

ITEM NO.38

COURT NO.2

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 30092/2022

(Arising out of impugned final judgment and order dated 09-05-2022 in CAAT(I) No. 411/2022 passed by the National Company Law Appellate Tribunal)

ASHOK KUMAR SARAWAGI

Petitioner(s)

VERSUS

ENFORCEMENT DIRECTORATE &amp; ANR.

Respondent(s)

IA No. 156830/2022 - CONDONATION OF DELAY IN FILING

IA No. 155872/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 14-12-2022 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE ABHAY S. OKA

For Petitioner(s) Mr. Dhruv Mehta, Sr. Adv.  
Mr. Tishampati Sen, Adv.  
Ms. Riddhi Sancheti, AOR  
Mr. Anurag Anand, Adv.  
Ms. Anupama Dhurve, Adv.

For Respondent(s) Mr. Zoheb Hossain, Adv.  
Mr. Kanu Agarwal, Adv.  
Mr. Sourav Roy, Adv.  
Mr. Annam Venkatesh, Adv.  
Mr. M.K.Maroria AOR

UPON hearing the counsel the Court made the following  
O R D E R

We have heard learned counsel for parties on the issue of interim relief.

Mr. Dhruv Mehta, learned senior counsel for the petitioner prays that interim relief, as prayed in paragraph 8(a) of the Special Leave Petition, be granted. He pointed out that even if the Resolution

Plan is approved by the Committee of Creditors, it cannot be acted upon unless it is approved by the Adjudicating Authority in accordance with Section 31 of the Insolvency and Bankruptcy Code, 2016 (for short, 'I.B. Code'). Mr. Zoheb Hossain, learned counsel appearing for the Enforcement Directorate opposes the said prayer. He pointed out that an appeal against the order of attachment has already been filed by the petitioner before the Appellate Authority.

In the facts of the case, we find that CIRP against corporate debtor was admitted by order dated 20<sup>th</sup> November 2019 passed by NCLT. Public announcement about the initiation of CIRP was made on 25<sup>th</sup> November 2019 and 04<sup>th</sup> December 2019. On 14<sup>th</sup> December 2020, the petitioner who is the Resolution Professional issued invitation for Expression of Interest thereby inviting Resolution Plans from the eligible prospective Resolution Applicants. On 30<sup>th</sup> December 2021, the Enforcement Directorate issued an order of provisional attachment of the immovable and moveable properties owned by the corporate debtor.

Therefore, we are dealing with a fact situation where the order of provisional attachment under the Prevention of Money Laundering Act, 2002 was passed more than two years after CIRP was admitted and one year after invitation for Expression of Interest was

published by the petitioner. The prayer of the petitioner is to allow the petitioner to conduct and conclude the process of CIRP on "*as is where is basis*" and "*whatever there is basis*". If the process is not completed within the time provided in I.B. Code it may result in liquidation of the corporate debtor. Appropriate interim order will have to be passed to ensure that the object of CIRP is not defeated in the event the order of attachment is set aside.

Therefore, by way of interim relief, we permit the petitioner to conduct the process of CIRP in accordance with I.B. Code on "*as is where is basis*" and "*whatever there is basis*". However, we make it clear that even if a Resolution Plan as approved by the Committee of Creditors is submitted to the Adjudicating Authority, the order of approval shall not be passed by the Adjudicating Authority without express permission of this Court.

List on 28.02.2023.

Learned counsel for the parties to file a short synopsis running into not more than four pages each and we assign half an hour each to both the sides for submissions.

(ASHA SUNDRIYAL)  
ASTT. REGISTRAR-cum-PS

(POONAM VAID)  
COURT MASTER (NSH)