

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
10-07-2024 AT 10:30 AM**

CP(IB) No. 155/9/HDB/2021

AND

IA(IBC) 422/2022, Inv. P (IBC) 33/2023 & IA (IBC) 960/2023 in

CP(IB) No. 155/9/HDB/2021

u/s. 9 of IBC, 2016

IN THE MATTER OF:

Jai Corp Ltd

...Operational Creditor

AND

G S Oils Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

IA(IBC) 422/2022

Orders deferred, since it is a case of the respondents that the records containing information that the liquidator is insisting to be produced is seized by CBI as such the respondents are unable to produce the same, the respondents are given one more opportunity to file seizure report/Punchanama/Inventory report within 7 days from today and furnish a copy to the liquidator.

Matter adjourned to 12.08.2024 for further hearing.

Inv. P (IBC) 33/2023

Orders pronounced. In the result, **this application is dismissed. No costs.**

IA (IBC) 960/2023

Orders pronounced. In the result, **this application is allowed. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH - I, HYDERABAD**

I.A. (IBC) No. 33 of 2023

IN

CP (IB) No.155/9/HDB/2021

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with
Rule 11 of The National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

Directorate of Enforcement (ED),
Hyderabad Zonal Office, 3rd Floor, Shakar Bhavan,
Fateh Maidan Road, Hyderabad – 500004
Represented by its deputy Director.

...APPLICANT

Versus

Liquidator of M/s. G.S. Oils Limited,
H.No. 4-5-3, Station Road, Adilabad,
504001, Telangana

...RESPONDENT

Date of Order: 10.07.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/Counsels present:

For Applicant : Mr. Narendra Naik, Advocate
For Respondent : Mr. B Ravi Teja Advocate.

PER BENCH

ORDER

1. This is an application filed by the 'Enforcement Directorate, Hyderabad Zone' (hereinafter referred as 'Applicant') under Section 60 (5) of 'The Insolvency and Bankruptcy Code, 2016' (hereinafter referred as 'IBC') read with Rule 11 of The National Company Law Tribunal Rules, 2016 against the Liquidator of M/s. G.S. Oils Limited seeking the following reliefs:

- i. Allow the Applicant herein to be impleaded in the C.P. (IB) No. 155/9/HDB/2021 and direct the Liquidator to provide the Applicant i.e., Directorate of Enforcement, Hyderabad Zone with a copy of the Asset Memorandum in respect of the Corporate Debtor in C.P. (IB) No. 155/9/HDB/2021;*
- ii. to direct the Liquidator to exclude the properties attached by the Applicant under the PMLA from the Liquidation estate and the purview of Liquidation;*
- iii. Consequently, provide an opportunity to the Applicant herein to submit its contentions elaborately pertaining to the properties of CD that are attached under the PAO.*

2. The core contention of the applicant is that, the assets of the Corporate Debtor which is under liquidation by virtue of the order of this Tribunal dated 12.09.2022 were provisionally attached by the applicant under the provisions of PMLA vide the order No. 07/2017, dated 29.09.2017 and the same was later confirmed vide the attachment order No. 09/2022,

dated. 25.03.2022 by the Adjudicating Authority under the PMLA. As such the said properties are amenable to the Jurisdiction of this Tribunal under the IB Code, however as the liquidator is proceeding with the said assets, the present application is filed seeking to implead the applicant in the company petition and for exclusion of the said assets from the asset memorandum etc.,

3. This application is resisted by the liquidator contending, inter alia, that mere attachment of the properties of the Corporate Debtor under liquidation by the competent authority under PMLA by itself will not take away the rights of the liquidator to deal with the said properties under the provisions of the IB Code and further that the very order of attachment having being effected while the order of moratorium granted by this Court against the corporate debtor in terms of Section 14 IBC is in vogue, the attachment proceedings are null and void.
4. In the light of the contest as above we have framed the following point.

POINT:

Whether the applicant is necessary party for the just and proper adjudication of the company petition?

5. We have heard the learned counsel Mr Narendra Naik, for applicant and Learned Counsel Mr B Ravi Teja, for Respondent.

POINT:

Whether the applicant is necessary party for the just and proper adjudication of the company petition?

6. At the outset it is to be stated that this Tribunal having found that the resolution of the Corporate Debtor has failed, had ordered liquidation of the Corporate Debtor vide the order dated 12.09.2022 and the Corporate Debtor is undergoing the liquidation proceedings. This Tribunal in its finding in IA No. 960/2023 held that the provisional orders of attachment effected under the provisions of PMLA and confirming the provisional orders, are null and void as the both orders were passed while the moratorium order against the corporate debtor was in vogue.
7. Be it as it may, mere attachment of the properties of the corporate Debtor even under the provisions of the PMLA Act, will not divest the corporate debtor, its “ownership and other rights” over the said properties, the corporate debtor has or is having an attachment is only legal embargo created over the said property, that a part of the final Adjudication by the Competent Authority under the PMLA Act is pending.
8. Therefore, when the title as well as the other rights of corporate debtor over the subject property in this case remain with the Corporate Debtor the said properties invariably form part of liquidation estate as the finding under section 36 of IBC which is as below:

“(1) For the purposes of liquidation, the liquidator shall form an estate of the assets mentioned in sub-section (3), which will be called the liquidation estate in relation to the corporate debtor.

(2) The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

(3) Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following:—

(a) any assets over which the corporate debtor has ownership rights, including all rights and interests therein as evidenced in the balance sheet of the corporate debtor or an information utility or records in the registry or any depository recording securities of the corporate debtor or by any other means as may be specified by the Board, including shares held in any subsidiary of the corporate debtor;

(b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;

(c) tangible assets, whether movable or immovable;

(d) intangible assets including but not limited to intellectual property, securities (including shares held in a subsidiary of the corporate debtor) and financial instruments, insurance policies, contractual rights;

(e) assets subject to the determination of ownership by the court or authority;

(f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;

(g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;

(h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and

(i) all proceeds of liquidation as and when they are realised.

(4) The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation:—

(a) assets owned by a third party which are in possession of the corporate debtor, including—

(i) assets held in trust for any third party;

(ii) bailment contracts;

(iii) all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund;

(iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and

(v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;

(b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;

(c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;

*(d) assets of any Indian or foreign subsidiary of the corporate debtor;
or*

(e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor.”

9. Therefore, in view of our discussion as above, the presence or the absence of applicant herein absolutely has no consequence at all for the just and proper adjudication of the subject dispute. Therefore, this application is liable to be dismissed.

Accordingly, **this application is dismissed. No costs.**

Sd/-
Charan Singh
Member Technical

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

**THE NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH - I, HYDERABAD**

I.A. (IBC) No. 960 of 2023

IN

CP (IB) No.155/9/HDB/2021

Under Section 60(5) of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of The National Company Law
Tribunal Rules, 2016

IN THE MATTER OF:

Sri. Gonugunta Murali
Liquidator, G S Oils Limited,
Having Office at 16.11-19/4,
Saleem Nagar, Near Farahat Hospital,
Malakpet, Hyderabad – 500036

...Applicant/Liquidator

Versus

THE DIRECTORATE OF ENFORCEMENT
Rep. by the Joint Director,
Dept. of Revenue, Ministry of Finance,
Government of India, 3rd Floor,
Shankar Bhawan, Basheerbagh, Hyderabad-500004

...Respondent

Date of Order: 10.07.2024.

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Parties/Counsels present:

For Applicant : Mr B Ravi Teja, Advocate

For Respondent : Mr Narendra Naik, Advocate.

PER BENCH
ORDER

1. This is an application filed by Mr. Gonugunta Murali, the Liquidator (hereinafter referred as ‘Applicant’) for the Corporate Debtor M/s. GS Oils Limited under Section 60 (5) of ‘The Insolvency and Bankruptcy Code, 2016’ (hereinafter referred as ‘IBC’) read with Rule 11 of The National Company Law Tribunal Rules, 2016 against the Directorate of Enforcement, the Respondent herein seeking the following reliefs:

- “A. To declare the Provisional Attachment Order No. 09/2022 dated 25 March 2022 and Confirmation Order dated 16 September 2022 on the file of Hon'ble Adjudicating Authority (PMLA), New Delhi, to the extent of the assets of the Corporate Debtor, as mentioned in **Table-A** and any other assets of the Corporate Debtor attached by the Respondent, as void ab initio, non-est, illegal and arbitrary in violation of Section 14 of IBC; and*
- B. Consequently set aside the Provisional Attachment Order No. 09/2022 dated 25 March 2022 and Confirmation Order dated 16 September 2022 on the file of Hon'ble Adjudicating Authority (PMLA), New Delhi, to the extent of the assets of the Corporate Debtor, as mentioned in **Table-A** and any other assets of the Corporate Debtor attached by the Respondent.*
- C. Consequently, release the attachment of the assets of the Corporate Debtor, to the extent of the assets of the Corporate Debtor, including the assets mentioned in **Table-A** and any other assets of the Corporate Debtor attached by the Respondent.”*

2. M/s. Jai Corp Limited (hereinafter referred as 'Financial Creditor') filed a Petition vide C.P. (IB) 155/9/HDB/2022 before this Tribunal to initiate 'Corporate Insolvency Resolution Process' (hereinafter referred as 'CIRP') against 'M/s. GS Oils Limited' (hereinafter referred as 'Corporate Debtor'). The Corporate Debtor was admitted into CIRP by an order dated 15.04.2021 in C.P. (IB) 155/9/HDB/2022 and appointed the Applicant herein as the Interim Resolution Professional. The Applicant herein was confirmed by the 'Committee of Creditors' of the Corporate Debtor (hereinafter referred as 'CoC') to be continued as the Resolution Professional of the Corporate Debtor. Upon failure to complete CIRP of the Corporate Debtor, the Corporate Debtor was admitted into Liquidation by an order of this Tribunal dated 12.09.2022 in C.P. (IB) 155/9/HDB/2022 and appointed the Applicant herein as the Liquidator of the Corporate Debtor.
3. During the performance of the duties as Resolution Professional, the Applicant herein came to know that the Respondent Authority issued a Provisional Attachment Order No. 09/2022 dated 25.03.2022 (during the pendency of CIRP of the Corporate Debtor) over the assets of the Corporate Debtor (mentioned at Table A of the Petition). This Provisional Attachment Order was Confirmed by the Adjudicating Authority established under 'The Prevention of Money Laundering Act, 2022' (hereinafter referred as 'PMLA') vide Confirmation Order dated 16.09.2022 (during the pendency of Liquidation proceedings of Corporate Debtor).
4. It was submitted that a security was created by the Corporate Debtor over these assets with the State Bank of India (one of the Financial Creditors) for various loans sanctioned by it. Aggrieved by the Confirmation order

dated 16.09.2022 passed by the Adjudicating Authority under PMLA, the State Bank of India filed an appeal before the Ld. Appellate Tribunal, New Delhi under PMLA. The Applicant herein is representing the Corporate Debtor in the said Appellate Proceedings and filed a Counter Affidavit.

5. CASE OF THE APPLICANT:

- i. That as a Liquidator, it is his duty to take the custody over the assets of the of the Corporate Debtor and that this Liquidation estate includes the properties attached by the Respondent Authority.
- ii. That the proceedings before the Adjudicating Authority under PMLA are civil in nature and that the attachment of properties by the Respondent Authority was done during the pendency of CIRP against the Corporate Debtor, which is a violation of the provisions of IBC.
- iii. That this attachment of the properties of Corporate Debtor is causing hindrance to a smooth conduct of Liquidation proceedings. That keeping in view the objects of IBC, the order confirming the attachment of the assets of the Corporate Debtor passed by the Adjudicating Authority under PMLA may be set aside and these properties may be released from the attachment of the Respondent Authority so as to maximise the value of the assets of the Corporate Debtor.

6. CASE OF THE RESPONDENT:

- i. That all the assets attached by the Respondent Authority belonging to the Corporate Debtor are proceeds of crime and hence, cannot be made part of Liquidation Proceedings and Asset Memorandum of the Corporate Debtor.
- ii. That the provisions of IBC are inapplicable to the proceedings under PMLA and hence, the present is liable to be dismissed.

7. The Point that arises, for consideration of this Tribunal is:

- (i) **Whether the order of attachment of the assets of the Corporate Debtor made under PMLA Act while “moratorium” ordered under section 14 of IB Code, against the said assets of the Corporate Debtor by the Adjudicating Authority under IB Code, is valid and sustainable under law?**

We have heard Learned Counsel Mr B Ravi Teja, for Applicant and Learned Counsel Mr Narendra Naik, for Respondent.

1. According to the learned counsel for the applicant, on an application filed by M/s Jai Crop Limited under section 9 of IB Code, against M/s GS Oils Limited for initiation of Corporate Insolvency Resolution Process against the said GS Oils Limited, alleging that GS Oils limited defaulted in re-payment of its Operational Debt extending the sum over Rupees One Crore due and payable to the applicant, this Tribunal, vide order dated 15.04.2021 in CP (IB) 155/9/HDB/2022 admitted the said petition, appointed interim resolution professional and also imposed moratorium on Corporate Debtor in terms of the order dated 15.04.2022.
2. Learned Counsel further submits that, while it is so, the applicant resolution professional came to know that the respondent on 25.03.2022 issued a provisional attachment order in respect of the assets of the Corporate Debtor which are mentioned in the petition and the said provisional order of attachment has been confirmed by the Competent

Authority established under the PMLA Act, vide the order dated 16.09.2022.

3. Learned counsel further submits that aggrieved by the order confirming the provision order of attachment dated 16.09.2022, State Bank of India, filed an Appeal before the Appellant Authority under PMLA and the same is pending. According to the learned counsel the order of attachment of properties of the Corporate Debtor, since passed while the Moratorium order passed under section 14 of IB Code is in vogue, is un-sustainable and un-tannable under law. In support of this plea learned counsel relied on the following rulings:

- A. The Directorate of Enforcement v. Manoj Kumar Agarwal & Ors., The Hon'ble National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) (Ins) No.575/2019 & Company Appeal (AT) (Ins) No.576/2019, dated 09 April 2021, wherein it was held as follows:

"42. In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."

- B. In Deputy Director, Directorate of Enforcement, Delhi vs Axis Bank & Ors., 2019 SCC Online Del 7854:

"165. Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable property (or deemed tainted property) has initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the

preceding prescription, it would be appropriate that the PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA.

4. Mr Narendra Naik, learned counsel for the respondent, strongly refuted the submissions made by the learned counsel for the petitioner and contended that the provisional order as well as the order confirming the same is sustainable under law and binding on the Corporate Debtor as the provisions of PMLA Act would prevail over IBC. In support of this contention, learned counsel for the respondent relied on the following rulings:

- C. Kiran Shah vs Enforcement Directorate, Company Appeal (AT) (Ins) No. 817/2021 dated 03.01.2022 which was relied on by the Respondent Authority in support of the contentions. In the said case, all the judicial pronouncements relied on by the Applicant were considered at length and the Hon'ble NCLAT, Delhi, observed as follows:

91. It is to be relevantly pointed out that Section 32-A 'Liability for Prior Offences etc. was inserted by Act 1 of 2020 S. 10 (with effect from 28.12.2019) and in reality, this Section only bars attachment after approval of 'Resolution Plan' by an 'Adjudicating Authority' of course subject to the requirement of certain conditions being satisfied. In the instant case in hand, admittedly, there is no approval of 'Resolution Plan' till date and as such, it is held by this 'Tribunal', that the Appellant cannot press into service the ingredients of Section 32-A(2) of the I & B Code.

92. To put it, in clear and in an unequivocal term, this Tribunal points out that Section 32 A of the I & B Code, 2016 in the present form and content in a cocksure manner will negate the action i.e. taken to discharge the criminally acquired asset/property in the considered opinion of this 'Tribunal'. Further more, such Illgotten/ Illegitimate

Assets will be legitimised after the 'Corporate Insolvency Resolution Process' was completed.

93. A mere running of the eye of the 'Prevention of the Money Laundering Act 2002' latently and patently indicates that it pertains to 'Proceeds of Crime' and provides for the penal action in respect of the 'Proceeds of Crime'. It is to be remembered that only when an endeavour is made to show the source of that money as something legitimate, it would amount to projecting the 'Proceeds' as untainted property. 94. One cannot brush aside a primordial fact that 'Money Laundering' is an 'Unlawful Bustle Activity' through which the Illegal/Illegitimate Proceeds take an outward appearance of 'Legitimacy'. In this connection, this Tribunal worth recalls and recollects the decision of Hon'ble Supreme Court in Binoy Viswam vs. Union of India reported in 2017 7 SC 59 where in it is observed that 'unearthing black money' or checking money laundering is to be achieved to whatever extent possible.

95. Although, Section 14 of I & B Code deals with 'moratorium', it is not a hindrance for the 'Authority' and the Officers under the 'Prevention of Money Laundering Act, 2002' to deny a person of the tainted 'Proceeds of Crime. Suffice it for this 'Tribunal' to point out that a person who is involved in 'Money Laundering' is not to be allowed to enjoy the fruits of Proceeds of Crime' with a view to ward off is Civil indebtedness, in respect of his Creditors.

96. As seen from the 'Prevention of Money Laundering Act, 2002', the purpose of the Act is to prevent 'Money Laundering' and it deals with confiscation of property derived from or concerned with 'Money Laundering' etc. In fact, 'The Prevention of Money Laundering Act, 2002' is to fulfill our Country's obligation in adhering to the United Nations Resolutions and in regard to Assets/Properties being the 'Proceeds of Crime', it takes a 'primacy and precedence' over the 'Insolvency and Bankruptcy Code, 2016' which promotes "Resolution' as its objective over Liquidation in the considered opinion of this 'Tribunal'.

97. In the instant case, there is no 'Resolution Plan' as approved by the "Tribunal' and further no Liquidation Proceedings had ended in the sale of Liquidation Assets of the Corporate Debtor'. 98. Besides this, the objective, purpose of two enactments (1) 'I & B Code' and (2) 'PMLA' even though at the first blush appear to be at logger heads,

there is no repugnancy and inconsistency between them, in lieu of the fact the text, shape and its colour are conspicuously distinct and different, operating in their respective spheres. More importantly, when confiscation of the 'Proceeds of Crime' takes place, the said Act is performed by the Government not in its status/capacity/role as Creditor.

In the same case, it was observed as follows:

103. In so far as anyone aggrieved against any decision or order of the 'Adjudicating Authority' of the PMLA, then it is open to him to prefer an Appeal before the Appellate Tribunal, PMLA by resorting to the relevant provision(s) of the 'Prevention of the Money Laundering Act, 2002'. Moreover, as against any decision or order of the Appellate Tribunal, PMLA, the concerned person/entity may file an 'Appeal' to the Hon'ble High Court under Section 42 of the PMLA.

104. There is no two opinion of the fact that the 'First Appeal' to the Appellate Tribunal is as per Section 26 of the PMLA against the Order passed by the 'Adjudicating Authority' under sub Sections 2 & 3 of Section 8 of the Act.

105. The Hon'ble Supreme Court had confirmed the Judgment of this Tribunal in Varrsana Ispat Ltd. v Deputy Director of Enforcement (Vide Comp. App. (AT) (Ins) No. 493 of 2018) through an order dated 22.07.2019 in Civil Appeal 5546 of 2019 and the same has become final, conclusive and the same being of a binding value upon this Tribunal. Indeed, as per Article 141 of the Constitution of India the Judgment of the Hon'ble Supreme Court is binding on this Appellate Tribunal.

106. In regard to the Judgment of the Hon'ble High Court of Delhi in the matter of Deputy Director, Directorate of Enforcement Delhi v Axis Bank and Ors. Reported in 2019 SCC Online Del 7854, it is to be pointed out that the Hon'ble Supreme Court had granted only a Status quo Order on 30.08.2019, but there is no stay of the Judgment of the Hon'ble High Court of Delhi. As on date, the Judgment of the Hon'ble High Court of Delhi in the matter of Deputy Director Directorate of Enforcement Delhi v Axis Bank and Ors. in law is binding upon this 'Tribunal'.

107. It is significantly pointed out by this 'Tribunal' that the Judgment of this Tribunal in JSW Steel's Case(Vide Comp. App. (AT) (Ins) No. 957 of 2019)is in applicable to the facts of the present case before this 'Tribunal' because of the latent and patent fact. There is no final approval of Resolution Plan in Company Appeal (AT) (Ins) No. 817 of 2021 and that apart the attachment order was confirmed by the Adjudicating Authority under the prevention of 'Money Laundering Act' of course after providing an opportunity of 'Hearing' to the Appellant/ Resolution Professional.

108. Even the decision in Bank of India's Case in 2019 SCC Online ATPMLA 23 relied on the side of Appellant, in the earnest opinion of this Tribunal is inapplicable because of the fact the Bank had obtained a secured charge in respect of the properties under attachment, which was acquired before the offence under the prevention of Money Laundering Act, 2002. However, it cannot be forgotten that in the present case on hand, before this Tribunal, the property came to be attached belonging to that of 'Corporate Debtor' as 'Proceeds Of Crime'.

109. In so far as the decision in Manoj Kumar Aggarwal case is concerned (reported in 2021 SCC OnLine NCLAT 121), this 'Tribunal' is of the considered opinion that the said decision runs contra to the 'Principle of Stare Decisis.

110. As far as the present case is concerned, the 'Appellant/Resolution Professional' even though has filed Company Appeal (AT) (Ins) No. 817 of 2021 being dissatisfied with the order dated 31.12.2020 in IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 [filed by the Applicant/IRP for KSL Industries Ltd./Corporate Debtor under Sections 14,18,25 & 60(5) of Code] seeking to set aside the 'Attachment of the Property of the 'Corporate Debtor' by the Respondent/Enforcement Directorate vide order dated 24.10.2019 passed by the 'Adjudicating Authority' PMLA etc., this 'Tribunal' makes it candidly clear that filing of Application under Section 60(5) of the I & B Code is not an 'all pervasive' one, thereby conferring Jurisdiction' to an 'Adjudicating Authority' (NCLT) to determine 'any question/issue of priorities', question of Law or Facts pertaining to the 'Corporate Debtor' when in reality in 'Law', the 'Adjudicating Authority' (NCLT) is not empowered to deal with the matters falling under the purview of another authority under PMLA. Viewed in that perspective, IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 filed by the Applicant/IRP

for KSL & Industries Ltd is held by this 'Tribunal' as not maintainable in law. Resultantly, the Appeal fails.”

5. Having heard the learned counsels for both sides and on perusal of the record, at the outset we wish to refer to the following rulings:-

A. The Directorate of Enforcement v. Manoj Kumar Agarwal & Ors., The Hon'ble National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) (Ins) No.575/2019 & Company Appeal (AT) (Ins) No.576/2019, dated 09 April 2021, wherein it was held as follows:

"42. In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfil objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."

B. In Deputy Director, Directorate of Enforcement, Delhi vs Axis Bank & Ors., 2019 SCC Online Del 7854:

"165. Situation may also arise, as seems to be the factual matrix of some of the cases at hand, wherein a secured creditor, it being a bonafide third party claimant vis-a-vis the alternative attachable property (or deemed tainted property) has initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the initiation of the latter action unwittingly having the effect of frustrating the former. Since both actions are in accord with law, in order to co-exist and be in harmony with each other, following the preceding prescription, it would be appropriate that the PMLA attachment, though remaining valid and operative, takes a back-seat allowing the secured creditor bonafide third party claimant to enforce its claim by disposal of the subject property, the remainder of its value, if any, thereafter to be made available for purposes of PMLA."

6. It is clear from the above rulings that there is no conflict between PMLA and IBC and even if a property has been attached under the provisions of

PMLA Act belonging to the Corporate Debtor, the same should be available for fulfilling the objects of IBC.

7. In so far as the ruling in Kiran Shah vs Enforcement Directorate, Company Appeal (AT) (Ins) No. 817/2021 relied on by the respondent is concerned, it is to be stated that the said judgement involves the question as to who is the 'Competent Authority' to 'raise' the order of attachment, in this case since this Tribunal is not considering the said aspect, on facts the above ruling is not applicable to the present case.
8. Therefore, in the light of our discussion as above and the case law the order of attachment of the properties of the Corporate Debtor, ED case number vide 9 of 2022 dated 25.03.2022 and 16.09.2022, are held to be non-est, in so far as the present proceedings are concerned and as such the same should be made available for the purpose of liquidation of the Corporate Debtor.

Accordingly, **this application is allowed. No costs.**

Sd/-
Charan Singh
Member Technical

Sd/-
Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Anil/Swapna