
High Court Judgement dated March 01, 2024.**

Facts of the Case: -

The present cross writ petitions involve WP (L) No. 9943 of 2023 filed by Mr. Shiv Charan & others, (hereinafter referred as Petitioner 1,2,3) respectively against the Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue, Ministry of Finance (AA) and the Deputy Director, Directorate of Enforcement ED, (hereinafter referred as respondents), seeking to invalidate the Enforcement Case Information Report (ECIR) and orders attaching properties while WP (L) No. 29111 was filed by the ED, (hereinafter referred as Petitioner 2) challenging the NCLT's authority to pass the order invoking Section 32A of the IBC, 2016.

The case concerns the resolution of DSK Southern Projects Private Limited/CD under the IBC. The CD underwent a CIRP initiated by a financial creditor on 09.12.21. Eventually, a Resolution Plan put forth by petitioners and approved by NCLT on 17.02.23 under Section 31 of the IBC, 2016.

Prior to the commencement of the CIRP, on 20.10.17 various FIR's alleging offenses including cheating and criminal breach of trust were filed against the CD and its former promoters. These offenses fell under the "scheduled offenses" as per PMLA, 2002. Consequently, an ECIR was filed by ED on 08.03.18. The ECIR estimated the "proceeds of crime" to be approximately ₹ 8,522.27 crores. As a result of the ECIR, the ED filed an "original complaint," leading to attachment proceedings against the assets of the CD. This included four bank accounts of the CD totaling ₹3,55,298/-, and 14 flats constructed by the CD valued at ₹ 32,47,55,298/- (aggregating to ₹32,51,10,596/-), referred to as the "Attached Properties". The attachment was initially provisional under Section 5 of the PMLA, 2002, on 14.02.19 and later confirmed by an order dated 05.08.19 passed by the AA. The attachment persisted even after the initiation of the CIRP and continued after the approval of the Resolution Plan, which forms the crux of the current writ petition.

The core issue which arises before the Hon'ble High court is: Whether the NCLT has the jurisdiction to direct the ED to release the attached properties once the Resolution Plan in respect of said CD is approved by invoking Section 32A of the IBC, 2016.



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High Court Observations: -

The Hon'ble High Court affirmed, NCLT's jurisdiction in declaring that a CD would be discharged from offenses upon approval of the Resolution Plan under Section 31 of the IBC, 2016. Hon'ble High Court further stated that protections to the CD under Section 32A apply upon approval of a qualifying Resolution Plan, ensuring a clean break with a change in ownership.

The Hon'ble High Court further observed that since Section 32A confers immunity from prosecution, continued attachment under the PMLA, 2002 would be illogical. It also clarified that the jurisdiction under Section 14 of the IBC, 2016 ceased upon the commencement of Section 32A, making conflicts irrelevant. The court emphasized that the Approval Order for Resolution Plan by the NCLT dated 17.02.23, was not challenged by the ED, required the release of attached properties under Section 32A. The Hon'ble High Court further concluded that the NCLT's interpretation and application of Section 32A did not undermine the PMLA, 2002.

The Hon'ble High Court further stated that Quasi-judicial authorities, when exercising powers akin to civil courts within state agencies like the ED, play a distinct role separate from executive functions. They serve as a statutory check on the executive, bound by Supreme Court rulings as per Article 141 of the Constitution. It's imperative that such quasi-judicial bodies adhere to Supreme Court decisions to prevent unnecessary legal disputes, ensuring compliance with the rule of law.

Order/Judgement: The Hon'ble High Court ruled that the attachment by the ED over the Attached Properties, including four bank accounts and 14 flats of the CD, ceased on 17.02.23 pursuant to Section 32A of the IBC, 2016. It mandated that the Respondents in WP 9943 and the Petitioner in WP 29111 must promptly communicate this release to the CD, with a copy sent to the Petitioner in WP 9943, within six weeks of the judgment. This communication is vital for using the Attached Properties as bankable assets to revive the CD in line with the objectives of resolution.

Case Review: Both Writ petitions are disposed of.