

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

MA/30(CHE)/2021

In

CP/129(IB)/2018

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of
National Company Law Tribunal Rules, 2016.)*

In the matter of Nathella Sampath Jewelry Private Limited

MR. PALANIAPPAN

Liquidator of *Nathella Sampath Jewelry Private Limited*
B5, Patteswarar Park North Block,
Dr. Ramasamy Layout, Velandipalayam,
Coimbatore- 641025.

...Applicant/Liquidator

-Versus-

THE JOINT DIRECTOR

Directorate of Enforcement,
Chennai Zonal Office-1,
3rd Floor, C Block, Murugesu Naicker Complex,
84, Greaves Road,
Chennai- 600006

...Respondent

In the matter of

Nathella Sampath Jewelry Private Limited

... Corporate Debtor

Order Pronounced on **25th January, 2024**

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

For Applicant

: Ms. Indumathi Ravi & Associates

ORDER

1. Under consideration is an Application filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the code') by the Applicant, the Liquidator of M/s. Nathella Sampath Jewelry Private Limited (hereinafter referred to as 'the Corporate Debtor') against the Joint Director, Directorate of Enforcement seeking reliefs as follows,

- a) *The Hon'ble Tribunal may be pleased to pass appropriate orders setting-aside/recalling/vacating the provisional attachment Order dated 31st July 2018 bearing No11/2018 in ECIR/CEZO-1/09/2018 Chennai Zone-I against the asset of the Corporate Debtor and Guarantors and other assets including those purchased out of the proceeds of crime/misuse of funds obtained from the lenders as referred under Schedule I & II (37 immovable properties) of the said provisional attachment Order dated 31 July 2018, as the case may be, and vest such rights in the hands of the Applicant/Liquidator.*
- b) *That the Hon'ble Tribunal may direct the Respondent to provide inter- alia all relevant information and documents already gathered by the Respondent during their search exercise, as may be required by the Applicant in conducting the liquidation proceedings, as the case may be;*
- c) *That the Hon'ble Tribunal direct the Respondent not to take any action that would disrupt the recovery proceedings under the provisions of the Code;*
- d) *Any other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

2. It is submitted by the Learned Counsel for the Applicant that the Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 23.04.2018 in CA/129/(IB)/2018 vide an application under Section 10 of the code. The Applicant herein was appointed as the Liquidator of the Corporate Debtor vide order dated 25.02.2020 in MA/547(CHE)/2018 by this Adjudicating

Authority. It is stated that the company under Liquidation was engaged in the business of buying, manufacturing and selling all precious metal in the form of jewellery and other accessories.

3. It is submitted by the Learned Counsel for the Applicant that the Credit facilities provided by the members of the CoC, are secured by way of primary security, collateral security and personal guarantees of the Promoters/Directors of the Corporate Debtor. It is stated that the account of Corporate Debtor sometime in April, 2017 revealed signs of sickness due to failure in payment of loans availed. Inspection of showrooms were conducted. During the meeting of SBI led consortium that held of 24.08.2017, it was decided to conduct a forensic audit into the accounts of Corporate Debtor and that M/s. DeloitteTouche Tohmatsu India LLP (DTTILLP) was appointed to conduct the Forensic audit of the Corporate Debtor.
4. It is submitted by the Learned Counsel for the Applicant that consequent to the forensic audit, misrepresentation/falsification of financial statements leading to the difference in the value of stock as per the audited financial statements and other transaction with related parties of the Corporate Debtor were revealed. The forensic audit also identified the role of the statutory auditor in the above misrepresentation and that the above facts evidenced that consequent to the above fraudulent activities, Corporate Debtor had caused a loss to the tune of Rs.379.75 Crores (outstanding as on 28.02.2018) plus accrued interest from 01.03.2018 to the above said Banks.

5. It is submitted by the Learned Counsel for the Applicant that the account of the Corporate Debtor was declared as NPA by SBI on 28.07.2017, on 29.07.2017 by HDFC Bank and on 31.07.2017 by Union Bank of India
6. It is submitted by the Learned Counsel for the Applicant that a Criminal case was filed by State Bank of India, registered vide RC 08/E/2018-BS & FC/BLR on 24 March 2018 by CBI, BS & FC, Bangalore against the below mentioned individuals / firms / company for commission of offences of Criminal Conspiracy, Criminal Breach of Trust, Cheating, Forgery, Using as genuine a forged Document and Criminal misconduct by Public Servants on the basis of a written complaint dated 23.08.2018 from Shri G.D. Chandrashekar, General Manager, (MC-I), Mid Corporate Regional Office-I, State Bank of India, Chennai Region against the Corporate Debtor & others. The under mentioned accused were charged for offences under Section 120B of IPC 1860, read with Section 409, 420, 467, 468 & 471 of Indian Penal Code, 1860 and Section 3(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 in the said FIR.
- a) *M/s NathellaSampath Jewelry Private Limited, Corporate Debtor having Registered Office situated at No.54, Nathella Plaza, South Usman Road, T.Nagar, Chennai 600 017;*
- b) *Shri N.Ranganath Gupta, Promoter cum Managing Director, of Corporate Debtor, Chennai & R/o Door Noi 245 (Old No.4-B) Kilpauk Garden Road, Kilpauk, Chennai;*
- c) *Shri N. Prasanna Kumar, Director of Corporate Debtor, Chennai & R/o Door No 245 (Old No.4-B) Kilpauk-Garden Road, Kilpauk, Chennai*

d) Shri N. Prapanna Kumar, Director of Corporate Debtor, Chennai & R/o Door No 245 (Old No.4-B) Kilpauk-Garden Road, Kilpauk, Chennai;

e) V. Shri Sohun C.J. Partner of M/s Jeeravla & Co., Chartered Accountant, No.27, First Floor, Barnaby Road Kilpauk, Chennai being Statutory Auditor of Corporate Debtor.

7. It is further submitted by the Learned Counsel for the Applicant that subsequent to the above, the Directorate of Enforcement ("ED")/the Respondent herein had passed a Provisional Attachment order vide Order No. 11/2018 dated 31.07.2018 after commencement of Corporate Insolvency Resolution Process of the Corporate Debtor. A copy of the said Provisional Attachment Order is annexed as "Annexure 2" along with the typed set of papers. It is submitted by the Learned Counsel for the Applicant that, it was only by way of this Order, that the Resolution Professional has come to know that 37 immovable properties valued to the tune of Rs. 328.44 Crore were acquired out of proceeds of crime.

8. It is further submitted by the Learned Counsel for the Applicant that the provisional attachment order by itself categorically states that the Corporate Debtor's funds were used in acquiring properties in the names of the directors and related parties. The same is evidenced through bank statements, supported by the Transaction Audit report of Deloitte and written statement given by the beneficiaries of the properties to the Respondent, confirming the acquisition of properties out of the funds of the Corporate Debtor. Further, the funds of the Corporate Debtor was also used in the form of purchase of the properties, payment of registration charges, servicing loan EMIs, payment of property tax, maintenance etc. As such, all the

subject properties are the properties of the Corporate Debtor and would naturally come to the liquidation estate assets of the Corporate Debtor.

9. It is submitted by the Learned Counsel for the Applicant that the Resolution Professional had already filed an application in MA.No.423 of 2018 before this Adjudicating Authority seeking relief as to raise the Provisional Attachment made vide Order No. 11/2018 dated 31.07.2018 on the file of the Respondent. Simultaneously the RP also moved an application in MA No. 643/2018 before this Adjudicating Authority highlighting 37 immovable properties amounting to Rs 328.44 Crore, acquired by the Directors/Promoters/Guarantors by diverting/siphoning off of the loan amount that was sanctioned to the Corporate Debtor with a clear intention to deceive and defraud the Secured Creditors.
10. It is submitted by the Learned Counsel for the Applicant that vide Order dated 16.01.2019 the Adjudicating Authority, PMLA, New Delhi confirmed the Provisional Attachment Order of the Joint Director, Directorate of Enforcement, Chennai Zonal Office - 1. Challenging the said order, the RP has preferred an appeal on 01.02.2019 before the Hon'ble Appellate Tribunal PMLA.
11. It is further submitted by the Learned Counsel for the Applicant that, in view of the appeal filed before the Appellate Tribunal, PMLA, the RP withdrew MA. No 423 of 2018 on 25.02.2019 which was pending before this Adjudicating Authority seeking raise of Provisional Attachment Order with liberty to file a fresh application once the appeal filed under PMLA with the Appellate Board is disposed.

12. It is further submitted by the Learned Counsel for the Applicant that, the appeal was listed for hearing on 04.08.2020 thereafter, the functioning of the Appellate Tribunal was suspended due to Covid-19 pandemic and all the matters listed on 04.08.2020 were adjourned to 04.12.2020. Therefore, the Liquidator was not in a position to proceed further in taking the appeal to its logical end. As a result of which the Applicant herein has filed the present Application praying indulgence of this Adjudicating Authority.
13. It is submitted by the Learned Counsel for the Applicant that, in view of the Provisional Attachment Order dated 31.07.2018 of the Respondent, the RP could not bring about any kind of a Resolution and as a result of which the Corporate Debtor went into liquidation.
14. It is further submitted by the Learned Counsel for the Applicant that, the impugned order of the Respondent prevents the Liquidator from performing his duties as per the Section 35 of the IBC 2016 which includes: (a) to take into his custody or control all the assets, property, effects and actionable claims of the Corporate Debtor; (b) to evaluate the assets and property of the Corporate Debtor in the manner specified by the Board and prepare a report; (c) to take such measures as to protect and preserve the assets and properties of the Corporate Debtor as he considers necessary.
15. It is submitted by the Learned Counsel for the Applicant that, the Corporate Insolvency Resolution Process of the Corporate Debtor commenced on 23.04.2018, whereas the attachment order was passed by the Respondent only on 31.08.2018, which is much after the commencement of Corporate Insolvency Resolution Process.

16. It is further submitted by the Learned Counsel for the Applicant that, in terms of the provisions of Section 36 of the code, the Liquidator is empowered to take charge of the assets of the Corporate Debtor. Accordingly, it is imperative for the Applicant to be allowed to exercise access and control over the assets which are attached by the attachment order issued by the Respondent.

17. It is submitted by the Learned Counsel for the Applicant that, the provisions of Section 238 of the code makes it clear that anything inconsistent therewith contained in any other Law shall be overridden by the provisions of Insolvency Code. Reliance is place on *Innovative Industries Limited Vs. ICICI Bank 2017 SCC Online SC 1025*, that no proceeding under any Law, including PMLA Act 2002 can be continued or initiated against Corporate Debtor till the completion of CIRP. The attachment order comes in the way of smooth functioning of the Applicant under the liquidation process and hence such inconsistency ought to be removed by virtue of the powers vested under the provisions of Section 238 of the Code.

18. It is submitted by the Learned Counsel for the Applicant that, further reliance is placed on the Order dated 31.08.2018 passed by the NCLT, Kolkata Bench in case of *Surendra Kumar Joshi Vs. REI Agro Limited [CA(IB) No. 455/KB/2018 in CP(IB) No.73/KB/2017* wherein the Adjudicating Authority has clearly directed the ED to handover the possession of the attached properties to the Liquidator along with the title deeds. The Adjudicating Authority while delivering the said decision relied upon the Order of the Apex Court in the case of *Solidaire India Private Limited Vs. Fair Growth Financial*

Services Private Limited Ors (2001) 3 SCC 71 wherein, under a similar controversy the Apex Court held as under:

"The provisions of MPID Act thus cannot take away the powers under the Companies Act if the properties of the Company in liquidation are allowed to be sold and the sale proceeds are allowed to be distributed through the competent authority only amongst depositors the same would be in teeth of the provisions of the Companies Act, 1956 and the secured creditors and the workmen preferential creditors having statutory dues would be totally deprived of their legitimate claims against the company in liquidation whereas the depositors under the provisions of MPID Act would exclusively benefitted under the provisions of the MPID Act which would result in mischief."

"The above ruling completely raises the controversy. The only difference is that in that proceedings the properties were attached under MPID Act In this case, they are attached under PMLA Act."

19. The Applicant also places reliance on the Order dated 16.05.2018 passed by NCLT, Mumbai in case of *State Bank of India Vs. Dunar Foods Limited* the Adjudicating Authority has clearly stated:

"The Authorities under PMLA shall cooperate with the Resolution Professional to provide all the information collected by them so that the Insolvency Proceedings can run side by side concurrently without having any conflict with the Authorities. Endeavour should be is that on attachment the properties be dealt with either for 'Restructuring' or 'Liquidation' within the prescribed time."

20. It is submitted by the Learned Counsel for the Applicant that, no prejudice would be caused to the ED upon release/vacation of the said attachment Order since the intent of the Applicant is to secure the said assets for maximization of value for the benefit of the financial creditors and other stakeholders. The Applicant states that the process of liquidation has to be completed in a time bound

manner and cannot be kept in abeyance in view of the pendency of the appeal under the PMLA which would defeat the very purpose of the IBC. In light of the above circumstances, the Applicant therefore, seeks to raise the order of provisional attachment passed vide order dated 31.07 2018.

21. From the records available it is seen that the Respondent/Directorate of Enforcement neither appeared nor responded in the instant matter despite notices having been served. Therefore, this Adjudicating Authority vide its common order dated 04.05.2023 decided to proceed ex-parte if none is present for the respondent during the next date of hearing i.e., on 04.07.2023. On perusal of the daily proceedings dated 04.07.2023, it is seen that none appeared for the respondent. Hence, this Authority is constrained to proceed in the absence of the respondent.
22. Heard the Learned Counsel for the Applicant. Perused the documents including the written statements on record.
23. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process vide order dated 23.04.2018 by this Adjudicating Authority. It is seen that the provisional attachment were made vide Order No. 11/2018 dated 31.07.2018 by the respondent after commencement of Corporate Insolvency Resolution Process of the Corporate Debtor. It is relevant to bring on record that the period of moratorium kicks in right away once the Corporate Insolvency Resolution Process is initiated.

24. In the instant matter, from the above mentioned dates and events, it is evident that the attachment order passed by the respondent is well after the date of commencement of Corporate Insolvency Resolution Process in a way making it obvious that the respondent has acted upon the assets belonging to the Corporate Debtor during the moratorium period.
25. On perusal of the attachment order dated 31.07.2018 it is understood that the order is passed under Section 5 (1) of the Prevention of Money Laundering Act, 2002, which by itself has a set of stipulated rules and regulations governing appeals against such attachment orders before the Appellate Tribunal, (PMLA). Moreover, from the submission made by the applicant, it is brought to the knowledge of this Adjudicating Authority that the Resolution Professional of the Corporate Debtor has already preferred an appeal before the Appellate Authority and the same is still pending. Considering the prevailing situation of the Corporate Debtor and the actions taken by the RP/Liquidator, it is seen that nothing herein bothers the Applicant/Liquidator to proceed in the chosen way before the Hon'ble Appellate Tribunal (PMLA) to lift the provisional attachment.
26. Thus, it is quite evident that the attachment made is as per the ingredients of the provisions of the PMLA Act, 2002 and that the same is to be dealt with under the relevant provisions of the said act only. Moreover, it is time and again retreated by the Hon'ble NCLAT that the Code only pertains to the questions concerning Corporate Insolvency Resolution Process & Liquidation Proceedings of the

Corporate Debtor. Keeping that in mind, the concept of 'Attachment' made as per Section 5 (1) of the Prevention of Money Laundering Act, 2002 cannot be a subject matter of proceedings under Section 60(5) of the code, in a way making it clear that this Adjudicating Authority is not the right 'FORA' to deal with revocation of attachment made under the PMLA, Act, 2002. Thereby, making it obvious that a remedy under PMLA act cannot be claimed before this Adjudicating Authority under the IBC, 2016 Code.

27. Accordingly, in terms of the instant facts and circumstances, we deem it fit to **dismiss** the application as not maintainable in law and facts.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)