

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.204
IA 608 of 2020 in CP(IB) 213 of 2018

Orders under Section 60(5) & 14 IBC, 2016

IN THE MATTER OF:

Chandra Prakash IRP For MayFair Leisures Ltd.
V/s
Director of Enforcement Department of Revenue

.....Applicant

.....Respondent

Order delivered on: 06/03/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

**IA NO. 608 of 2020 in
CP (IB) NO. 213/7/NCLT/AHM/2018**

IA NO. 608 of 2020

[An application under Section 60(5) and 14 of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016]

Chandra Prakash Jain

Interim Resolution Professional of
M/s. Mayfair Leisures Limited,
Having address at:
D-501, Ganesh Meridian,
Opposite High Court of Gujarat,
SG Road, Ahmedabad 380060

....Applicant

Versus

Deputy Director,

Director of Enforcement
Department of Revenue, Ministry of Finance
11th floor, Satya One,
Opposite Manav Mandir,
Drive in Road, near Helmet Circle,
Memnagar, Ahmedabad

....Respondent

In the matter of:

CP (IB) 213 of 2018

[An application under section 7 of Insolvency and Bankruptcy Code, 2016]

Bank of India,

Having registered office at:
Bandra Kurla Complex, Star House,
C-5, G Block, Bandra (E),
Mumbai 400051.

Having branch office at:
Ahmedabad Large Corporate Branch,
2nd floor, Bank of India building

....Financial Creditor

Versus

M/s. Mayfair Leisures Ltd.

Having office at:
5/12, Essen House,
B.I.D.C. Gorwa,
Vadodara, Gujarat, 390016

....Corporate Debtor

Order pronounced on 06.03.2023

**Coram: DR. MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

Appearance:

Mr. Monaal J. Davawala, Ld. Adv. for the Applicant

Mr. Sudhir K Gupta, Ld. Adv. for the Respondent

Mr. Kunal P Vaishnav, Ld. Adv. for the Suspended Management

ORDER

1. This application is filed by the Applicant under section 60(5) and 14 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) read with Rule 11 of NCLT Rules, 2016 (**NCLT Rules**) seeking release of attachment of property by the Enforcement Directorate, Ahmedabad.
2. M/s. Mayfair Leisure Limited is the Corporate Debtor and was admitted in Corporate Insolvency Resolution Process (**CIRP**) vide order dated 02.06.2020 by this Adjudicating Authority in Petition No. CP (IB) 47 of 2017 filed by the Financial Creditor i.e. Bank of India under section 7 of the IBC. The Adjudicating Authority appointed the Applicant i.e. Mr. Chandra Prakash Jain as the Interim Resolution Professional (**IRP**).
3. The Applicant issued public announcement in “Business Standard” (English) edition and “Gujarat Samachar” (Gujarati) edition on 13.06.2020 inviting claims from Creditors of the Corporate Debtor. The Applicant received claim from only one Financial Creditor i.e. Bank of India and thus constituted Committee of Creditors (**CoC**) consisting of one Financial Creditor.
4. It is submitted by the Applicant that he received an email from Suspended Management on 22.06.2020 wherein it was informed that the property of the Corporate Debtor, situated at Survey No. 619, village Atladara, district, Vadodara had been attached by Central Bureau of Investigation (**CBI**) on 05.04.2018 and the same was confirmed by the Hon’ble Gujarat High Court in 2019. It was further informed in the email dated 22.06.2020 that the property is also attached by the Enforcement Directorate (**ED**) vide its provisional attachment order dated 24.04.2018. The said order was confirmed by the Hon’ble PMLA Appellate Tribunal vide its order dated 03.12.2018. The Hon’ble PMLA Appellate Tribunal

vide order dated 12.05.2020 had directed that the status of the property of the Corporate Debtor has to be maintained as it was on 07.04.2018 during the course of investigation of the money laundering under PMLA, 2002 which was initiated vide ECIR/AMZO/03/2018 based on CBI, ACB, Gandhinagar, FIR no. 029 2018 A 0006.

5. It is further submitted by the Applicant that in view of order dated 12.05.2020 passed by Hon'ble PMLA Appellate Tribunal, he is not able to take the possession of the property nor he is able dispose it off. Further, the ED has not even filed its claim with the Applicant. Further, the Applicant submitted that vide letter dated 17.06.2020 he had intimated ED about initiation of CIRP of the Corporate Debtor. In response to the letter, ED confirmed vide letter dated 26.06.2020 that the immovable assets of the Corporate Debtor are attached by their office. The Applicant in response issued another letter dated 21.07.2020 and requested the ED to release the attached property in order to take charge of the Corporate Debtor.

6. It is submitted by the Respondent that a money laundering case under ECIR/AMZO/03/2018 dated 05.04.2018 has been recorded by ED, Ahmedabad zonal office, on the basis of registration of FIR no. 0292018A0006 dated 26.03.2018 by the CBI, against M/s. Diamond Power Infrastructure Ltd. **(DPIL)**, Shri Suresh Narain Bhatnagar, Founder of DPIL, Shri Amit Suresh Bhatnagar, Managing Director of DPIL, Shri Sumit Suresh Bhatnagar, joint Managing Director of DPIL, unknown public servants of various banks and unknown others for commission of offence under section 420, 467, 468, 471 read with 120-B of Indian Penal Code, 1860 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1998. Further, DPIL used its related parties including the Corporate Debtor i.e. M/s. Mayfair Leisures Ltd. by indulging in suspicious transactions during the period 2010-2011 to 2016-2017. The investigation indicated that these transactions were mere paper transactions without any transfer of goods in order to

present false picture of their business health to the banks. DPIL and its related parties have diverted huge amount of funds received as loan/cash, credit to sister concern including M/s. Mayfair Leisures Ltd. and utilized these funds for real estate business of these companies.

7. It is also submitted by the Respondent that the office of the Respondent traced immovable properties valued at Rs. 1122.72 crores and provisionally attached the same vide Provisional Attachment Order No. 02/2018 on 24.04.2018. Subsequently, a complaint was made before the Hon'ble Adjudicating Authority, PMLA, New Delhi for confirmation of the attachment. The Hon'ble Adjudicating Authority, PMLA, New Delhi confirmed the provisional attachment of the properties valued at Rs. 1122.72 crores vide order dated 01.10.2018. The Respondent has also filed a Prosecution Complaint (PC) no. 21 of 2018 in the designated Special Court under Prevention of Money Laundering Act, 2002 (PMLA).

8. Further, it is also submitted by the Respondent that the money laundering case was recorded by ED on 05.04.2018 and the provisional attachment order of the immovable assets was issued on 24.04.2018, which is prior to the admission of the instant application before this Adjudicating Authority. Further, the moratorium vide directions issued by the Hon'ble Tribunal are in respect of proceedings of civil nature as well as disposal of the properties of the Corporate Debtor, whereas the action taken by the Directorate under PMLA, is a criminal matter as the said properties are derived from criminal activities.

9. Moreover, it is submitted by the Respondent that a complaint has already been filed before Hon'ble Special Court vide PC No. 21 of 2018 and the immovable properties attached by the ED are required to be available before Hon'ble Special Court under PMLA for the purpose of confiscation of the same to the Central Government as well as for

imposition of penal action against M/s. DPIL and its directors/responsible officers under the provisions of PMLA, 2002.

10. It is also submitted by the Respondent that the objectives of PMLA, 2002 and IBC are different. The concerns of the Applicant regarding availability of the properties is already covered under the provisions of PMLA, 2002. Once it is established that the money involved in the case is laundered, the said properties which are provisionally attached will stand confiscated and will be dealt as per section 8(8) of PMLA, 2002. The claimants with a legitimate interest in the property may be considered during the proceedings before the Special Court under PMLA Act, 2002. Hence, the Respondent has submitted that the present application is not maintainable.

11. Further, it is submitted by the Respondent that the Applicant has cited his inabilities in performing his duties on account of the attachment of property by the ED. However, the Applicant has failed to note that the Respondent has already submitted a prosecution complaint before Hon'ble Special PMLA Court, Ahmedabad in the instant case for confiscation of the properties and prosecution of the accused persons. Further, as per section 8 of the PMLA, 2002, the Applicant can submit their claims before the Hon'ble Special PMLA Court.

12. We have heard the learned counsels of the Applicant and Respondents and perused the material on record. It has been noted that M/s. Mayfair Leisure Limited who is the Corporate Debtor was admitted in CIRP vide order dated 02.06.2020 by this Adjudicating Authority in Petition No. CP (IB) 47 of 2017 filed by the Financial Creditor i.e. Bank of India under section 7 of the IBC. However, the property was already attached by the ED vide its provisional attachment order dated 24.04.2018. The said order was confirmed by the Hon'ble PMLA Appellate Tribunal vide its order dated 03.12.2018. The Hon'ble PMLA Appellate Tribunal vide order dated 12.05.2020 had directed that the

status of the property of the Corporate Debtor has to be maintained as it was on 07.04.2018 during the course of investigation of the money laundering under PMLA, 2002 which was initiated vide ECIR/AMZO/03/2018 based on CBI, ACB, Gandhinagar, FIR no. 029 2018 A 0006.

13. Further, it is also noted that a complaint has already been filed before Hon'ble Special Court vide PC No. 21 of 2018 under PMLA, 2002 for confiscation of the attached properties and prosecution of the accused persons. Hence, criminal action under PMLA, 2002 was already taken by the Respondent on 24.04.2018 which is prior to the admission of the instant application by this Adjudicating Authority.

14. The Hon'ble High Court of Madras in the matter of *Deputy Director, office of the Joint Directorate of Enforcement vs. Asset Reconstruction Company of India Ltd. and others (Writ Petition No. 29970 of 2019 and WMP Nos. 29872 and 34971 of 2019)* wherein, the Hon'ble High Court of Madras, observed that NCLT has no jurisdiction to go into the matters governed under the PMLA, 2002 and, therefore, section 14, having consequent upon an order passed by the Adjudicating Authority declaring moratorium, would not apply to the PMLA which is a distinct and special statute having its own objective and as such section 14 would not bar a proceeding under the Act. For benevolent reference the relevant extract of which is reproduced below:

“8. Section 14 of the IBC speaks of moratorium. A declaration has to be made through an order by the Adjudicatory Authority in this regard. If one carefully goes through the said section, there is no way professional attachment order passed under the provisions of the PMLA would automatically invite a moratorium. This provision only speaks about the consequence for institution of the suit, for continuance and other proceedings against the Corporate Debtor. Therefore, Section

14 of the IBC is consequent upon an order passed by the Adjudicative Authority declaring moratorium. This would not apply to a special enactment which travels on its own path. After all, one cannot presume a conflict between two enactments having it distinct roles with their objections. As stated, it only speaks about the follow up action over a property, which is subject matter of the proceedings before the National Company Law Tribunal under the IBC. Thus, Section 14 would not bar a proceeding under the PMLA.”

15. It is clear that the proper recourse to be resorted by the ‘Corporate Debtor’ is to approach the ‘Competent Forum’ under the PMLA, 2002 to its logical end or any other ‘Jurisdictional Forum’ (other than the purview of IBC, 2016,) in the manner known to Law and in accordance with Law.

16. In view thereof, this application stands rejected.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Shweta Desai – LRA