



**IA 2262/2024 in C.P. (IB)/973(MB)2020**

- 1) Mr. Tushad Kakalia, Ld. Counsel for the Applicant/Resolution Professional of the Corporate Debtor, Mr. Nalin Bajaj, Ld. Counsel for the Respondent No. 1 and Ms. Aishwarya Pawar, Ld. Counsel for the Respondent No. 2 are present.
- 2) The present Interlocutory Application has been filed by the Applicant/Resolution Professional of the Corporate Debtor praying for the following reliefs:
  - a. *That this Hon'ble Court be pleased to lift and/or vacate the attachment imposed on the assets of the Corporate Debtor by way of the Provisional Attachment Order dated 28th June 2021 (Exhibit C) and confirmed by the Attachment Confirmation Order dated 28th February 2022 (Exhibit D);*
  - b. *That in the alternative to prayer (a), this Hon'ble Tribunal be pleased to clarify that the attachment imposed on the assets of the Corporate Debtor by way of the Provisional Attachment Order dated 28th June 2021 (Exhibit C) and confirmed by the Attachment Confirmation Order dated 28th February 2022 (Exhibit D) shall stand lifted and/or vacated upon approval of the resolution plan by this Hon'ble Tribunal”.*
- 3) The present Application is being filed by the Applicant, the Resolution Professional of the abovenamed Corporate Debtor. Pursuant to an order

dated 09.02.2023 passed by this Tribunal the captioned Company Petition filed by Bank of India was Admitted. Upon such admission, the Corporate Insolvency Resolution Process (the "CIRP") qua the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 (the "Code") commenced and the Applicant was appointed as the Interim Resolution Professional and subsequently confirmed as the Resolution Professional of the Corporate Debtor. Consequentially, a moratorium under Section 14 of the Code commenced. Upon going through the records of the Corporate Debtor, the Applicant noted that a Provisional Attachment Order dated 28.06.2021 (the "Provisional Attachment Order") had been passed by the Respondent, which was confirmed by an Order passed by the Adjudicating Authority. By the Provisional Attachment Order read with the Attachment Confirmation Order, 29 assets and properties of the Corporate Debtor upon which the moratorium as per Section 14 of the Code is presently applicable, were attached.

- 4) Thereafter, the Attachment Confirmation Order was challenged by the Corporate Debtor before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court passed an order dated 19.04.2022 in the said Writ Petition by which the Respondent was directed to not take any further steps under Section 8 of the PMLA. Further, the Petitioners (which included the Corporate Debtor) were restrained from disposing off or creating any third-party rights or encumbering the properties which form part of the Provisional

Attachment Order. In the course of the hearing of the Writ Petition before the Hon'ble Delhi High Court on 23.05.2023, the Applicant for the first time learned that an Appeal had already been filed by the erstwhile management of the Corporate Debtor before the Appellate Tribunal challenging the Attachment Confirmation Order but the same was dismissed for non-prosecution on 02.05.2023. The Applicant has filed a Civil Miscellaneous Application for restoration of the captioned Appeal before the Appellate Tribunal.

- 5) Moreover, the continuation of the attachment amounts to the continuation of the proceedings which culminated in the passing of the Provisional Attachment Order and the Attachment Confirmation Order and to the execution of the said Orders, which is prohibited under Section 14 of the Code. Various stakeholders including the Corporate Debtor's lenders who are public financial institutions have been awaiting repayment of their dues for a long time. The lifting of the attachment, which would result in the Applicant being able to fetch more value for the assets of the Corporate Debtor would mean that these public financial institutions and stakeholders would be able to recover their dues to a greater extent. There are, in the circumstances, extremely compelling reasons to lift the attachment.
- 6) Heard Ld. Counsel for the Parties extensively and perused the material available on record.

- 7) We note that the provisional attachment order was passed on 28.06.2021, pursuant to investigation by CBI, BSFB, alleging that the Corporate Debtor and its Promoters/Directors had worked in the guise of undertaking merchanting trade without having any genuine transactions and defaulted in meeting its payment obligations towards a lending bank of consortium lead by Bank of India. The Enforcement Directorate took note of diversion of funds by way of providing unsecured loans to group concerns, export of goods against merchant transactions only on papers, switching of consignments, proceeds of sales from third parties amongst others. The Enforcement Directorate investigation in terms of PMLA 2002 with a view to identify the person offence in money laundering and properties and assets etc, acquired out of illegal gate generated by suspected persons. The ED is also stated to have accorded in statement of several persons and has made a finding that net devolvement amount of LCs entailed wrongful losses caused to the Banks and corresponding gains to the Corporate Debtor. Accordingly, ED has concluded that these constitute proceeds of crimes u/s 2(1)(u) of PMLA, 2002. Accordingly, ED passed the provisional attachment order in relation to assets of the Corporate Debtor and this Provisional attachment order came to be confirmed by the Adjudicating Authority on 28.02.2022.
- 8) The Insolvency and Bankruptcy Code, 2016 provides for the resolution of the Financial Distress of a Corporate Debtor and such Resolution is in the interest of and under the control of its Creditors. Section 32A(2) of the Code

also provides for No action against the property of the Corporate Debtor in relation to an offence committed prior to the commencement of CIRP where such property is covered under a Resolution Plan approved by the Adjudicating Authority under Section 31 and the Resolution Plan results in change in the control of the Corporate Debtor to a person other than Promoters or Management for related party or persons against whom the investigation authority have some material to proceed against.

- 9) The Applicant has sought the declaration from this Tribunal that in case the assets, subject matter of attachment order are resolved in terms of provisions of the Code and such Resolution is otherwise eligible for protection as available u/s 32A(2) of the Code, the attachment imposed on the assets of the Corporate Debtor by way of the Provisional Attachment Order dated 28<sup>th</sup> June 2021 (Exhibit C) and confirmed by the Attachment Confirmation Order dated 28<sup>th</sup> February 2022 (Exhibit D) shall stand lifted and/or vacated upon approval of the resolution plan by this Tribunal. In view of the provisions of 32A(2) of the Code, we consider it appropriate to clarify that the Attachment order in relation to the assets/properties of the Corporate Debtor shall stand lifted/vacated upon approval of the Resolution Plan in relation to the assets/properties of the Corporate Debtor dealt with a such Plan, provided such Plan is approved by this Tribunal and such Plan does not result into change in control of the Corporate Debtor to the person is specified in Section 32A(2)(i/ii) of the Code.

10) In view of the forgoing, the Interlocutory Application bearing IA No. 2662 of 2024, is disposed of as Allowed in terms of prayer clause “b”.

Sd/-

Sd/-

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**JUSTICE VIRENDRASINGH BISHT  
MEMBER (JUDICIAL)**

Vedant Kedare