

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

**MA(IBC)/05(CHE)/2020
In
CP(IB)/768(CHE)/2018**

(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the Matter of M/s. Padmaadevi Sugars Limited

Shri. Mudapallur Varieth Gangadharan
(RP of M/s. Padmaadevi Sugars Ltd.)
No. 341, 6th Floor, Fountain Plaza,
Pantheon Road, Egmore,
Chennai – 600 008

...Applicant

-Vs.-

1. The Deputy Commissioner of Income Tax (Benami Prohibition)
Office of the Deputy Commissioner of Income Tax (Benami Prohibition)
Room No. 104, 1st Floor,
Income Tax Investigation Wing Building, 46
M.G. Road, Nungambakkam,
Chennai – 600 034

2. Hitesh S. Patel
Flat No. 8131, 8th Block, 13th Floor,
TVH Lumbini Square,
No. 127, Bricklin Road,
Purasiwalkam, Vepery,
Chennai – 600 007

3. Dinesh S. Patel
1/813, Kuttralam Main Road,
Piranoor Border, Senkottai Taluk,
Tirunelveli – 627 809

4. Shivgan K. Patel
Flat No. 8131, 8th Block, 13th Floor,
TVH Lumbini Square,
No.127, Bricklin Road,
Purasiwalkam, Vepery,
Chennai – 600007

...Respondents

For Applicant : S. Sathiyarayanan, Advocate
For Respondent: R. Sankaranarayanan, ASG
Pawan Jhabakh, Advocate

ALONG WITH
IA(IBC)/599(CHE)/2021
In
CP(IB)/768(CHE)/2018

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code,
2016)*

C. Ramasubramaniam
Liquidator of M/s. Padmaadevi Sugars Ltd.
"RAJI", 3B1, 3rd Floor, Gaiety Palace,
No. 1L, Blackers Road,
Chennai – 600 002

...Applicant

-Vs.-

1. The Dy. Commissioner of Income Tax (Benami Prohibition)
Room No. 104, I Floor,
Income Tax Investigation Wing Building,
46, MG Road, Nungambakkam,
Chennai – 600 034

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Chennai – 600007

...Respondents

For Applicant : S. Sathiyarayanan, Advocate
For Respondent 1 : R. Sankaranarayanan, ASG
Pawan Jhabakh, Advocate
For Respondent 2-4: Athiban Vijay, Advocate

Order pronounced on 25.04.2022

CORAM :

Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

COMMON ORDER

Per: Justice (Retd.) S.RAMATHILAGAM, MEMBER (JUDICIAL)

Under consideration are Two Applications viz.,
MA(IBC)/05(CHE)/2020 and IA(IBC)/599(CHE)/2021 seeking the
following reliefs:

MA(IBC)/05(CHE)/2020:

- a. to raise the order of attachment dated 01.11.2019 passed by the 1st Respondent;
- b. to direct the Respondents 2-4, to deposit to the credit of the account of the Corporate Debtor the sum of Rs. 386 Crores, received by them in lieu of alienating the property owned by the Corporate Debtor.
- c. to pass any other order this Hon'ble Tribunal may deem fit and necessary and thus render justice.

IA(IBC)/599(CHE)/2021:

- a. To staying the attachment order dated 01.11.2019 of the 1st Respondent to enable the Applicant to carry out the Liquidation process of the Corporate Debtor;
- b. Pass such other orders And further orders, as this Hon'ble Tribunal may deem fit and appropriate and thus render justice.

2. The brief facts of these Applications are as follows:

MA(IBC)/05(CHE)/2020

I. The Applicant is the Resolution Professional of the Corporate Debtor viz., M/s. Padmaadevi Sugars Ltd. (hereinafter the "Corporate Debtor") appointed vide Order dated 15.10.2018, passed in an Application filed under Section 7 of the Insolvency

and Bankruptcy Code, 2016 (hereinafter the "IBC"), filed by a Financial Creditor; Bank of India against the Corporate Debtor. The Corporate Debtor was engaged in the business of processing sugarcane and producing processed sugar. In light of the abovementioned Order dated 15.10.2018 the immovable property along with the machinery and equipment on 29.10.2018 was handed over to the Resolution Professional.

II. It is submitted by the Applicant that, in the meantime, the Corporate Debtor received a Provisional Attachment Order and a show cause notice dated 01.11.2019 bearing F. No. IO/PBPT/PSL/199 from the 1st Respondent under Section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 wherein, the immovable property of the Corporate Debtor was received on 24.12.2019. Consequently, the Corporate Debtor is prohibited and restrained, until further order or till 90 days from the end of the month from the date of the said notice whichever is earlier, from transferring or charging the properties described above as per the provisions of Section 24(3).

III. It is further stated by the Applicant that in the show cause notice, it is stated that in furtherance to the investigation and search actions under Section 132 were initiated against Ms. V.K. Sasikala and others on 09.11.2017, 17.11.2017 and 28.11.2017, various incriminating documents and loose sheets



were found and seized, which inter-alia, established that during the period of demonetization an amount of Rs. 386 Crore was paid for the purchase of the immovable property of the Corporate Debtor in control of the 2nd to 4th Respondents herein. Furthermore, during a search conducted in one of the properties original share certificates held by the family members i.e., 2nd to 4th Respondents herein were found and seized. Thereafter, the 1st Respondent initiated investigation against the 2nd Respondent. It was submitted on oath by the 2nd Respondent that, he had negotiated for sale of some of the properties owned by the Respondents 2 to 4. It is also averred in the Application that, the 2nd Respondent had admitted in his sworn statement that, he had received a total of Rs. 386 Crore towards the sale of the Corporate Debtor and further admitted that a Memorandum of Understanding dated 21.1.2016 was entered into regarding the sale.


IV. It is further submitted by the Applicant that neither has the transaction in question been reflected in any books of accounts of the Corporate Debtor nor has the transfer of the immovable property been registered as per Registration Act and Transfer of Property Act. The Applicant herein further contends that the allegation that the Corporate Debtor has engaged in benami transaction is unsustainable as the entire transaction was wholly devised by the 2nd Respondent and that the provisional attachment



order against the immovable property of the Corporate Debtor is bad in law and should be raised.

V. It is averred by the Applicant that as the Corporate Insolvency Resolution Process (for brevity the "CIRP") was commenced on 15.10.2018 which was extended further for a period of 90 (ninety) days vide order dated 17.10.2019, the moratorium is still in existence under Section 14. It is further submitted that, failure to raise the order of provisional attachment would result in the Corporate Debtor going into Liquidation.

3. The Learned Counsel for the 1st Respondent herein viz., the Deputy Commissioner of Income Tax (Benami Prohibition) has filed a Memo on 22nd January, 2020. A brief of the submissions given in the Memo is as follows:

A. That the provisional attachment of the property i.e., sugar factory with all land and machinery belonging to the Corporate Debtor vide attachment order dated 1.11.2019 was well founded and warranted based on the premise that the transaction is in the nature of benami transaction within the meaning of Section 2(9)(A) of the Prohibition of Benami Transactions Act, 1988. Further, it is averred that, the Corporate Debtor is the Benamidar, the property attached is the Benami Property and Smt. V.K. Sasikala is the beneficial owner. 

B. As a consequence of the provisional attachment, the Corporate Debtor is prohibited until further order or till 90 days from the end of the month from the date of notice under Section 24(1) whichever is earlier, from transferring or charging the properties described above as per the provisions of Section 24(3). It is further submitted that this Adjudicating Authority is not the appropriate authority to revoke the provisional attachment as specific mechanism for the same has been given under Prohibition of Benami Transactions Act, 1988. In this regard, the 1st Respondent places reliance on the judgement of the Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Others [2019 SCC OnLine SC 1542]** wherein the following was held:

*"The only provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or statutory authority in relation to a matter which is in the realm of public law, cannot by any stretch of imagination, be brought within the fold of the phrase "**arising out of or in relation to the insolvency resolution**" appearing in Clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional / Resolution Professional will the claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under section 260A of the Income Tax Act, 1961. Therefore, the jurisdiction of the NCLT delineating in Section 60(5) cannot be stretched so far as to bring absurd results. Wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the RP*

cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5)."

C. Additionally, the 1st Respondent submits that the instant property value does not fall under the ambit of debt due or payable to the Government (Central or State) or local authority. The authority while exercising the power under the Prohibition of Benami Transactions Act, 1988 does not stand as a creditor. Moreover, where there are two special statutes, both having non-obstante clauses, the courts have held that where an Act has a distinct purpose, such Act would have precedence. In this regard, the 1st Respondent places reliance on the judgment of the Hon'ble High Court of Delhi in the case ***Deputy Director, Directorate of Enforcement Vs. Axis Bank & Ors. [(2019) 259 DLT 500]*** wherein the following was held in para 17:

"The Government, when it exercises its powers under PMLA to seek attachment leading to confiscation of proceeds of crime, does not stand as a creditor, the person alleged to be complicit in the offence of money-laundering similarly not acquiring the status of a debtor."

"The objective of PMLA being distinct from the purpose of RDBA, SARFAESI Act and Insolvency code, the latter three legislations do not prevail over the former."

"An order of attachment under PMLA is not illegal only because a secured creditor has a prior secured interest (Charge) in the property, within the meaning of the expressions used in RDBA and SARFAESI Act. Similarly, mere issuance of an order of attachment under PMLA does not ipso facto render illegal a prior charge or encumbrance of a secured creditor, the claim of the latter for release (or restoration) from PMLA attachment being dependent on its bonafides."

4. The Learned counsel for the Respondents 2 to 4 has filed a counter on 07.01.2021 challenging the maintainability and prayers sought in the Application before this Adjudicating Authority stating that the jurisdiction of Section 60(5) of the IBC is to act as an Adjudicating Authority to determine questions of priorities of any question of law or facts arising out of or in relation to the Insolvency Resolution based on the issue involved in a given case. The Learned Counsel for the 2nd to 4th Respondents state that if the intent of the IBC was to confer this Adjudicating Authority the jurisdiction under Section 60(5) to decide all types of claims relating to the asset of the Corporate Debtor, then Section 18(f)(vi) would not have provided for determination of ownership by a court or other authority, and therefore, wherever the Corporate Debtor has to exercise rights in judicial, quasi judicial proceedings, the Resolution Professional cannot short -circuit the same and bring a claim before this Adjudicating Authority taking advantage of Section 60(5).


Furthermore, the Counsel for the Respondents 2 to 4 has also placed reliance on Supreme Court decision wherein it is held that the non-obstante clause in Section 60(5) is designed to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a Corporate Debtor covered by IBC and hence, applications under other statutes will not be covered under Section 60(5).



The Learned Counsel for the Respondents 2 to 4 also submits that the Applicant has not filed any documents to support the allegations against the Respondent except the order of attachment from the 1st Respondent and further avers that at no point of time did the Respondents 2 to 4 herein enter into any agreement to sell the properties of the Corporate Debtor.

5. Heard all the parties and perused all the documents including the written submissions, counters, memos and compilation of case laws submitted by the Applicant and Respondents.

It is seen from the submissions and the documents that the 1st Respondent has only provisionally attached the said properties, which means that it is for a period of either until further orders or 90 days from the end of month from the date of the notice under Section 24(1) of the Prohibition of Benami Property Transaction Act, 1988; whichever is earlier. It can be seen that the Date of the order for attachment was 01.11.2019 and the date of filing the Application is 03.01.2020 which is only 63 days from the date of attachment order. The Applicant ought to have waited for the said period to expire or for further orders from the 1st Respondent post which, the procedure for revoking the attachment as stipulated under the Prohibition of Benami Property Transaction Act, 1988 should have been preferred.



The Applicant had sought that as the Corporate Debtor is undergoing CIRP, the provisional attachment Order of the 1st Respondent be raised, failure of which would result in liquidation of the Corporate Debtor. However, as it can be seen that the Corporate Debtor has been ordered for Liquidation vide order of this Adjudicating Authority dated 20.04.2021, the present Application viz., MA(IBC)/05(CHE)/2020 has become infructuous.

Furthermore, from our records, it can be seen that the second prayer sought by the Applicant has been dismissed by this Adjudicating Authority vide daily order dated 25.02.2022. Accordingly, MA(IBC)/05(CHE)/2020 **stands Closed**.

IA(IBC)/599(CHE)/2021

1. The Application IA(IBC)/599(CHE)/2021 has been filed by the Applicant viz., C. Ramasubramaniam, Liquidator of the Corporate Debtor. The Corporate Debtor has been ordered for Liquidation vide Common Order dated 20.04.2021 and that the properties provisionally attached by the 1st Respondent are all assets of the Corporate Debtor which form part of the Liquidation Estate. It is averred by the Applicant that, unless the order of the Provisional Attachment is quashed, the Liquidator will not be able to proceed further with the Liquidation Process.

2. The Applicant relies on the decision of the Hon'ble Supreme Court in Alchemist Asset Reconstruction Company Limited Vs. Hotel



Gaudavan Private Limited [(2018) 16 SCC 94] wherein it was held that once a moratorium is imposed under the IBC, any proceeding initiated against the Corporate Debtor is non-est law. It is further submitted by the Applicant that, the attachments being the subject matter of this Application viz., IA(IBC)/599(CHE)/2021, arise out of the claim against the Corporate Debtor and hence is within the jurisdiction of this Adjudicating Authority under Section 60(5) of the IBC and the said orders of provisional attachment are in violation of Section 14 of the IBC.

3. In addition to this, The Respondent No 1 has filed a counter dated 25.02.2022 stating that the attachment order dated 01.11.2019 is not in violation of section 14 of the IBC. Further, the Respondent No. 1 avers that the properties attached are not properties of the company but are vested with the Government and hence are not eligible to be qualified as properties of the Corporate Debtor. Moreover, Section 60(5) of the IBC empowers the Adjudicating Authority to decide questions within the purview of IBC and that, the issue at hand is not within the scope of IBC.

4. The Applicant has prayed for staying the attachment order of the 1st Respondent dated 01.11.2019 so as to enable the Applicant to carry out the Liquidation process of the Corporate Debtor. The Corporate Debtor has been ordered for Liquidation vide Order of this Adjudicating Authority dated 20.04.2020. The period of



moratorium starts with the initiation of the CIRP and ends in two circumstances:

- (a) on the commencement of Liquidation or
- (b) upon the approval of a resolution plan.

In the present case, the Liquidation period has commenced now which means that the moratorium has ended.

5. Be that as it may, the provisional attachment made by the Respondents comes under the statute of Prohibition of Benami Property Transaction Act, 1988 which in itself has stipulated a due process with respect to attachment of property under Section 7 of the same. As the Insolvency and Bankruptcy Code, 2016 and the Prohibition of Benami Property Transaction Act, 1988 are two special Acts, the Applicant has alleged that the former should prevail over the latter as the IBC, 2016 was framed in 2016. The general principle for construction in a circumstance where two special Acts are in conflict with each other is that, the Act made later should prevail vide the maxim '*leges posteriores priores contrarias abrogant*'. However, in the present case, as there is nothing to stop the Applicant/Liquidator herein to proceed under the relevant section to raise the provisional attachment. Additionally, the Respondent has contended that the properties attached are not the Company's properties and thus the same cannot come under the Liquidation Estate. This Adjudicating

Authority does not find any conflict between these two statutes as the Liquidator is not barred by IBC, 2016 to add the said property into the liquidation estate to proceed with the liquidation proceedings if the said properties are part of the Liquidation Asset unless it is proved otherwise. Further, the reliance on the case laws placed by the Applicant cannot be considered in this case and accordingly with the reasons stated supra, this **IA(IBC)/599(CHE)/2021** stands **Dismissed**.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Haripriya