

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-01-2024 AT 03:30 PM**

**IA (IBC) 33, 96 & 231/2020, IA (IBC) 1980/2023, IA (IBC) 363/2022, IA
(IBC) 620/2021, IA(IBC) 559, 738/2023, Inv.P(IBC)/25/2023 & IA (IBC)
1205/2022 in CP(IB)No.41/7/HDB/2017
u/s. 7 of IBC, 2016**

IN THE MATTER OF:

Canara Bank

...Financial Creditor

VS

Deccan Chronicle Holdings Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

IA (IBC) 1205/2022

This application is closed, with a liberty to file a fresh application for extension, in the event the resolution plan is not implemented by the SRA as directed by this Tribunal vide the order dated 23.01.2024.

Ivn.P (IBC) 25/2023 in IA (IBC) 559/2023

As IA (IBC) 559/2023 is closed, no further orders required in Ivn. P (IBC) 25/2023.

IA (IBC) 738/2023

Orders pronounced. In the result, **this application is partly allowed. No costs.**

IA (IBC) 559/2023

In the light of the orders passed in IA No 738/2023, **this application is closed.**

IA (IBC) 620/2021

Learned Counsel Mr. Sanjeev Singh & Ms. Taniya Bansal for Religare Finvest Limited present through Video Conference. This is an application

seeking for liquidation. In the light of the orders passed in IA No 738 and 559/2023, the orders in IA No 620/2021 deferred till 01.03.2024.

IA (IBC) 363/2022

In the light of the orders passed in IA No 738/2023, **this application is dismissed.**

IA (IBC) 1980/2023

Learned Counsel Mr. Nitish, for applicant and learned counsel Mr. Mayur Mundra, for respondent present physically. For hearing, matter adjourned to 01.03.2024.

IA (IBC) 231/2020, IA (IBC) 96/2020 & IA (IBC) 33/2020

Learned Counsel Mr. G. Bhupesh, for applicant and Learned Counsel Mr. Mayur Mundra, for respondent present physically. Erstwhile Resolution Professional present in person. It is represented by the learned counsel for the applicant that majority of the claims of the applicants herein have been settled amicably and the counsel is hopeful that the balance claims will be settled before next hearing date. This submission is recorded. Matter adjourned to 01.03.2024 for reporting final settlement.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

**IA.No.738 OF 2023
in
CP (IB) No.41/7/HDB/2017**

Under section 32A and 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the NCLT Rules, 2016.

IN THE BETWEEN :

SREI Multiple Assets Investment Trust –
Vision India Fund,
the successful Resolution Applicant of
Deccan Chronicle Holdings Limited
having its registered office at
'Vishwakarma', 86,
Topsia Road (South), Kolkata – 700046.

Applicant

Versus

1. **Enforcement Directorate**
Through Joint Director
Hyderabad Zonal Office
Having its office at:
3rd Floor, Shakar Bhavan
Basheer Bagh, Hyderabad – 500004.
2. **Ms. Mamta Binani**
Chairman of the Supervisory Committee
Of the Corporate Debtor and
Erstwhile Resolution Professional
appointed for the Corporate Debtor,
Deccan Chronicle Holdings Ltd (DHCL)

Having her office at 2A, Ganesh Chandra Avenue
Commerce House, 4th Floor, Room No.6
Kolkata – 700013 and office of DCHL being at:
36, S.D. Road, Secunderabad,
Telangana – 500003.

... Respondents

3. **Indian Overseas Bank**
A body corporate duly constituted by and
Under the Banking Company (Acquisition &
Transfer of Undertakings) Act, 1970
Carrying on business, inter alia,
From Asset Recovery Branch,
1-8-522/27/2, 3, 4, 3rd Floor
Chikkadpally, Hyderabad – 500 020.
4. **Andhra Bank, a body corporate**
duly constituted by and under
the Banking Company (Acquisition &
Transfer of Undertakings) Act, 1970
Carrying on business, inter alia,
From Sultan Bazaar Branch
Ground Floor, Andhra Bank Building
Koti, Hyderabad – 500 095.
5. **U.V. Asset Reconstruction Limited**
a body corporate duly constituted under
Reserve Bank of India Act, 1950
Carrying on business, inter alia
From Corporate/ Principal Office, No.1304
13th Floor, Chiranjiv Tower
32, Nehru Place, New Delhi – 110 019.
6. **Octopus Productions Pvt Ltd**
having its principal office of business at

9, Lovelock Flat No.4C
Kolkata, WB 700019.

... **Proforma respondents**

Date of Order: 23rd January 2024

CORAM:

**DR. VENKATA RAMAKRISHNA BADARINATH
NANDULA
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH
HON'BLE MEMBER (TECHNICAL)**

PARTIES/COUNSELS APPEARANCE:-

For Applicant/ SRA : Shri Joy Sha, Senior Counsel with
Shri Abhishek Dash, Advocate.

For respondent no.1 : Shri D. Narender Naik,
ED Advocate

For respondent no.2 : Shri Mayur Mundra,
Erstwhile RP Advocate

For respondent no.4/ : Shri N. Satyanarayana Babji,
Union Bank of India Advocate.

For respondent no.6/ : Shri B.V.N. Sai Charan,
Octopus Productions Advocate

PER: BENCH

ORDER

This Application is filed by SREI Multiple Assets Investment Trust – Vision India Fund, the successful Resolution Applicant of Deccan Chronicle Holdings Limited praying that:

“(a) Declaration that the assets and/ or properties of the Corporate Debtor which form part of the Resolution Plan cannot be attached by the respondent no.1 by the Order No.1/ 2020 (In ECIR No.CIR/ HYZO/ 02/ 2015) purportedly issued under section 5(1) of the Prevention of Money Laundering Act, 2002 after approval of the Resolution Plan.

(b) An order quashing the provisional order of attachment dated October 15, 2020 being Order No.1/ 2020 (In ECIR No.CIR/ HYZO/ 02/ 2015) purportedly issued under section 5(1) of the Prevention of Money Laundering Act, 2002 by the respondent no.1.

(c) An order of injunction be passed restraining the respondent no.1 from taking any step and/ or further step in pursuance of the order dated October 15, 2020 being Order No.1/ 2020 (In ECIR No.CIR/ HYZO/ 02/ 2015) purportedly issued under section 5(1) of the Prevention of Money Laundering Act, 2002 in respect of assets and/ or properties mentioned in paragraph 7 hereof during the pendency of this application.

(d) An order staying the operation of the order dated October 15, 2020 being Order No.1/ 2020 (In ECIR No.CIR/ HYZO/ 02/ 2015) purportedly issued under section 5(1) of the Prevention of Money Laundering Act, 2002 by the respondent no.1 insofar as they purport to

attach the assets and/or properties mentioned in paragraph 7 hereof during pendency of this application.

(e) Ad interim order in terms of prayers above.”

2. By Board Resolution (Annexure ‘A’, page 45 of the IA), Shri Arindam Mukherjee is authorized to affirm this IA on behalf of the applicant.

3. Respondent no.1 is the Enforcement Directorate, Department of Revenue, Ministry of Finance, a law enforcement agency and economic intelligence agency responsible for enforcing economic laws. Respondent no.2 is Chairman of the Supervisory Committee of the Corporate Debtor and the erstwhile IRP of the Corporate Debtor. Respondents no.3 to 6 are proforma parties, who have charges in respect of assets of the properties of the Corporate Debtor registered in their respective names under the approved Resolution Plan of the Corporate Debtor. Assets of respondent no.1 are required to be transferred to respondents no.3 to 6. Whereas, Deccan Chronicle Holdings Limited is the Corporate Debtor, whose management and control

are vested with the Successful Resolution Applicant, after approval of Resolution Plan.

4. **Averments made in the IA:**

4.1 Vide order dated 05.07.2017 and 19.07.2017 (continuation order) (Annexure 'B', page 47 and 70 of this IA) passed in CP IB No.41/7/ HDB/ 2017, Deccan Chronicle Holdings Limited has been admitted into CIRP and respondent no.2 herein was appointed as Resolution Professional. Respondent no.2 has taken all the required steps, such as, constitution of CoC, inviting Expression of Interest. After extension of date for receiving Expression of Interest (EoI), 11 participants submitted EoIs, out whom two Resolution Applicants were in the forefront, viz. Arm Infra & Utilities and SREI Multiple Assets Investment Trust – Vision India Funds (the applicant herein). Fifteenth CoC, has approved the Resolution Plan submitted by the applicant with 81.30% votes under section 30(4) of the Code. Ultimately, the CIRP concluded on 15.02.2019. This Tribunal vide order dated

03.06.2019 (Annexure ‘C’) passed in IA No.66 of 2019 has approved the Resolution Plan submitted by respondent no.2 herein. Annexure ‘D’, page 103, is the Resolution Plan dated 11.12.2018 of this IA.

4.2 The Resolution Plan submitted by the applicant, inter alia, records the terms and conditions for implementation of the Resolution Plan, wherein the Financial Creditors of the Corporate Debtor and/ or its assignees or nominees including the proforma respondents no.3 to 6 hold exclusive charge in the manner more fully and particularly described in Exhibit ‘E’, Part ‘B’ (page 145 of the IA) of the Resolution Plan.

| Sl. No. | Type of asset | Used as | Location | Name of the FC/ respondent |
|----------------|----------------------|----------------|--|--|
| 1. | Land & buildings | Godown | Survey No.52, Block No.6 of Alandur Village hamlet of Adayar at Industrial Plot No.14, Thiruvika Industrial Estate, Guindy, Chennai. | UV Asset Reconstruction Company Ltd., respondent no.5. |

| | | | | |
|----|-------------------|--------------------|---|--|
| 2. | Land | Classified counter | S. No.13, 14/15, Ward No.11, B. No.14, Village & Mandal Saroornagar, RR Dist., Telangana. | UV Asset Reconstruction Company Ltd., respondent no.5. |
| 3. | Land | Vacant land | S. No.96/1/A, Plot No.19, Block 32, APIIC, Autonagar, Vanasthalipuram Village, Hayathnagar village, Hayathnagar Mandal, RR Distr. | UV Asset Reconstruction Company Ltd., respondent no.5. |
| 4. | Land and building | Not in use | 9-1-52 to 56 (Old No.37), Siddula House Sarojini Devi Road, Secunderabad – 500 003. | Indian Overseas Bank Ltd., respondent no.3. |
| 5. | Office | Office premise. | Flat 204, 2 nd Floor Sewa corporate park suites khasra no.46/1 1/2 , 1/3, 2/1/1 MG Road Sirhaul Village Sector 25, Gurgaon, Haryana. | Indian Overseas Bank Ltd., respondent no.3. |
| 6. | Land and building | | Survey no.779/1 = 72 cents out of | Andhra Bank Ltd., |

| | | | | |
|----|-------------------|--|---|---------------------------------------|
| | | | 82 cents and 779/2 = 83 cents out of total extent 1.55 acres Madhavaram Village Ambattur Taluk, Thiruvallur Dist. | respondent no.4. |
| 7. | Land and building | | Plot no.177, 178, 178A & 179 of Bommasandra Jigani Link Road Industrial Area survey nos. Parts 248 & 250 of Rajapura Village Jigani Hobli Anekal Taluk Bengaluru. | Andhra Bank Ltd., respondent no.4. |

4.3 The events that unfolded thereafter are as under:

15.10.2020 : Provisional order of Attachment dated 15.10.2020

(Annexure 'E') has been issued by respondent no.1/
Enforcement Directorate under section 5(1) of
Prevention of Money Laundering Act, 2002
(PMLA), attaching immovable properties valued at

Rs.1,22,15,06,450/- provisionally under section 5(1) of PMLA, 2022 for a period of 180 days.

Nov. 2020 The applicant had filed IA No.1171 of 2020 (Annexure 'F') in this Petition seeking similar reliefs as prayed for in this application. The Hon'ble NCLAT vide order dated 21.01.2022 (Annexure 'G') has set aside order dated 03.06.2019 (Annexure 'C') passed in IA No.66 of 2019 by this Tribunal approving the Resolution Plan.

21.04.2022 Consequently, IA No.1171 of 2020 lost its locus and the same has been disposed of as withdrawn vide order at Annexure 'H'.

14.08.2019 This Tribunal in IA No.155 of 2018 filed by the Resolution Professional, has held that trademarks 'Deccan Chronicle' and 'Andhra Bhoomi' are the properties of the Corporate Debtor. A copy of said order is at Annexure 'I'.

23.09.2019 In Company Appeal (AT) (Ins) No.982 of 2019 (Trademark Appeal) filed by the erstwhile promoters of Corporate Debtor, the Hon'ble NCLAT has passed interim order. Copy of said order is at Annexure 'J'.

10.05.2022 Canara Bank has challenged the above order dated 21.01.2022 (Annexure 'H') before the Hon'ble Supreme Court of India. The Hon'ble Apex Court vide order dated 10.05.2022 (Annexure 'K') directed the Hon'ble NCLAT to consider Company Appeal (AT) (Ins) No.553 of 2019 along with Trademark Appeal, viz. Company Appeal (AT) (Ins) No.982 of 2019.

4.4 Thus, order dated 03.06.2019 (Annexure 'C') passed in IA No.66 of 2019 regarding implementation of Resolution Plan having been upheld, now the applicant has locus to maintain this application. The order of attachment dated October 15, 2020

being Order No.1/ 2020 (In ECIR No. CIR/ HYZO/ 02/ 2015) is challenged on the following grounds.

4.5 That assets referred to above cannot be attached by the impugned order dated 15.10.2020 inasmuch as they form integral part of the approved Resolution Plan under Part-B thereof as approved by this Tribunal vide order dated 03.06.2019. The same having been upheld is now binding on all the stakeholders.

4.6 Relying on newly introduced section 32A of the IBC, the applicant contends that Corporate Debtor cannot be prosecuted for an offence committed prior to commencement of the CIRP, once Resolution Plan has been approved by the Tribunal. Once Resolution plan is approved the assets and properties which form part of the Resolution Plan cannot be under any circumstances be attached by respondent no.1.

4.7 Relying on *Manish Kumar Vs. Union of India*, (2021) 5 SCC 1, the applicant contends that the applicant cannot be faulted for the offences committed by the erstwhile promoters of the Corporate Debtor and the assets of the Corporate Debtor under the Resolution Plan cannot be attached.

4.8 The impugned order of Attachment dated 15.10.2020, fastens liability of the crimes committed by the erstwhile management. It is submitted that no liability can be cast upon the applicant for the omission/ commission committed by the erstwhile management of the Corporate Debtor.

4.9 On completion of CIRP and after approval of Resolution Plan, there cannot be any attachment by any enforcement agency.

4.10 While investigating under Prevention of Money Laundering Act, 2002, respondent no.1 cannot deal with and/ or attach assets of the Corporate Debtor, which have been legally acquired by the applicant through statutory process and as approved by this Tribunal under IBC. Besides, as was discussed

hereinabove the Financial Creditors of the Corporate Debtor and/or its assignees or nominees including the proforma respondents no.3 to 6 hold exclusive charge in the manner more fully and particularly described in Exhibit 'E', Part 'B' (page 145 of the IA) of the Resolution Plan.

4.11 Under the Resolution Plan, the attached properties/ assets of the Corporate Debtor are to be transferred to Proforma respondents no.3 to 6 in lieu of money and such creditors will be entitled to sell such assets and recover their respective dues. The impugned attachment order prevents such process of transfer. As a result, the Resolution Plan as approved by this Tribunal has become unworkable.

4.12 The applicant has received e-mail dated 27.03.2023 (Annexure 'O') from proforma respondent no.6, asking an amount of Rs.100 crores from the applicant in lieu of properties which stand attached by the Enforcement Directorate. This would plunge the Resolution Plan into uncertainty and the applicant would be liable to shell out more money if the

properties/ assets of the Corporate Debtor which were to be transferred to the Proforma respondents are attached by the Enforcement Directorate.

5. COUNTER DATED 22.05.2023 FILED BY
RESPONDENT NO.2/ ERSTWHILE RESOLUTION
PROFESSIONAL.

5.1 Respondent no.2 submits that unless the Resolution Plan is completely implemented, Resolution Applicant cannot take over the Corporate Debtor. In the instant case, the Plan is not implemented to its full extent.

5.2 CIRP was initiated against DCHL by order dated 19.07.2017. Proceedings of the Corporate Debtor were handled by Karuchola Koteswara Rao as IRP until the Tribunal appointed Ms. Mamta Binani as Resolution Professional vide order dated 08.02.2018. Certified copy of order was dated 12.02.2018.

5.3 Respondent no.2 relied on section 32A(2) of the IBC, which provides that no action shall be taken against the property

of the Corporate Debtor in relation to an offence committed prior to commencement of CIRP, wherein such property is covered under a Resolution Plan approved by the Adjudicating Authority under section 31 of the IBC.

5.4 While upholding validity of section 32A of the IBC, Hon'ble Apex Court in Writ Petition (C) No.26 of 2020 vide order dated 19.02.2021 has held that:

“257. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court’s jurisdiction are clear. The wisdom of the legislation is not open to judicial 338 review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the 339 hands of the Interim Resolution Professional and thereafter into the hands

of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.”

By virtue of the above observations of the Hon’ble Apex Court respondent no.2 contends that section 32A(2) of the IBC provides immunity from any action taken against the property of the Corporate Debtor qua an offence committee prior to commencement of CIRP of the Corporate Debtor.

5.5 It is submitted by respondent no.2 that after approval of Resolution Plan by this Tribunal, Enforcement Directorate/ respondent no.1 herein has passed order of provisional attachment dated 15.10.2020. One of the Financial Creditors of the Corporate Debtor, viz. Union Bank of India has challenged the said order of Provisional Attachment before the Hon’ble High Court of Delhi being Writ Petition (C) No.1547 of 2021 and the Hon’ble High Court, by way of interim relief, has stayed the order of the Enforcement Directorate vide its order dated

08.02.2021 (Annexure -3 of this Reply). Relevant para is reproduced hereunder:

“10. Accordingly, till the next date in this matter, there shall be a stay of the proceedings in ECIR No. ECIR/ HYZO/ 02/ 2018 before the Adjudicating Authority arising out of the provisional attachment order dated 15th October 2020, passed by the ED, subject to the condition that the petitioner Bank shall place on record any details of the steps taken to monetize the assets and the recovery made, if any.”

5.6 As regards the applicant’s statement made in the application that IA No.1171 of 2020, respondent no.2 has confronted as under:

| Applicant’s statement made in para 12, page 26 of the IA | Response of respondent no.2 in her Reply |
|--|--|
| 12. In the aforesaid circumstances, the applicant lost its locus to maintain IA No.1171 of 2020 and as such, the same was withdrawn. The same is recorded in the order passed by this Hon’ble Adjudicating Authority on April 21, 2022, a copy | It is for the first time the applicant herein is citing that there was no locus during that point of time. The appeal before the Hon’ble Supreme Court was pending and was well within knowledge of the applicant and before adjudication of the said appeal the applicant has taken steps for withdrawal of the IA. In this regard, copies of order dated 05.01.2022 & 21.04.2022 passed by the Adjudicating Authority and order dated 21.01.2022 passed by the Hon’ble NCLAT and |

| | |
|---|---|
| where is annexed hereto and marked as Annexure 'H'. | Supreme Court Case Status in Civil Appeal No.2094 of 2022 are at Annexures 4, 5, 6 and 7. |
|---|---|

5.7 Besides, respondent no.2 states that the erstwhile Resolution Professional has filed submissions in support of IA No.1171 of 2020. Said submissions are at Annexure-8 of this Reply.

5.8 When the Hon'ble Supreme Court vide order dated 10.05.2022 had set aside order of the Hon'ble NCLAT dated 21.01.2022 and remanded the matter to Hon'ble NCLAT, the Hon'ble NCLAT after fresh consideration has upheld the Resolution Plan and Trademark Appeal was allowed. A copy of order dated 02.09.2022 passed by the Hon'ble NCLAT in Company Appeal (AT) (Ins) No.553 of 2019 is at page 172 of this Reply. Against that order the applicant herein/ Successful Resolution Applicant has approached the Hon'ble Supreme Court by filing Civil Appeals No.1706/ 2023 and 8323/ 2022. Besides, IDBI, one of the Financial Creditors also challenged the said order by Civil Appeal No.8132/ 2022. All the said appeals

were disposed of by the Hon'ble Supreme Court by common judgement dated 17.03.2023 (Annexure-10 of this Reply), upholding the Resolution Plan of the Corporate Debtor.

6. COUNTER DATED 01.06.2023 FILED BY
RESPONDENT NO.1/ ENFORCEMENT
DIRECTORATE.

6.1 Respondent no.1 submitted that it has issued the following orders and has filed following complaints, which were challenged before the Hon'ble High Court.

| Orders issued by Enforcement Directorate | Proceedings filed by Enforcement Directorate | Proceedings filed against the OC before Hon'ble High Court. |
|---|---|---|
| Provisional Attachment Order No.03 of 2017 dated 28.03.2017 (PAO-3/2017). | Filed Original Complaint being OC No.747/ 2017 in PAO-3/2017 before the Adjudicating Authority, PMLA. | T. Vinayak Ravi Reddy, one of the defendants/ one of the Directors of the Corporate Debtor has filed Writ Petition No.9319 of |

| | | |
|--|---|--|
| | | 2019 before the Hon'ble High Court of Telangana. |
| Provisional Attachment Order No.01 of 2020 dated 15.10.2020 (PAO-1/2020). | Filed Original Complaint being OC No.1365/2020 in PAO-1/2020 before the Adjudicating Authority, PMLA. | one of the Financial Creditors of Corporate Debtor has filed Writ Petition No.1547 of 2021 before the Hon'ble High Court of Delhi. |
| Both the above orders were issued by Enforcement Directorate in FCIR/ HYZO/02/2015, provisionally attaching number of movable and immovable assets held by Corporate Debtor, its directors and others, valued at Rs.386.71 crores. | | |
| Both the above complaints were filed before the Adjudicating Authority under section 5(5) of the Prevention of Money Laundering Act, 2002, praying for confirmation of attached properties, beyond 180 days. | | |

Both the above Provisional Attachment Orders (PAOs) and both the Original Complaints (OCs) are at Annexure ‘A’ (Colly.) of this Counter.

6.2 While both the Original Complaints are pending before the Adjudicating Authority, Prevention of Money Laundering Act, stay orders have been passed by respective Hon’ble High Courts as following:

- In Writ Petition No.9319 of 2019, the Hon’ble High Court of Telangana vide order dated 29.04.2019 (page 13 of the Counter) has passed order as under:

“During the pendency of this petition, the proceedings pursuant to the impugned provisional attachment order No.03/2017 dated 28.03.2017 issued under section 5(1) of the PMLA, 2022, shall remain stayed. However, the attachment of the properties in connection thereto shall continue till the next date.”

- In Writ Petition No.1547 of 2021, the Hon’ble High Court of Delhi vide order dated 08.02.2021 (page 28 of the Counter) has passed order as under:

“10. Accordingly, till the next date in this matter, there shall be a stay of the proceedings in ECIR/ HYZO/02/ 2018 before the Adjudicating Authority arising out of the provisional attachment

order dated 15th October 2020, passed by the ED, subject to the condition that the petitioner Bank shall place on record any details of the steps taken to monetize the assets and the recovery made, if any.”

6.3 It is submitted by the Enforcement Directorate that the following proceedings were taken by respective parties and orders were passed. However, copies of orders are not enclosed.

- Approval order was challenged vide Company Appeal (AT) (Ins) No.553 of 2019 by IDBI Bank before the Hon’ble NCLAT. The Hon’ble NCLAT has set aside the same vide order dated 21.01.2022.
- Said order dated 21.01.2022 was carried before the Hon’ble Supreme Court of India by Canara Bank in Civil Appeal No.2094 of 2022. The Hon’ble Apex Court vide order dated 10.05.2022 directed the Hon’ble NCLAT to consider Company Appeal (AT) (Ins) No.553 of 2019 along with Trademark Appeal, viz. Company Appeal (AT) (Ins) No.982 of 2019.

- Hon'ble NCLAT has reconsidered the appeals and passed two separate orders dated 02.09.2022. Aggrieved by that the appellants preferred Civil Appeal No.1706 of 2023 and Civil Appeal No.8323 of 2022 before the Hon'ble Apex Court. Said appeals were disposed by the Hon'ble Apex Court by common judgement dated 17.03.2023 (Annexure-10 of the Reply filed by respondent no.2), upholding the Resolution Plan of the Corporate Debtor.

In view of the above submissions respondent no.1 submitted that the Resolution Plan of the Corporate Debtor cannot be implemented as the Resolution Plan deals with the attached property of the Corporate Debtor. If the Resolution Plan is implemented without considering Provisional Attachment Orders, it will be detrimental to all the stakeholders including the Enforcement Directorate and Successful Resolution Applicant.

6.4 As regards reliance placed by the applicant in Manish Kumar Vs. Union of India, (2021) 5 SCC 1, respondent no.2

submits that ratio laid down in the above decision is not applicable to the present case as there was no approval order of the Resolution Plan at the time of Provisional Attachment Orders. A copy of the said judgment is enclosed to Additional Counter dated 12.07.2023 filed by respondent no.2, at pages 29-493. It is contended that the following sections of Prevention of Money Laundering Act, 2002 would make clear that the Enforcement Directorate has power to exercise ‘attachment’ of property which is ‘proceeds of crime’:

| Section of PMLA | Provision |
|------------------------|--|
| 3 | Offences of money laundering. |
| 4 | Punishment for money laundering. |
| 5 | Attachment of property involved in money laundering. |
| 8 | Adjudication. |
| 2(d) | Definition of ‘attachment’. |
| 2(u) | Definition of ‘proceeds of crime’. |
| 2(v) | Definition of ‘property’. |

6.5 Relying on Vijay Madanlal Choudhary and others Vs. Union of India and others, SLP (Criminal) No.4634 of 2014,

respondent no.1 contended that section 71 of Prevention of Money Laundering Act, 2002 shall have effect notwithstanding anything inconsistent therewith contained in any other law and that Prevention of Money Laundering Act, 2002 is a special law dealing with proceeds of crime and tainted money and arresting circulation of tainted/ laundered money in the system.

6.6 As regards the submission made by the applicant in para 23 of the application that, “*while conducting investigation under Prevention of Money Laundering Act, 2002, respondent no.1 cannot attach assets of the Corporate Debtor*”, the answering respondent relied on judgement of the Hon’ble High Court of Delhi in Deputy Director, Directorate of Enforcement Delhi Vs. Axis Bank & others, 2019 SCC Online; and Rajiv Chakraborty, Resolution Professional of EIEL Vs. Directorate of Enforcement, (2023) 297 DLT 181, a copy of judgment is placed at pages 494-617 of Additional Counter dated 12.07.2023 filed by respondent no.2.

6.7 With regard to the submissions made in paras 24 and 25 of the application, respondent no.1 submitted that orders of attachment made under Prevention of Money Laundering Act, 2002 cannot be considered or ruled upon by NCLT under IBC. In this context respondent no.1 relied on Embassy Property Developments Pvt Ltd Vs. State of Karnataka, 2019 SCC OnLine SC 1542. Respondent no.1 further submitted that provisions of IBC cannot be interpreted in a manner to defeat the objective of Prevention of Money Laundering Act, 2002.

7. REJOINDER DATED 12.07.2023 FILED BY APPLICANT TO COUNTER DATED 01.06.2023 FILED BY RESPONDENT NO.1.

(i) The assets in question were attached by two different orders under section 5(1) of the PMLA, 2002, namely,

(i) Provisional Attachment order PAO No.03/2017 dated 28.03.2017 (first PAO), and

- (ii) PAO No.01 of 2020 dated 15.10.2020 (second PAO).

While first PAO dealt with assets of the erstwhile promoters of DCHL/ Corporate Debtor, the second PAO deals with the assets of the Corporate Debtor. The applicant is not concerned with first PAO since it was passed prior to approval of Resolution Plan. However, the applicant is aggrieved with second PAO since it was passed after approval of the Resolution Plan. Second PAO has derailing effect on implementation Resolution Plan in respect of Corporate Debtor. The applicant contends that attachment of any property of the Corporate Debtor pursuant approval of Resolution Plan is not permissible under section 32A of the IBC.

- (ii) The applicant contends that if there is any substance in the submissions of the ED, the matter be sent to the CoC so that RP may publish fresh request for Resolution Plans on the basis of fresh information memorandum which would exclude the assets which were attached by the ED. In light of PAO, the applicant

will not be able to implement the approved Resolution Plan in its entirety.

(iii) The applicant refutes the allegation of the ED that this application is filed in sheer abuse of process of law or with intent to escape the authorities.

(iv) The applicant submits that the Resolution Professional has not taken any action against attachment of assets of the Corporate Debtor so far. It is settled principle of law that proceedings under IBC is not a recovery proceeding. The applicant cannot be called upon to implement Resolution Plan in part when the ED itself admitted in Counter Affidavit that the Resolution Plan cannot be implemented in its current form.

8. ADDITIONAL COUNTER DATED 12.07.2023 FILED ON BEHALF OF RESPONDENT No.2, IN RESPONSE TO COUNTER DATED 01.06.2023 FILED BY RESPONDENT No.1.

8.1 Respondent no.2 has filed this Additional Counter opposing the Provisional Attachment Order and in favour of

implementation of Resolution Plan. It is contended that Resolution Plan submitted by the applicant has been approved by this Tribunal and the Hon'ble NCLAT and it was upheld by the Hon'ble Supreme Court. Even in Writ Petition No.9319 of 2019, the Hon'ble High Court of Telangana has passed interim order dated 29.04.2019 (page 13 of the Counter) as under:

“During the pendency of this petition, the proceedings pursuant to the impugned provisional attachment order No.03/2017 dated 28.03.2017 issued under section 5(1) of the PMLA, 2022, shall remain stayed. However, the attachment of the properties in connection thereto shall continue till the next date.”

Above order does not speak about CIRP, let alone the stay on approval of Resolution Plan and order is in relation to Provisional Attachment Order No.3/ 2017 dated 28.03.2017 in Original Complaint No.747 of 2017 and ECIR/ HYZO/ 02/ 2015. Whereas the present application is filed for quashing of Provisional Attachment Order No.01 of 2020 dated 15.10.2020.

8.2 Hon'ble High Court of Telangana has passed order of stay qua Provisional Attachment Order No.3/ 2017 in Original Complaint No.747 of 2017. It directs stay of attachment of

properties till next date, viz. 25.06.2019. There is no bar imposed on approval of Resolution Plan.

8.3 It is submitted that properties attached under Provisional Attachment Order No.01 of 2020 dated 15.10.2020 form part of Approval Resolution Plan. Once such plan is approved it will be binding on all stakeholders u/s 31(1) of IBC.

8.4 It is contended that Provisional Attachment Order No.01 of 2020 dated 15.10.2020 passed after approval of Resolution Plan is in clear violation of section 31(1) of the IBC. Therefore, the same should be set aside. Such approval was in accordance with law and section 32A of the IBC would not apply. The contention that the plan was approved in violation of stay order is misplaced. Stay was not in relation to Provisional Attachment Order No.01 of 2020 dated 15.10.2020, but it was in relation to Provisional Attachment Order No.03 of 2017 dated 28.03.2017.

8.5 Properties attached under Provisional Attachment Order No.01 of 2020 dated 15.10.2020 are covered under Part-B of the Resolution Plan as approved by this Tribunal and would fall under the ambit section 32A(2) of the Code. Such attachment is against the objective of the Code and cannot be allowed. The answering respondent relied on the Explanation given under section 32A (2) of the IBC to contend that the explanation shows that the property includes attachment of property under any law as may be applicable. Provisions are plain and unambiguous that no action shall be taken including the action of attachment of property covered under the Resolution Plan. The impugned action of respondent no.1 is in violation of section 32A (2) of the IBC. The contention of respondent no.1 that section 32A(2) of IBC is not applicable is without any legal basis.

8.6 That the contention of respondent no.1 that Prevention of Money Laundering Act, 2002 shall have supremacy over any other law is not correct as it may be that during moratorium

period when PMLA may have effect, but clearly not when Resolution Plan is approved and statutory protection under section 32A of the IBC is in force.

8.7 The answering respondent also contradicts with the contention of respondent no.1 that this Tribunal does not have jurisdiction to decide validity of the Provisional Attachment Order issued under PMLA, 2002. Respondent no.2 quoted section 61(5) of the IBC to contend that NCLT is the appropriate authority to entertain and dispose of any application or proceeding or any claim relating to insolvency resolution or liquidation of the Corporate Debtor. Thus, this Tribunal is well within the jurisdiction to entertain this application and pass order u/s 32A(2) read with 60(5) of the IBC.

8.8 Respondent no.2 relied on and quoted excerpts from the Report of Bankruptcy Law Reforms Committee (BLRC), Volume-I: Rationale and Design, November 2015, which outlined its vision of jurisdiction of NCLT vis-a-viz insolvency.

respondent no.2 has also relied on Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & others, (2021) 7 SCC 209 (para 173).

“Although various provisions of the IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a ‘going concern’, there must be a specific textual hook for the NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the ‘spirit’ or ‘object’ of the IBC. Section 60(5)(c) of the IBC vests the NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process.”

A copy of the Report on Bankruptcy Law Reforms Committee (BLRC) Volume-I is placed at pages 779-929 of the Additional Counter dated 12.07.2023 filed by respondent no.2. A copy of the said judgment is placed at pages 618-755 of the Additional Counter dated 12.07.2023 filed by respondent no.2.

8.9 Respondent no.2 also relied on decision of the Hon’ble High Court of Delhi in the matter of Union Bank of India Vs. Union Bank of India, WP (C) No.1547 of 2021, order dated 08.02.2021 and quoted the following:

“9. Considering the fact that the resolution plan has already been approved in this matter, and that the ED’s order of provisional attachment of the properties of respondent no.4 has been passed after the approval of the resolution plan by the NCLT, the said

provisional attachment would prima facie be contrary to section 32A of the IBC.”

A copy of the said judgment is annexed at pages 756-764 of the Additional Counter dated 12.07.2023 filed by respondent no.2.

By virtue of the above observation the contention that of respondent no.1 that the applicant does not have any case is not correct.

8.10 Respondent no.2 has also relied on M/s Packwell (India) Ltd Vs. M/s Emgee Cables and Communication Ltd, order dated 05.12.2022 passed by the NCLT, Jaipur Bench in IA No.15/ JPR/ 2022 in CP (IB) No.601/ ND/ 2018, and quoted the following:

“14. Thus, the IBC creates a specific bar with respect to proceedings that may be initiated under the PMLA by virtue of the provisions contained in Section 32A. Moreover, Section 32A cannot possibly be read as being applicable prior to a Resolution Plan being approved or a liquidation measure being enforced. Further, it can therefore be construed that the objective and intention of the Code is providing a free hand to the creditors if the properties of the Corporate Debtor are attached then it will jeopardize the Liquidation Process.”

A copy of the said judgment is placed at pages 765-778 of the Additional Counter dated 12.07.2023 filed by respondent no.2.

By virtue of the above submissions and the case laws, respondent no.2 urges this Tribunal to exercise its jurisdiction in the interest of the Corporate Debtor.

9. REPLY AFFIDAVIT DATED 06.06.2023
RESPONDENT NO.6 (PROFORMA RESPONDENT).

(i) Octopus Productions Pvt Ltd., respondent no.6 contends that UV Asset Reconstruction Company Limited (UVARCL) was member of the erstwhile CoC of the Corporate Debtor, which had admitted exposure of Rs.1193,20,96,653/- to Corporate Debtor at commencement of CIRP. UVARCL held voting share of 14.59% in the CoC as reflected in para 2.5 of order dated 03.06.2019 passed by this Tribunal approving Resolution Plan. Whereas, the answering respondent is an assignee of the entire debt held by UVARCL against the Corporate Debtor under Assignment Agreement dated 30.03.2019. Respondent no.6, on stepping into the shoes of UVARCL under the terms of assignment currently has a debt

exposure of Corporate Debtor of Rs.1193,20,96,653/- and is also single largest Financial Creditor having a share of 14.59%.

(ii) Respondent no.6 contends that it has exclusive right, title and interest in respect of the following three assets by virtue of order approving Resolution Plan dated 03.06.2019 (Annexure 'C'):

- Land and building situated at Survey No.52, Block No.6 of Alandur Village hamlet of Adayar at Industrial Plot No.14, Thiruvika Industrial Estate, Guindy, Chennai.
- Land situated at S. No.13, 14/15, Ward No.11, B. No.14, Village & Mandal Saroornagar, RR Dist., Telangana.
- Land situated at S. No.96/1/A, Plot No.19, Block 32, APIIC, Autonagar, Vanasthalipuram Village, Hayathnagar village, Hayathnagar Mandal, RR District.

(iii) PAO dated 15.10.2020 issued by ED has prejudiced the right of respondent no.6 to enjoy the assets, as the above properties are at Sl. Nos.12, 13 and 14 of the said PAO.

(iv) The PAO made the Resolution Plan unworkable. The Resolution Plan cannot be implemented in bits and pieces and an inequitable situation will arise if this Resolution Plan becomes unworkable. Unless PAO is removed the properties under the Plan cannot be transferred to respondent no.6 and creditors cannot be free from encumbrances.

10. The learned Counsel for the applicant and the contesting respondents have filed their Written Submissions reiterating their contentions raised during their oral submissions.

11. In the light of the contest as afore stated, the Point that emerges for our consideration is;

Whether the the provisional order of attachment under Section 5(1) of the Prevention of Money Laundering Act, 2002 (PMLA) in respect of the properties of the corporate debtor covered under the approved resolution plan, would wipe of the *protection* available to such properties under section 32A of I&B Code? If so, can the SRA be allowed

to *defer* implementation of the resolution plan till the attachment is raised/quashed by a competent court?

12. We have heard Shri Joy Sha, learned Senior Counsel along with Shri Abhishek Das, learned counsel for the applicant, Shri D. Narender Naik, learned Counsel for 1st respondent, Shri Mayur Mundra, learned counsel for the 2nd respondent, and Shri B.V.N. Sai Charan, learned Counsel for the 6th respondent. Perused the record, written submissions and the case law.

13. The moot question that we are called upon to decide in this application is, whether the impugned '*provisional order of attachment*' made under section 5(1) of Prevention of Money Laundering Act, 2002, covering the assets of the corporate debtor which admittedly formed part of the Resolution Plan duly approved under the provisions of IB Code 2016, would *nullify* the *protection* granted under *section 32A of I&B Code* to the said assets of the corporate debtor?

The submissions

14. Shri Joy Shah, Ld. Sr. Counsel for the applicant at the outset contended that, impugned order of attachment made on 15.10.2020 vide Order No.1 of 2020, under the Section 5(1) of PMLA, by the 1st respondent in respect of the assets and properties of the Corporate Debtor forming part of the approved resolution plan, is unsustainable and untenable under law as the said property is immune from the impugned provisional order of attachment under section 32A of I&B Code. Ld. Sr. Counsel, further contends that on the meaningful reading of the newly introduced section 32-A in I&B Code, it is clear that the Corporate Debtor cannot be prosecuted for an offence committed prior to the commencement of CIRP, once Resolution Plan has been approved by the Adjudicating Authority.

15. In this context Ld. Sr. Counsel relied on the ruling of Hon'ble Supreme Court of India, in Manish Kumar vs Union of

India and Others, (2021) 5 SCC 1 [Writ Petition (C) No.53 of 2020, order dated 19.01.2021], wherein it was held that,

“257. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court’s jurisdiction are clear. The wisdom of the legislation is not open to judicial 338 review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the 339 hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.”

16. Ld. Sr. Counsel further contended that the subject properties do not fall under any of the exemptions enshrined in

section 32A of I&B Code and the impugned provisional order of attachment therefore, is liable to be quashed/vacated forthwith and pending quashing/vacating the same, the 2nd respondent be restrained from insisting for payment of the balance amount payable under the approved resolution plan.

17. Shri Narendra Naik, learned counsel for the 1st respondent, however would contend that challenge to the order of attachment made under PMLA would neither lie before this Tribunal nor this Tribunal has jurisdiction to rule on the validity or otherwise of the provisional order of attachment passed under PMLA Act. So much so, the present application is *per se*, not maintainable before this Tribunal and the same is liable to be dismissed. Learned counsel would further contend that the Resolution Plan of the applicant submitted before the Committee of Creditors by the Resolution Professional itself is in violation of section 30(2) of IBC, which requires to confirm that the “Resolution Plan submitted by the Resolution Applicant does not contravene any provisions of law for the time being in force”. In

this context learned counsel submits that ‘PMLA’, defines ‘attachment’ to mean *prohibition of transfer, conversion, dispossession or movement of property by an order issued under Chapter III of PMLA*, as such the plan clearly violates the above provision.

18. Ld. Counsel also contended that the impugned provisional order of attachment, since challenged, by the 3rd respondent, *now*, Union bank of India, before the Hon’ble High Court of Delhi, vide WP No. 1547/2021 wherein the following Order has been passed 08.02.2021:

“9. Considering the fact that the resolution plan has already been approved in this matter, and that the ED’s order of provisional attachment of the properties of respondent no.4 has been passed after the approval of the resolution plan by the NCLT, the said provisional attachment would prima facie be contrary to section 32A of the IBC.”

besides, another Writ Petition No.9319 of 2019, in Hon’ble High Court of Telangana, wherein an interim order dated 29.04.2019 as under has been passed :

“During the pendency of this petition, the proceedings pursuant to the impugned provisional attachment order No.03/2017 dated 28.03.2017 issued under section 5(1) of the PMLA, 2022, shall remain stayed. However, the attachment of the properties in connection thereto shall continue till the next date.”

are pending the same is *sub judice*, and therefore, the present application before this Tribunal is not maintainable.

19. Ld. Counsel also placed reliance on the ruling in Vijay Madanlal Choudhary and others Vs. Union of India and others, SLP (Criminal) No.4634 of 2014, wherein it was held that,

“The PMLA is a distinct regime adopted by the Nation to strengthen the arms of enforcement agencies in the fight against crime, representative of the new tools adopted across the world to force the perpetrators of crime to disgorge the benefits that may have been derived or obtained and thus stands on a pedestal, distinct and different from the insolvency regimen which has come to be erected in terms of the IBC.”

20. Shri Mayur Mundra, learned counsel for the 2nd respondent sailed with the submissions made by the learned Senior Counsel for the applicant, in so far as the same relates to the impugned provisional order of attachment of the properties of the

Corporate Debtor which are admittedly formed part of the already approved Resolution Plan, and vehemently refuted the submission of the learned counsel for the 1st respondent, that this Tribunal has no jurisdiction to rule on the validity or otherwise of the provisional order of attachment passed under PMLA.

21. According to the learned counsel the impugned provisional order of attachment having been passed in respect of the properties covered under the approval of the resolution Plan, is contrary to section 32A of I&B Code, hence this Tribunal is fully empowered to interfere with the impugned order of attachment. In this regard Ld. Counsel apart from the ruling in re, *Manish Kumar*, supra, also relied on the following rulings.

Gujarat Urja Vikas Nigam Limited Vs. Amit Gupta & others, (2021) 7 SCC 209 (para 173).

“Although various provisions of the IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a ‘going concern’, there must be a specific textual hook for the NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the ‘spirit’ or ‘object’ of the IBC. Section 60(5)(c) of the IBC vests the NCLT with wide powers since it can entertain and dispose of any

question of fact or law arising out or in relation to the insolvency resolution process.”

M/s Packwell (India) Ltd Vs. M/s Emgee Cables and Communication Ltd, order dated 05.12.2022 passed by the NCLT, Jaipur Bench in IA No.15/ JPR/ 2022 in CP (IB) No.601/ ND/ 2018, and quoted the following:

“14. Thus, the IBC creates a specific bar with respect to proceedings that may be initiated under the PMLA by virtue of the provisions contained in Section 32A. Moreover, Section 32A cannot possibly be read as being applicable prior to a Resolution Plan being approved or a liquidation measure being enforced. Further, it can therefore be construed that the objective and intention of the Code is providing a free hand to the creditors if the properties of the Corporate Debtor are attached then it will jeopardize the Liquidation Process.”

In so far as the delay in implementing the Resolution plan by the applicant/Successful Resolution Applicant (SRA) is concerned , learned counsel strongly contended that the applicant shall forthwith implement the plan lest the opportunity be forfeited. In this regard Ld. Counsel also invited our attention to IA /2023 filed by the 2nd respondent for directions to the applicant to

implement the plan lest to allow forfeiture of the performance guarantee and other amounts already paid.

22. Shri B.V.N. Sai Charan, learned Counsel for the 6th respondent contends that, UV Asset Reconstruction Company Limited (UVARCL) was member of the erstwhile CoC of the Corporate Debtor, which had admitted exposure of Rs.1193,20,96,653/- to Corporate Debtor at commencement of CIRP. UVARCL held voting share of 14.59% in the CoC as reflected in para 2.5 of order dated 03.06.2019 passed by this Tribunal approving Resolution Plan. Whereas, the answering respondent is an assignee of the entire debt held by UVARCL against the Corporate Debtor under Assignment Agreement dated 30.03.2019. The 6th Respondent on stepping into the shoes of UVARCL under the terms of assignment currently has a debt exposure of Corporate Debtor of Rs.1193,20,96,653/- and is also single largest Financial Creditor having a share of 14.59%.

23. Ld. Counsel further contends that, the 6th respondent has exclusive right, title and interest in respect of the following three assets by virtue of order approving Resolution Plan dated 03.06.2019.

(i). (a) Land and building situated at Survey No.52, Block No.6 of Alandur Village hamlet of Adayar at Industrial Plot No.14, Thiruvika Industrial Estate, Guindy, Chennai.

(b) Land situated at S. No.13, 14/15, Ward No.11, B. No.14, Village & Mandal Saroomnagar, RR Dist., Telangana.

(c). Land situated at S. No.96/1/A, Plot No.19, Block 32, APIIC, Autonagar, Vanasthalipuram Village, Hayathnagar village, Hayathnagar Mandal, RR District.

(iii) The PAO dated 15.10.2020 issued by ED has prejudiced the right of respondent no.6 to enjoy the assets, as the above properties are at Sl. Nos.12, 13 and 14 of the said PAO.

(iv) The PAO made the Resolution Plan unworkable. The Resolution Plan cannot be implemented in bits and pieces and an inequitable situation will arise if this Resolution Plan becomes unworkable. Unless PAO is removed the properties under the

Plan cannot be transferred to respondent no.6 and creditors cannot be free from encumbrances.

Our Analysis

24. Indisputably, the impugned provisional order of attachment of the properties/assets of the corporate debtor dated 15.10.2020 has been passed *after* the **approval of the Resolution Plan of the applicant**, and the same is in respect of some of **the properties which are covered under the said approved resolution plan.**

It is also pertinent to note that the impugned order of provisional attachment of the properties of the Corporate Debtor, has been challenged by the 3rd respondent (Union Bank), before the Hon'ble High Court of Delhi, vide Writ Petition (C) No.1547/2021 and the Hon'ble High Court, on 08.02.2021 passed the following Order ;

“9. Considering the fact that the resolution plan has already been approved in this matter, and that the ED's order of provisional attachment of the properties of respondent no.4 has been passed

after the approval of the resolution plan by the NCLT, the said provisional attachment would prima facie be contrary to section 32A of the IBC.”

25. In an yet another Writ Petition No.9319 of 2019, filed in Hon’ble High Court of Telangana, on 29.04.2019 the following interim order has been passed :

“During the pendency of this petition, the proceedings pursuant to the impugned provisional attachment order No.03/2017 dated 28.03.2017 issued under section 5(1) of the PMLA, 2022, shall remain stayed. However, the attachment of the properties in connection thereto shall continue till the next date.”

26. Here we wish to state that, we are not entering into any discussion or intend to arrive at a finding on the maintainability, *per se*, of the impugned order of attachment of the properties which formed part of the approved resolution plan as the same is not in the scope of our present job. Our enquiry, therefore, is confined only to find whether the provisional order of attachment under Section 5(1) of the PMLA, in respect of the properties of the corporate debtor covered under the approved resolution plan, would wipe of the *protection* available to such

properties under section 32A of I&B Code? If so, can the SRA be allowed to *defer* implementation of the resolution plan till the attachment is raised/quashed by a competent court?

27. Since the Ld. Counsel for the 1st respondent, strongly pleaded that no challenge to the order of attachment made under PMLA, would neither *lie* before this Tribunal nor this Tribunal has jurisdiction to rule on the validity or otherwise of the provisional order of attachment passed under PMLA Act, which plea with equal force since denied by the Ld. Sr. Counsel for the Applicant and also by the Ld. Counsel for the 2nd and 6th respondents, we wish to *first* deal with the same, before we proceed further with our discussion on the point.

Hon'ble Principal Bench, NCLAT New Delhi, in the matter between *Directorate of Enforcement, Headquarters Investigation Unit, New Delhi- Appellant and Manoj Kumar Agarwal, Resolution Professional and Others, in Company*

Appeal (AT) (Insolvency) NO.575/2019, had an occasion to deal the issue of *jurisdiction* of this Tribunal on matters relating to *attachment of properties of the corporate debtor* which formed part of the approved resolution plan, in the wake of section 32A of I&B Code, which has been introduced in IBC vide Amendment Act of 2020. Since the facts of the case on hand and in re. *Directorate of Enforcement, supra*, are almost identical *besides*, like in the case on hand reliance has been placed on the ruling in Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors, (2019) SCC Online SC 1542, in the above case, we profitably rely on the above ruling, wherein it was, *inter alia*, held, that:

“Therefore, in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

28. Hon’ble NCLAT, while arriving at the above conclusion, placed reliance on the following passage from the ruling in

Manish Kumar vs. Union of India. (2021) SCC Online SC 30,
wherein the Hon'ble Supreme Court has upheld the constitutional validity of Section 32A of the I&B Code, 2016, as under:

“We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court’s jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest

arbitrariness in the provision.” Thus, constitutional validity of Section 32A has been upheld”.

29. Though there is no controversy that, NCLT is *not conferred* with jurisdiction to decide ‘*all types of claims to property of the corporate debtor*’, and that the corporate debtor ‘*has to exercise rights in judicial, quasi-judicial proceedings in respect of ‘such’ rights, besides that the resolution professional cannot “short-circuit” the same and bring a claim before NCLT taking advantage of Section 60(5)(c) of IB Code, the following categorical findings by Hon’ble Supreme Court, in re, Manish Kumar, supra, that,*

“265.....The intention of the Legislature was always to target the corporate debtor only insofar as it purported to prohibit application by the corporate debtor against itself, to prevent abuse of the provisions of the Code. It could never had been the intention of the Legislature to create an obstacle in the path of the corporate debtor, in any of the circumstances contained in Section 11, from maximizing its assets by trying to recover the liabilities due to it from others. Not only does it go against the basic common-sense view but it would frustrate the very object of the Code, if a corporate debtor is prevented from invoking the provisions of the Code either by itself or through his resolution professional, who at

later stage, may, don the mantle of its liquidator. The provisions of the impugned Explanation, thus, clearly amount to a clarificatory amendment.....”

The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.” (Emphasis is ours)

makes more clearer than crystal, that the ***property which formed part of the resolution plan duly approved*** under the provisions of IB Code, enjoys the protection enshrined in section 32A of

I&B Code. This Tribunal therefore, is bound to safeguard the said ‘protection’ from any kind of ‘onslaught’ on the properties of the corporate debtor which formed part of the approved resolution plan. Viewed from the object behind insertion of this section, we are of the firm conclusion that the said ‘protection’ needs to be ‘extended’ to the ‘provisional order of attachment made under the provisions of PML Act, lest the very purpose of introducing section 32A by way of an amendment by the legislature gets defeated. Therefore, for the said limited extent, this Tribunal can exercise its jurisdiction as enshrined in subsection 5(c) of section 60 of I&B Code 2016.

30. We therefore, while keeping ourselves aloof from entering in to any finding on the *supremacy* between the I&B Code and the PMLA, and on *other* aspects relating to the maintainability of the impugned provisional order of attachment, hereby hold that, in terms of section 60(5)(c) of I&B Code 2016, this Adjudicating Authority has the jurisdiction to adjudicate on the impugned provisional order of attachment only to the extent of

examining whether the ‘protection’ envisaged under Section 32A of IB Code, can be extended to the properties of the corporate debtor forming part of the approved resolution plan till a resolution takes place or sale of liquidation asset occurs.

31. Hon’ble Supreme Court in Gujarat Urja (supra), held that,

“the NCLT’s residuary jurisdiction [under Section 60(5)(c)] though wide, is nonetheless defined by the text of the IBC” and “the NCLT cannot do what the IBC consciously did not provide it the power to do”.

32. Here in the case on hand the applicant since is claiming immunity under section 32A of IB Code from the provisional order of attachment made by the 1st respondent in respect of the assets formed part of the Resolution Plan, this is a fit case to invoke the residuary jurisdiction under Section 60(5)(c)] of IB Code.

Therefore, on careful examination of the ‘impact’ of the impugned provisional order of attachment on the

implementation of the approved resolution plan by the Successful Resolution Applicant (SRA) and taking into consideration the ‘clean slate’ theory propounded by Hon’ble Supreme Court, *besides* the very object behind introducing section 32A by way of an amendment in I&B Code, in our considered view, the power of this Tribunal to interfere with the “impugned measure” is well within the teeth of section 60 (5)(c) of IB Code.

Therefore, in the light of our discussion and the case law referred above, we hereby hold that, all the assets and properties of the corporate debtor which formed part of the approved resolution plan for the resolution of the insolvency of the corporate debtor, are immune from the provisional order of attachment made vide order No.1 of 2020, ECIR No.CIR/HYZO/02/2015 dated 15.10.2020, under section 5(1) of Prevention of Money Laundering Act, 2002. Consequently, we further hold that the impugned provisional order of attachment is not an impediment

for the due implementation of the Resolution Plan by the applicant herein.

The Point is answered accordingly.

33. In so far as ‘*quashing*’ of the impugned provisional order of attachment is concerned it may be stated that, we have already made clear that we are not entering into any discussion or arrive at a finding on the maintainability, *per se*, of the impugned order of attachment of the properties which formed part of the approved resolution plan, and our enquiry is confined only to find whether the provisional order of attachment under Section 5(1) of the PMLA, of the properties of the corporate debtor covered under the approved resolution plan, would wipe of the *protection* available to such properties under section 32A of I&B Code?

34. Moreover, the impugned provisional order has already been stayed by Hon’ble High Courts of Delhi and Telangana.

Therefore, ‘quashing’ the impugned provisional order of attachment by this Tribunal, is uncalled for and unwarranted. It is for the applicant or for that matter the erstwhile Resolution Professional, to implead in the said Writ petitions, and urge for *quashing* the impugned provisional order of attachment.

Insofar as the relief of *restraining* the 2nd respondent from insisting for payment of balance amount payable under the approved Resolution Plan by the applicant is concerned, it is to be stated that this Resolution Plan has been approved vide order dated 03.06.2019 (Annexure ‘C’) passed in IA No.66 of 2019 and even though the Resolution Plan was required **to be implemented within a period 120 days**, on some pretext or the other till date the applicant had not implemented the plan. The 2nd respondent in fact filed IA No.1205 of 2022 and IA No.559 of 2023 for directions to the applicant herein, for forthwith implementation of the resolution plan, lest to permit the 2nd respondent to forfeit the performance guarantee and other deposits made by the applicant.

35. Accepting the applicant's contention, we have already held that the properties which formed part of the approved resolution plan are immune from the impugned order of attachment and further that the provisional order of attachment is not an impediment for the applicant to proceed with the Resolution Plan.

36. In *Vijay Madanlal Choudary & Others vs Union of India, & Others*, 2022 LiveLaw (SC) 633, Hon'ble Supreme Court of India, held that,

“Section 5(4) clearly states that nothing in Section 5 including the order of provisional attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment. The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which is obviously in respect of offence of money laundering, the Special Court finds that the offence of money laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. Once the possession of the property is taken in terms of sub-section (4) and the finding in favour of the person is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it would result in civil consequences even to third party.

That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a particular case so as to invoke the option available under sub-section (4) of Section 8'.

After dismissal the Appeals filed by the applicant before Hon'ble Supreme Court, the applicant chose to file the present application instead of coming forward to implement the resolution plan. Prior to filing the present application, the applicant filed IA No.1171 of 2020 before this Tribunal, for identical reliefs as prayed in the present application. The said application was resisted strongly by the 3rd respondent. This Tribunal after having heard the learned counsels for both sides reserved the matter for orders and at that juncture on 21.04.2022 the applicant sought leave to withdraw the same and accordingly this Tribunal allowed withdrawal of the said application and dismissed the same as withdrawn. Thus, from the above, it is quite clear that, the applicant has been indulging in dilatory tactics in implementing the approved resolution plan.

37. Hon'ble Supreme Court of India, in *Ibex Singapore*, held that,

“Permitting the Adjudicating Authority to exercise its residuary powers under Section 60(5) to allow for further modifications or withdrawals at the behest of the successful Resolution Applicant, would be in the teeth of the decision of this Court in Essar Steel (supra) which held that “[s]ection 60(5)(c) cannot be used to whittle down Section 31(1) of the IBC, by the investment of some discretionary or equity jurisdiction in the Adjudicating Authority outside Section 30(2) of the Code, when it comes to a resolution plan being adjudicated upon by the Adjudicating Authority”

The resolution plan of the applicant which was first approved on 13.06.2019, therefore needs to be implemented without any further delay. Therefore, considering the facts and circumstances, we grant 30 days' time from date of receipt of copy of this order, for implementing the approved Resolution Plan by the applicant including for payment of the entire amount due and payable under the approved Resolution Plan and in default the erstwhile RP, 2nd respondent shall forthwith proceed to forfeit the performance bank guarantee and the amount so far deposited by the applicant.

38. In the result, this application is partly allowed to the extent indicated above. Rest of the reliefs are hereby rejected. No order as to costs.

SD/-
CHARAN SINGH
MEMBER (TECHNICAL)

SD/-
DR. VENKATA RAMAKRISHNA BADARINATH NANDULA
MEMBER (JUDICIAL)

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