IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

Company Petition (IB) No. 652/KB/2019

An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

STATE BANK OF INDIA

... Applicant/ Financial Creditor.

Verses

R.P. INFO SYSTEM LTD.
(Formerly Known as R. P. Infosystems Pvt. Ltd.)

... Respondent/Corporate Debtor.

Date of Pronouncement: February 19, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the State Bank of India:	**Mr. Shaunak Mitra, Adv.**
	Ms. Tannya Baranwal, Adv.
	Mr. Kumar Shreyam, Adv.
For the RP Info Sys. Ltd.:	**Mr. Shubhankar Nag, Adv.**
	Ms. Urmila Chakraborty, Adv.
	Ms. Iram Hassan, Adv.
	Mr. Sanket Sarangi, Adv.

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA

C.P. (IB) No. 652/KB/2019

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The Court congregated through hybrid mode.

2. Heard the Learned Counsels for both the parties at length.

3. This application/petition has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" or "I&B Code" or "Code", by the **State Bank of India**, hereinafter referred to as **"Applicant" or "Financial Creditor"**, against the **R.P. Info Systems Ltd**., hereinafter referred to as **"Respondent" or "Corporate Debtor",** seeking for a direction to initiate the Corporate Insolvency Resolution Process, for brevity "**CIRP**" in respect of the Corporate Debtor herein.

4. The total amount claimed to be in default is Rs. 322.01 Crore as on 28.02.2019. The date of default is claimed as 25.05.2013, 17.06.2013, 29.08.2013, when the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) with e-SBBJ, SBI and e-SBI respectively, and such would get extended on 02.09.2015, 02.09.2016, 01.09.2017, 04.09.2018 and 02.09.2019 when the corporate debtor admitted the debt in its balance sheets.

Admitted Facts:

5. The respondent since 2005 has been engaged in the business of production, sale and distribution of computers, desktops, laptops and diverse computer accessories, and runs its business under

the popular brand name of "Chirag". Over time it became one of the most popular indigenous computer manufacturers of the country.

6. A consortium of 17 banks was formed to provide credit facilities to Corporate Debtor, with IDBI Bank as the lead banker.

7. According to a report prepared by PWC, the valuation of Corporate Debtor was between Rs. 1750 to 1930 Crores and according to the report prepared by State Bank of India Cap the equity value of Corporate Debtor was Rs. 1850 to 2000 Crores. It employs around 875 persons.

8. Disputes and differences between the Corporate Debtor and consortium started on and from 2013 when the consortium leader suddenly declared the account of the Corporate Debtor as fraudulent account without there being any iota of reason or evidence and closed banking operations.

9. The entire business of Corporate Debtor collapsed causing huge loss and damages to Corporate Debtor. All creditors avoided payments including the Financial Creditor herein. As a matter of fact, the Financial Creditor protested along with Punjab National Bank, Canara Bank and Indian Overseas Bank and reported such fact to the Reserve Bank of India by a letter dated May 28, 2013 (Page 418 Vol. 3 of Reply).

10. Soon thereafter, the lead banker IDBI bank issued a notice under the SARFAESI Act, followed by the State Bank of India. According to the own disclosure of State Bank of India, the alleged date of NPA of State Bank of India, State Bank of Patiala and State Bank of Bikaner and Jaipur are 17th June, 2013, 29th August, 2013 and 25th May, 2013.

11. The Corporate Debtor alleges that on the own showing of the Financial Creditor, it is clear that the Corporate Debtor suffered due to the inaction on the part of the consortium. It is alleged that consequent to such action of the consortium including the Financial Creditor, the Corporate Debtor became a sick company and applied before the Board for Industrial and Financial Reconstruction ('BIFR').

Brief Background:

12. The original Application/Petition being **C.P.(IB) No. 652/KB/2019** on 01.04.2019 was preferred under Section 7 of the I&B Code, 2016 before this Tribunal and it was allowed vide Order dated 04.02.2020.

13. During the pendency of the Corporate Insolvency Resolution Process the Corporate Debtor, one of its Directors of Suspended Board preferred an Appeal being Comp. Appeal (AT) (INS) NO. 804 2020, before the Hon'ble NCLAT, New Delhi.

14. The Hon'ble Appellate Tribunal, vide its Order dated 20.01.2021, allowed the said Appeal and set aside the Order dated 04.02.2020 passed by this Adjudicating Authority, on the ground of limitation.

15. At the material time the liquidation process of the Corporate Debtor was about to commence as the RP had filed an application for Liquidation of the Corporate Debtor, in the absence of any Resolution Plan. However, because of the order dated 20.01.2021 passed by the Hon'ble NCLAT, the CIRP came to a halt and the same was reserved.

16. Aggrieved by the order dated 20.01.2021, the Applicant (Financial Creditor) preferred a Civil Appeal being Appeal No. 979 of 2021 before the Hon'ble Supreme Court of India.

17. The Hon'ble Apex Court vide its Order dated 31.01.2022 while setting aside the Order dated 20.01.2021 passed by the NCLAT, allowed the Applicant to file an amendment application under Section 7 of the I&B Code before this Adjudicating Authority, to bring on record the correspondences between the Applicant and the Respondent regarding OTS and the Balance Sheet for the Financial years ending 2015, 2016, 2017, 2018 and 2019.

18. Emboldened thereby, the applicant filed an Amendment Petition however, the same could not be filed as the C.P. No. 652/KB/2019 was closed by this Adjudicating Authority vide its Order dated 09.03.2022.

19. Hence, the Financial Creditor/Applicant chose to file a fresh Company Petition under Section 7 of the I&B Code, which was numbered as C.P. No. 252 (KB) of 2022.

20. The said C.P. No. 252 of 2023 was listed for hearing on 19.07.2023 before this Tribunal. Upon perusal of the Order dated 31.01.2022, passed by the Hon'ble Apex Court and considering its implication, C.P. 252 of 2023 was dismissed and I.A. No. 307/2022 filed by the Corporate Debtor was allowed. The Order dated 09.03.2022, passed in C.P. (IB) 652/KB/2019 was recalled, the Company Petition was restored to its original file. The financial Creditor was permitted to amend the Company Petition No. C.P. (IB) 652/KB/2019. The amended petition was filed and the same was listed on 01.09.2023. On 02.11.2023, a last and final opportunity was allowed to the Corporate Debtor to file a reply to the Application.

Submissions of the Financial Creditor:

21. The Continued delay by the Corporate Debtor/Respondent in filing their reply had caused an unwarranted and prejudicial delay in the progress of the present matter in hand.

22. The I&B Code is a time-bound process. Under the I&B Code, there are strict timelines for various stages of the insolvency resolution process, including the admission of an application, the appointment of an insolvency resolution professional, the submission of resolution plans, and the approval of resolution plans. These timeframes are intended to ensure that insolvency

cases are resolved as quickly as possible, thereby maximizing the value of the assets of the insolvent entity and minimizing delays in the process.

23. The cause of action/ date of default would start on 25.02.2013, 17.06.2013, 29.08.2013 when the account of the Corporate Debtor turned NPA with e-SBBJ, SBI and e-SBP respectively and would get extended on 02.09.2015, 02.09.2015, 01.09.2017, 04.09.2018 and 02.09.2019 when the Corporate Debtor admitted the debt in its balance sheets.

24. The Corporate Debtor had also on 09.12.2014, 21.08.2015, 12.10.2017 given settlement/ OTS proposals thereby acknowledging the debt, which would also extend the action/ limitation, in terms of the Section 18 of the Limitation Act, 1963 and the decision in ***Asset Reconstruction Company (India) v. Bishal Jaiswal*** **reported in (2021) 6 SCC 366 at paras 21 and 35.**

25. The Financial Creditor on 02.09.2015, in principle approved the OTS proposal subject to the payment of upfront money which was not complied with by the Corporate Debtor.

26. The Company Petition bearing No. 652/KB/2019 filed on 01.04.2019, is well within the period that got limitation extended in view of the repeated acknowledgements of debt by the Corporate Debtor.

27. That proceedings under "Prevention of Money Laundering Act, 2002" (hereinafter referred to as "PMLA") erupted against the Corporate Debtor, but the same has no effect on the petition under Section 7 of I&B Code, 2016.

28. The conditions which are required to be satisfied at the stage of admission of Section 7 application are, whether there exists any **"debt"** which is **"due and payable"** and **"default"** in payment thereof has occurred. In the present case, both factors are present.

29. The attachment of assets by the Enforcement Director does not affect the admissibility of the petition under Section 7 of the IBC. Section 238 of the I&B Code has an overriding effect on anything inconsistent with any other law. Though the PMLA has a similar provision under Section 71, the same is subservient to the provisions of the I&B Code, since the I&B Act was enacted after the PMLA. Out of the two enactments of *non-obstante* clauses, like the present one, the enactment subsequent in time (here IBC) overrides the former (PMLA).

30. That petition is properly affirmed and/or verified in accordance with the relevant rules and Forms under the National Company Law Tribunal Rules, 2016 and IBC Code, 2016. The Company Petition being filed well within time, debt and default being admitted, it deserves to be allowed.

Submissions of the Corporate Debtor:

31. Per contra, Ld. Counsel Mr. Subhankar Nag appearing for the Respondents/ Corporate Debtor would submit that the contentions made by Learned Counsel for the applicant that there has been an acknowledgement of debt on the part of the applicant, is without any basis. In view of the fact that the purported acknowledgement letters are issued "without prejudice" to pending or future litigations, they are not to be treated as an acknowledgement in law.

32. The Corporate Debtor was in manufacturing business and the lead bank IDBI Bank had stopped credit facilities. The State Bank of India had complained to the Reserve Bank of India. A suit was filed against IDBI Bank, in Calcutta High Court, valued at Rs. 1700 Crores, which is pending.

33. That the date of the NPA is 2013 whereas the application is preferred in 2019, as such it is hopelessly barred by limitation. The decision cited by Learned Counsel for the applicant as rendered in ***Bishal Jaiswal (Supra)*** will not render any assistance as there is no acknowledgement in terms of Section 18 of the Limitation Act.

34. The Balance Sheets produced by the applicant record statements or comments made by the Auditor, does not bind either the Auditor or the Company.

35. The petition does not mention the date of default. In the absence of any fixed date of NPA, the petition is defective. As three different dates have been indicated as dates of NPA, all three cannot be regarded as dates of default in terms of the decision in ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. Civil Appeal No. 6347 of 2019*** as date of default cannot be changed or shifted.

36. In terms of the Calcutta High Court decision in **Bengal Silk Mills** filing of balance-sheet is a compulsion in law. But an entry therein or observations therein is not an acknowledgement of debt, as there is no compulsion to make an admission.

37. To support his contention, the Learned Counsel, Shri Subhankar Nag, appearing for the Corporate Debtor would place the following proposition that:

a. ***Kiran Shah v. Enforcement Directorate*** reported in **2022 SCC OnLine NCLAT 2 (Paras 66-73, 75, 78, 79, 83-86, 96-108, 113, 115)**
b. ***Nitin Jain v. Enforcement Directorate*** reported in **2021 SCC OnLine Del 5281 (Para 87, 102 (f) (G)**
c. ***Rajiv Chakraborty Resolution Professional of EIEL vs. Directorate of Enforcement*** reported in **2022/DHC/004739: MANU/DE/4428/2022**

38. Citing the above, the Learned Counsel would contend that this is a unique case and there is no settled law as of today by any Court

or Tribunal whether an application under Section 7 of the I&B Code is maintainable after a final order of attachment under PMLA on the assets of the Corporate Debtor.

39. Further, Shri Nag would cite the following precedents:

a. ***BSI Limited v. Gift Holding Pvt. Ltd.*** reported in **2000 2 SCC 737 (Paras 17,19, 20).**

b. ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*** reported in **2000 2 SCC 745 (Para 15, 16, 17)**.

40. Placing the above, the Learned Counsel would argue that:

40.1. Both the statues, being I&B Code and PMLA are statutes with overriding effect. However, as the statutes operate in different fields, the latter statute being I&B Code enacted in 2016 cannot override PMLA. PMLA is essentially a statute in the field of criminal law.

40.2. Inasmuch as all the assets of the Corporate Debtor are finally attached and subject matter of an adjudication of a case pending before a Competent Court being No. M.L. 4 of 2019 (pending before the Learned Judge Special (CBI) Court No. 1, Bichar Bhawan, Kolkata), this Adjudicating Authority cannot interfere with the process of such trial or adjudication till it culminates to a vesting in Central Government or to a release.

40.3. The assets attached under the PMLA exclusively form the subject matter of M.L. 4 of 2019, pending before the Learned Judge Special (CBI) Court No. 1, Bichar Bhawan, Kolkata over which this Adjudicating Authority cannot exercise jurisdictions.

40.4. It is asserted, that in Nitin Jain (Supra) in para 86 and 101(G), it has been held that:

> **"***86. In a case where in exercise of their respective powers a conflict does arise,* ***it is for the Courts to discern the legislative scheme and to undertake an exercise of reconciliation enabling the authorities to discharge their obligations to the extent that the same does not impinge or encroach upon a facet which stands reserved and legislatively mandated to be exclusively controlled and governed by one of the competing statutes****. The aspect of* ***legislative fields of IBC and PMLA and the imperative to strike a correct balance was rightly noticed*** *and answered...***"**
>
> **(Emphasis Added)**

40.5. The provisions under the I&B Code and PMLA should not encroach upon each other's territory and inasmuch as the attachment order in final is subject to trial and the properties of the Corporate Debtor are earmarked for the Competent Court under PMLA, striking balance would essentially denote that in the given case, the Court must keep in mind the doctrine of Comity of the Courts.

40.6. Placing the decision of ***Rajiv Chakraborty Resolution Professional of EIEL (Supra)*** as rendered by the Hon'ble Delhi High Court, it was argued that in a case where the preliminary attachment order was passed after moratorium kicked in, the resolution professional was given liberty to approach the PMLA Authority to release the property meaning thereby I&B Code should recognize the existence and importance of the PMLA.

40.7. Further, Shri Nag would contend that due to the final attachment order and initiation of trial, all the assets moveable and immoveable of the Corporate Debtor are finally attached and are the subject matter of a trial pending before the competent court of law under the PMLA. Such being the position, the assets of the Corporate Debtor are no more available for resolution or for liquidation under the I&B Code. Under such circumstances, the object of I&B Code itself would get frustrated.

40.8. To highlight the issue, the objects of the I&B Code and the PMLA as have been enumerated by way of written arguments, as under:

The objects of the I&B Code *viz-a-viz* the objects and Reasons of the PMLA:

40.9. THE INSOLVENCY AND BANKRUPTCY CODE, 2016

An Act to consolidate and amend the laws relating to reorganisation and ***insolvency resolution*** *of corporate persons, partnership firms and individuals in a time bound manner for* ***maximisation of value of assets of such persons****, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.*

40.10. It is contended that such objective has been further defined and upheld in diverse judgments and the Hon'ble Apex Court went on to hold that the I&B Code was promulgated for primary resolution of the Corporate Debtor and not as a tool for recovery of money.

40.11. The Learned Counsel would cite the judgment of ***Swiss Ribbon Pvt Ltd v. union of India*** reported in ***(2019) 4 SCC 17*** wherein the Hon'ble Apex Court has held that:

> **"***28. Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganization of the corporate debtor's business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all*

*creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.***"**

(Emphasis Added)

40.12. THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

"*An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.***"**

40.13. It is contended that the PMLA was enacted in terms of a declaration adopted by the United Nations General Assembly wherein India was a part of such resolution. The legislative intent to the promulgation of the PMLA was categorically spelt out by the Hon'ble Apex Court in its judgment ***Vijay Madanlal Choudhury v. Union of India*** reported in **2022 SCC OnLine 929: MANU/SC/0924/2022**, Paras 23, 43 and 44, whereof would be as under:

"*23. […] Even the Preamble of the Act reinforces the background in which the Act has been enacted by the Parliament being commitment of the country to the international community. It is crystal clear from the Preamble that the Act has been enacted to prevent money laundering and to provide for confiscation of property derived from or involved in*

money-laundering and for matters connected therewith or incidental thereto. It is neither a pure regulatory legislation nor a pure penal legislation. It is amalgam of several facets essential to address the scourge of money-laundering as such. In one sense, it is a sui generis legislation."

Xxx xxx xxx

"*43. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act -- for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.*

> *44. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:*
>
> *(a) Placement: which is to move the funds from direct association of the crime.*
>
> *(b) Layering: which is disguising the trail to foil pursuit.*
>
> *(c) Integration: which is making the money available to the criminal from what seem to be legitimate sources.***"**
>
> **(Emphasis Added)**

41. We have duly considered the rival contentions and perused records.

Analysis and Findings:

42. **On Debt:** It is evident that the facilities taken by the Corporate Debtor is not in dispute. Hence, the debt is admitted.

43. **On Default:** The fact that an amount of Rs. 322 Crore is outstanding is also not disputed. Hence, irrefutably and inarguably there is a default on the part of the Corporate Debtor.

44. **On Acknowledgment:** It is claimed by the Ld. Counsel for the Respondent that the asseveration of the Financial Creditor that there has been an acknowledgement of debt on the part of the applicant, is without any basis. Since, the purported acknowledgement letters are issued "without prejudice" to pending

or future litigations. As such, they are not to be treated as an acknowledgement in law.

Legal Implication of the Acknowledgment "without prejudice":

45. We are conscious of legal position explained and enumerated in the judgment rendered in the ***ITC Ltd. v. Blue Coast Hotels Ltd.*****,** reported in **(2018) 15 SCC 99: (2018) 4 SCC (Civ) 793: 2018 SCC OnLine SC 237 at page 119** in regard to the implication of the word "Without prejudice", which is reproduced hereunder for clarity:

> ***"Letter of undertaking "Without prejudice"***
>
> ***33.*** *Much was sought to be made of the words "without prejudice" in the letter [Dated 25-11-2013] containing the undertaking that if the debt was not paid, the creditor could take over the secured assets.* ***The submission on behalf of the debtor that the letter of undertaking was given in the course of negotiations and cannot be held to be an evidence of the acknowledgement of liability of the debtor****, apart from being untenable in law, reiterates the attempt to evade liability and must be rejected. The submission that the letter was written without prejudice to the legal rights and remedies available under any law and therefore the acknowledgement or the undertaking has no legal effect must likewise be rejected. This letter is reminiscent of a letter that fell for consideration in Spencer case [Spencer v. Hemmerde, (1922) 2 AC 507 (HL)] as pointed out by Mr Harish Salve,*
>
> *"as a rule the debtor who writes such letters has no intention to bind himself further than he is bound already, no intention of paying so long as he can avoid payment, and nothing before his mind but a desire, somehow or other, to gain time and avert pressure".(AC p. 526)*

It was argued in a subsequent case [Bradford & Bingley Plc v. Rashid, (2006) 1 WLR 2066 (HL)] that an acknowledgment made "without prejudice" in the case of negotiations cannot be used as evidence of anything expressly or impliedly admitted. The House of Lords observed as follows: (WLR p. 2072, para 16)

"16. … But when a statement is used as an acknowledgment for the purposes of Section 29(5), it is not being used as evidence of anything. ***The statement is not evidence of an acknowledgment. It is the acknowledgement****."*

(emphasis in original)

Therefore, the "without prejudice" rule could have no application*. It said: (WLR p. 2091, para 83)*

"83. Here, the [respondent], Mr Rashid was not offering any concession. On the contrary, he was seeking one in respect of an undisputed debt. Neither an offer of payment nor actual payment…."

(emphasis in original)

We, thus, find that the mere introduction of the words "without prejudice" have no significance and the debtor clearly acknowledged the debt even after action was initiated under the Act and even after payment of a smaller sum, the debtor has consistently refused to pay up*."*

(Emphasis Added)

Hence, mere use of the words "without prejudice" will not absolve a party of the acknowledgment made already.

46. *Acknowledgment of the debt in the balance sheet of the Corporate Debtor extends limitations under Section 18 of the Limitation Act, 1963:*

47.1. Section 18 of the Limitation Act, 1963 envisages:

The **"Effect of acknowledgment in writing"** as under:

(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation. — For the purposes of this section, —

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

47.2. We would note the contention of the Learned Counsel for the Applicant that the cause of action would be extended on 02.09.2015, 02.09.2016, 02.09.2017, 02.09.2018, 02.09.2019, corresponding to instances when the Corporate Debtor acknowledges the debt in its financial records. It is argued that the Balance Sheet and the Auditor

Report for the years 2015 to 2019 of the Corporate Debtor annexed to the amended application/petition reflect the debt of the Financial Creditor amongst other lenders against the Corporate Debtor.

47.3. We would note that the Corporate Debtor in its Balance Sheet for the years 2014 to 2019 has admitted the default in repayment of the dues to the Financial Creditor and Banks. The relevant pages annexed to the Amended Application are following:

Pages 3017 (Vol 16), **3022** (Vol 16), **3034** (Vol 16), **3045** (Vol 16), **3059** (Vol 16), **3073** (Vol 16), **3084** (Vol 16), **3099** (Vol 16), **3110** (Vol 16), **3117** (Vol 16), **3126** (Vol 17), **3143** (Vol 17), **3163** (Vol 17), **3171** (Vol 17), **3206** (Vol 17), **3213** (Vol 17) **and** 3214 (Vol 17).

The Copies of the pages are annexed as **Annexure A (Colly)** to the application.

47.4. We are regardful of the legal position laid down in the judgment rendered by the Hon'ble Apex Court in ***Bishal Jaiswal*** **(Supra)** that the acknowledgement of the debt in the balance sheet extends the period of limitation under Section 18 of the Limitation Act, 1963. The relevant extract of the judgment is reproduced hereunder:

"*31. In Zest Systems Pvt. Ltd. v. Center for Vocational and Entrepreneurship Studies, the Delhi High Court held:*

5. In Shahi Exports Pvt. Ltd. v. CMD Buildtech Pvt. Ltd. (supra) this Court held as follows:

7. It is hardly necessary to cite authorities in support of the well-established position that an entry made in the company's balance sheet amounts to an acknowledgement of the debt and has the effect of extending the period of limitation Under Section 18 of the Limitation Act, 1963. However, I may refer to only one decision of the learned single judge of this Court (Manmohan, J.) in Bhajan Singh Samra v. Wimpy International Ltd., MANU/DE/6688/2011 : 185 (2011) DLT 428 for the simple reason that it collects all the relevant authorities on the issue, including some of the judgments cited before me on behalf of the Petitioners. This judgment entirely supports the Petitioners on this point.

6. In view of the legal position spelt out in judgments noted above, ***the acknowledgement of the debt in the balance sheet extends the period of limitation****. The acknowledgement is as on 31.3.2015. This suit is filed in 2017. The suit is clearly within limitation. The present application is allowed.*

32. In Agni Aviation Consultants v. State of Telangana, MANU/TL/0077/2020 : (2020) 5 ALD 561, the High Court of Telangana held:

107. In several cases, various High Courts have held that an acknowledgement of liability in the balance sheet by a Company registered under the Companies Act, 1956 extends the period of limitation though it is not addressed to the creditor specifically. (Zest Systems Pvt. Ltd. v. Center for Vocational and Entrepreneurship Studies, Bhajan Singh Samra v. Wimpy International Ltd., Vijay Kumar Machinery and Electrical Stores v. Alaparthi Lakshmi Kanthamma, MANU/AP/0150/1968 : (1969) 74 ITR 224 (AP), and Bengal Silk Mills Company, Raja of Vizianagram v. Official Liquidator, Vizianagram Mining Co. Limited MANU/TN/0116/1952 : AIR 1952 Mad 1361).

108. ***Therefore it is not necessary that the acknowledgement of liability must be contained in a document addressed to the creditor i.e. the Petitioners in the instant case****.*

33. It is, therefore, clear that the majority decision of the Full Bench in V. Padmakumar (supra) is contrary to the aforesaid catena of judgments. The minority judgment of Justice (Retd.) A.I.S. Cheema, Member (Judicial), after considering most of these judgments, has reached the correct conclusion. We, therefore, set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020.

34. The NCLAT, in the impugned judgment dated 22.12.2020, has, without reconsidering the majority decision of the Full Bench in V. Padmakumar (supra), rubber-stamped the same. We, therefore, set aside the aforesaid impugned judgment also.

*35. On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is remanded to the NCLAT to be decided in accordance with the law laid down in our judgment****."***

(Emphasis Added)

47. On Maintainability: It is evident that the petition was once dismissed on the ground of limitation.

47.1. We would note that the financial creditor on 01.04.2019 filed the application being **C.P. 652/KB/2019**

under Section 7 of the I&B Code which was admitted on 04.02.2020 by this Adjudicating Authority.

47.2. An appeal was preferred before the Hon'ble NCLAT on which the Hon'ble NCLAT vide its order dated 20.01.2021 set aside the order of admission dated 04.02.2020 passed by this Adjudicating Authority.

47.3. A further appeal was preferred before the Hon'ble Apex Court being Civil Appeal No. 979 of 2021. The financial creditor (SBI) on 05.07.2021 filed an application bearing I.A. 74880/2021 in the said Civil Appeal.

47.4. The Hon'ble Apex Court finally disposed of the appeal on **31.01.2022** by granting permission to the Financial Creditors to amend the application filed under Section 7 of the I&B Code along with all relevant Annexures and remanded the instant matter to this Adjudicating Authority, being the appropriate forum to consider the matter for hearing of the Section 7 amended application, subject to the payment of cost of Rs. One Lakh by the SBI to the Corporate Debtor.

47.5. In view of the setting aside of the dismissal order of the Hon'ble NCLAT's order, it is imperative that the matter is considered on its merits. Hence, we proceed accordingly.

47.6. The amended application could not be filed as the Company Petition was closed on 09.03.2022.

47.7. The Order dated 09.03.2022 was recalled by this Tribunal on 19.07.2023 and amended Company petition being C.P. 652/KB/2019 was filed on **29.08.2023.**

47.8. The chain of events suggests that it is the same Company petition of 2019 that is being reheard on remand. Thus, the company petition is maintainable.

Interplay between PMLA and IBC:

48. Now we would proceed to examine the interplay between the PMLA and I&B Code and to consider the issue relating to the property attachment under the PMLA and the scope of moratorium under Section 14 of the I&B Code. We have noted that all the decisions cited by the parties refer to attachment orders issued after admission of the CIR Process and while the moratorium under Section 14 of the I&B Code was in effect.

49.1. In ***Varrsana Ispat Ltd v Deputy Director, Directorate of Enforcement*, Company Appeal (AT) (Insolvency) No. 439 of 2018** reported in **[2019] ibclaw.in 67 NCLAT,** the Hon'ble NCLAT down that

"*8. Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' is to prevent the money laundering and to provide confiscation*

of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

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12. From the aforesaid provisions, it is clear that the 'Prevention of Money-Laundering Act, 2002' relates to ***'proceeds of crime'*** *and the offence relates to* ***'money-laundering'*** *resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the 'Prevention of Money Laundering Act, 2002' or provisions therein relates to 'proceeds of crime', we hold that Section 14 of the 'I&B Code' is not applicable to such proceeding***."**

(Emphasis Added)

49.2. Subsequently, the Hon'ble NCLAT in the case of ***Andhra Bank v. Sterling Biotech Ltd,*** **Company Appeal (AT) (Insolvency) No. 601, 612, 527 of 2019** while dealing with the interplay between the I&B Code and the PMLA in the context of section 14 of the I&B Code, observed as follows:

> **"***15. In so far the assets of the 'Corporate Debtor' is concerned, if it is based on the proceeds of crime, it is always open to the 'Enforcement Directorate' to seize the assets of the 'Corporate Debtor' and act in accordance with the 'Prevention of Money-laundering Act, 2002' (for short, 'the PMLA')***."**
>
> **(Emphasis Added)**

49.3. We have further noted that the same *ratio*, that proceedings under the PMLA would not be affected by the proceedings under the I&B Code, was reiterated by the Hon'ble NCLAT in ***Rotomac Global Pvt Ltd v Deputy Director, Directorate of Enforcement*** in **Company**

Appeal (AT) (Insolvency) No. 140 of 2019 reported in **2019 SCC OnLine NCLAT 961**.

49.4. However, after the introduction of section 32A to the I&B Code, the Hon'ble NCLAT in ***Directorate of Enforcement, New Delhi v Manoj Kumar Agarwal,*** reported in **2021 SCC OnLine NCLAT 121: MANU/NL/0144/2021,** held that in cases where there existed an attachment order under PMLA prior to the commencement of CIRP the provisions of the IBC would override those of PMLA, 2002, and the attachment proceedings would be suspended during the moratorium. The Hon'ble NCLAT in this regard, interpreted section 32A purposively by relying upon the object and scheme of the I&B Code, which aims at achieving effective revival of the corporate debtor, which would not be possible if the resolution professional is not given charge of the properties of the debtor and where uncertainties loom over the entitlement of the corporate debtor to such assets. The Hon'ble NCLAT would hold that:

"*40. In Judgment in the matter of "P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd.", Hon'ble Supreme Court of India considered the provisions of Section 138 of the Negotiable Instrument Act and Liabilities of the Corporate Debtor and Directors in the light of Section 14 of IBC and observed in Paragraph 63 as under:*

"63. A conspectus of these judgments would show that the gravamen of a proceeding under Section 138, though couched in language making the act complained of an offence, is really in order to get back through a summary

> *proceeding, the amount contained in the dishonoured cheque together with interest and costs, expeditiously and cheaply. We have already seen how it is the victim alone who can file the complaint which ordinarily culminates in the payment of fine as compensation which may extend to twice the amount of the cheque which would include the amount of the cheque and the interest and costs thereupon. Given our analysis of Chapter XVII of the Negotiable Instruments Act together with the amendments made thereto and the case law cited hereinabove, it is clear that a quasi-criminal proceeding that is contained in Chapter XVII of the Negotiable Instruments Act would, given the object and context of Section 14 of the IBC, amount to a "proceeding" within the meaning of Section 14(1)(a), the moratorium therefore attaching to such proceeding."*

Thus to quasi-criminal proceeding as regards Corporate Debtor, Section 14 applies has been found. Considering this as well as the nature of proceedings that takes place before the Adjudicating Authority under PMLA, it appears to us that even if the Authority issues order of provisional attachment, the institution and continuation of proceedings before the Adjudicating Authority for confirmation would be hit by Section 14 of IBC.

41. Alternatively, even if for any reason it was to be held that Section 14 of IBC would not help, it appears to us that Section 238 of IBC would still apply. Although it is argued that PMLA is a special statute and has an overriding effect still Section 238 of IBC is also a special statute and which is subsequent statute. IBC has specific object, which is to consolidate and amend laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximization of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interest of all stakeholders including alteration in the order of priority of payment of Government dues.

Section 238 of IBC reads as under:

"238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law." *If this Section is perused, the provisions of this Code would have effect notwithstanding anything inconsistent therewith contained "in any other law" for the time being in force. Section 238 of IBC does not give over riding effect merely to Section 14. The other provisions also are material, and will have effect if there is anything inconsistent therewith contained in any other law for the time being in force.* ***Thus if the Authorities under PMLA on the basis of the attachment or seizure done or possession taken under the said Act resist handing over the properties of the Corporate Debtor to the IRP/RP/Liquidator the consequence of which will be hindrance for them to keep the Corporate Debtor a going concern till resolution takes place or liquidation proceedings are completed****, the obstructions will have to be removed. We have already referred to the various Acts required to be performed by IRP/RP/Liquidator to achieve the aims and objects of IBC in time bound manner****. If properties of Corporate Debtor would not be available to keep it a going concern, or to get the properties valued without which Resolution/Sale would not be possible, the obstruction will have to be removed.*** *To take over properties of Corporate Debtor, and manage the same, and keep Corporate Debtor a going concern are acts which fall within purview of IBC.* ***IRP/RP/Liquidator under IBC have duty and right to take over and manage assets of Corporate Debtor as long as the assets are property of the Corporate Debtor, so that the other duties conferred on them by the statute are performed. These are issues relating to resolution/liquidation. If hindrance is being created by the attachment or by taking over the possession, it would be a question of priority arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor and such question can be decided by the Adjudicating Authority*** *under Section 60(5)(c) of IBC which reads as under:*
"60. .....
(5)....

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

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 fulfill objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A.*** **"**

(Emphasis Added)

49. Thus, it has been succinctly spelt out that properties attached under the PMLA prior to the initiation of the CIRP, should still became available to fulfil objects of the IBC. The contention of the Corporate Debtor gets diluted.

50. Further, a three-judge Bench of the NCLAT considering the issue, in ***Kiran Shah, RP of KSL and Industries Ltd v Enforcement Directorate, Kolkata***, in **Company Appeal (AT) (Insolvency) No. 817 of 2021**, reported in **(2022) ibclaw.in 10 NCLAT** and observed as follows:

"*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'.

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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****."*

(Emphasis Added)

51. From the enumeration as above, it is manifestly evident that the object of the PMLA is to prevent the suspected from enjoying the fruits of a "tainted property" or "proceeds of crime", and not to allow the Government to don the hat of a creditor. Juxtaposed to the above, the object of the IBC essentially is to pay off the creditors of a corporate debtor by way of insolvency resolution or liquidation in a time bound manner maximizing the value of the assets of the corporate debtor and balancing the interest of all stakeholders of it.

52. Taking note of this apparent conflict between various judgments of the NCLAT on this issue, a very recent decision rendered by the Hon'ble High Court of Delhi, in the case of ***Rajiv Chakraborty Resolution Professional of EIEL vs. Directorate of***

Enforcement reported in **2022/DHC/004739: MANU/DE/4428/2022: (2022) ibclaw.in 257 HC** deserves mention. It is extracted hereunder to the extent relevant and germane to the lis:

> ***"****108. On a consideration of the aforesaid, the Court comes to the conclusion that Section 32A would constitute the pivot by virtue of being the later act and thus govern the extent to which the non-obstante clause enshrined in the IBC would operate and exclude the operation of the PMLA. As has been observed hereinabove, while both IBC and the PMLA are special statutes in the generic sense, they both seek to subserve independent and separate legislative objectives. The subject matter and focus of the two legislations is clearly distinct. When faced with a situation where both the special legislations incorporate non obstante clauses, it becomes the duty of the Court to discern the true intent and scope of the two legislations. Even though the IBC and Section 238 thereof constitute the later enactment when viewed against the PMLA which came to be enforced in 2005, the Court is of the considered opinion that the extent to which the latter was intended to capitulate to the IBC is an issue which must be answered on the basis of Section 32A. The introduction of that provision in 2020 represents the last expression of intent of the Legislature and thus the embodiment of the extent to which the provisions of the PMLA are to give way to proceedings initiated under the IBC.*
>
> *109. The Court has independently come to the conclusion that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC. Through Section 32A, the Legislature has authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to the erection of an impregnable wall which cannot be breached by invocation of the provisions of the PMLA. The non obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. The aforesaid issue stands answered accordingly.*

N. THE THIRD PARTY SAFEGUARDS

110. The Court also bears in mind that the provisional attachment of tainted properties does not inevitably lead to the debtor or the persons who hold the tainted property being divested of a right to establish that the properties so attached would not constitute proceeds of crime. It would be apposite to recollect that ***Axis Bank*** *had duly dealt with the issue of bona fide third-party interests that may have come to be created over a period of time and the various avenues which stand created under the PMLA itself for an aggrieved person to seek the release of attached properties.*

111. Apart from the provision of an appeal that may be taken against the order passed by the Adjudicating Authority under Section 8 of the PMLA, the Court also takes note of sub-section (8) of Section 8 in terms of which an aggrieved party is granted a right to seek release of property even after it may have been confiscated in favor of the Union Government. The safeguards which stand created in respect of the third parties who may have bona fide obtained an interest in the attached properties was noticed and answered by ***Axis Bank*** *as under:-*

"149. An order of attachment under PMLA, if it meets with the statutory pre-requisites, is as lawful as an action initiated by a bank or financial institution, or a secured creditor, for recovery of dues legitimately claimed or for enforcement of secured interest in accordance with RDBA or SARFAESI Act. ***An order of attachment under PMLA is not rendered illegal only because a secured creditor has a prior secured interest (charge) in the subject property. Conversely, mere issuance of an order of attachment under PMLA cannot, by itself, render illegal the prior charge or encumbrance of a secured creditor, this subject to such claim of the third party (secured creditor) being bonafide. In these conflicting claims, a balance has to be struck. On account of exercise of the prerogative of the State under PMLA, the lawful interest of a third party which may have acted bonafide, and with due diligence, cannot be put in jeopardy. The claim of bonafide third party claimant cannot be sacrificed or***

defeated. *A contrary view would be unfair and unjust and, consequently, not the intention of the legislature. The legislative scheme itself justifies this view. To illustrate, reference may be made to sub-section (8) of Section 8 PMLA where-under a power is conferred on the special court to direct the Central Government to "restore" a property to the claimant with a legitimate interest even after an order of confiscation has been passed.*

150. The legislation on money-laundering, as is the case of similarly placed other legislations providing for forfeiture or confiscation of illegally acquired assets, contains sufficient safeguards to protect the interest of such third parties as may have acted bonafide. Such safeguards and rights to secure their lawful interest in the property subjected to attachment (with intent to take it to confiscation) have already been noticed at length with reference to the statutory provisions. To recapitulate, and by way of illustration, reference may be made to the opportunity afforded by law (Section 8) to a person claiming "a legitimate interest" to approach the adjudicating authority and the appellate tribunal, as indeed the court, to prove that he had "acted in good faith", taking "all reasonable precautions", himself not being involved in money-laundering, to seek its "release" or "restoration". In this context, however, as also earlier noted, the presumptions that can be drawn in terms of Sections 23 and 24 of PMLA are to be borne in mind, the burden of proving facts contrary to the case of money-laundering being on the person claiming to have acted bonafide.

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162. But, in case an otherwise untainted asset (i.e. deemed tainted property) is targeted by the enforcement authority for attachment under the second or third part of the definition of "proceeds of crime", for the reason that such asset is equivalent in value to the tainted asset that was derived or obtained by criminal activity but which cannot be traced, the third party having a legitimate interest may approach the adjudicating authority to seek its release by showing that the interest in such property was acquired bona fide and for lawful (and adequate) consideration, there being no intent,

while acquiring such interest or charge, to defeat or frustrate the law, neither the said property nor the person claiming such interest having any connection with or being privy to the offence of money-laundering.

163. Having regard to the above scheme of the law in PMLA, ***it is clear that if a bonafide third party claimant had acquired interest in the property which is being subjected to attachment at a time anterior to the commission of the criminal activity, the*** *product whereof is suspected as proceeds of crime, the acquisition of such interest in such property (otherwise assumably untainted) by such third party cannot conceivably be on account of intent to defeat or frustrate this law. In this view, it can be concluded that the date or period of the commission of criminal activity which is the basis of such action under PMLA can be safely treated as the cut-off. From this, it naturally follows that an interest in the property of an accused, vesting in a third party acting bona fide, for lawful and adequate consideration, acquired prior to the commission of the proscribed offence evincing illicit pecuniary benefit to the former, cannot be defeated or frustrated by attachment of such property to such extent by the enforcement authority in exercise of its power under Section 8 PMLA.*

164. Though the sequitur to the above conclusion is that the bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law, notwithstanding the order of attachment under PMLA, the latter action is not rendered irrelevant or unenforceable. To put it clearly, in such situations as above (third party interest being prior to criminal activity) the order of attachment under PMLA would remain valid and operative, even though the charge or encumbrance of such third party subsists but the State action would be restricted to such part of the value of the property as exceeds the claim of the third party.

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-à-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."

112. It would also be pertinent to note that merely because a particular property may have come to be provisionally attached under the PMLA, that does not confer on the enforcing authority under the aforesaid enactment, a superior or overarching interest either in the property or the proceeds that may ultimately be obtained upon its disposal. This position was duly elucidated in ***Axis Bank*** *in the following terms:-*

"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-à-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****."*

113. Viewed in the aforenoted backdrop it is manifest that an ***order of attachment when made under the PMLA does not result in the corporate debtor or the Resolution Professional facing a fait accompli****. The statutes provide adequate means and avenues for redressal of claims and grievances. It could be open to a Resolution Professional to*

approach the competent authorities under the PMLA for such reliefs in respect of tainted properties as may be legally permissible. Similarly, and as was explained by ***Axis Bank****, a PAO made by the ED under the PMLA does not invest in that authority a superior or overriding right in property. Ultimately the claims of parties over the property that may be attached and the question of distribution and priorities would have to be settled independently and in accordance with law.*

114. Accordingly and for all the aforesaid reasons, the writ petition shall stand dismissed. The challenge to the Provisional Attachment Orders dated 08 July 2020 and 05 August 2020 as well as orders of confirmation passed by the Adjudicating Authority dated 01 and 29 January 2021 on grounds as raised fails and stands negatived.

115. This order, however, shall not preclude the petitioner Resolution Professional from seeking release of the provisionally attached properties in accordance with law.

*116. The Court further observes that the rights of the Enforcement Directorate over the properties subject to attachment would stand restricted to the extent that has been recognised in this decision as well as the judgment of the Court in Axis Bank.***"**

(Emphasis added)

53. The gist of the principles that could be culled out from the decision supra, would be as under:

i. The PMLA provides for the confiscation of the illegal acquired assets (tainted properties) out of proceeds of crimes to prevent a person from enjoying fruits of such tainted properties or the "proceeds of crime".

ii. A Provisional Attachment Order (PAO) does not invest in the authority a superior or overriding right in the property.

iii. Similarly, the attachment of tainted properties does not divest a person of a right to establish that the properties attached are not out proceeds of crime.

iv. A third party having a legitimate interest over such property can always seek its release by showing that its interest in such property was acquired bona fide and for lawful (adequate) consideration.

v. An order of attachment under PMLA if it meets with the pre-requisites, is as lawful as an action initiated by a bank or a financial institution or a secured creditor for recovery of its dues or enforcement of its secured interest in accordance with RDBA or SARFAESI Act.

vi. An order of PMLA is not rendered illegal only because a secured creditor has a prior security interest in the subject property.

vii. PMLA does not result in the corporate debtor or the Resolution Professional facing a *fait accompli*.

viii. The statutes provide adequate means and avenues for redressal of claims and grievances.

ix. It could be open to a Resolution Professional to approach the competent authorities under the PMLA for such reliefs

in respect of tainted properties as may be legally permissible.

54. Having noted as above, we are of the view that PMLA and I&B Code subserve completely different, divergent and distinct purpose. The rights of the Enforcement Directorate over the properties subject to attachment would stand restricted to the extent as recognised in the judgments rendered in ***Axis Bank*** **(Supra)** and later in ***Rajiv Chakraborty*** **(Supra).**

55. Coming to the issue that has cropped up for determination, in this matter, i.e., whether that property which already stands attached by the Enforcement Directorate under the PMLA prior to the filing of an application under Section 7 of the I&B Code for the initiation of the CIRP, would bar admission of the application bearing the present claim of Financial Creditor.

56. We would note that the Hon'ble Apex Court in ***Axis Bank (Supra)*** and the Hon'ble Delhi High Court in ***Rajiv Chakrabarty (Supra)*** have elaborately dealt with the interplay of the PMLA and I&B Code and have clearly and categorically held that PMLA is a legislation on money laundering, independent of the I&B Code, 2016 and Section 8(8) of the PMLA explicates that a person aggrieved by an attachment order under PMLA can always seek its "release" and "restoration" by showing that his interest in the property was acquired bona fide, and PMLA then takes a back seat. Thus, there is no conflict between the two provisions. The subject property which stands attached under the PMLA can be released in the

event a Corporate Debtor is admitted by the competent authority in CIRP and a creditor's right of secured interest over the property remains secured, it would still have the right to enforce its secured interest over the property in question.

57. Thus, we can safely conclude that irrespective of the prior attachment order under the PMLA, the tainted properties of the Corporate Debtor would always be available to fulfil the object and achieve the goal of IBC. Attachment order under PMLA will not bar admission under IBC.

58. In our considered opinion that since the PMLA attachment order is in regard to the assets of the Corporate Debtor, whereas the debts are almost admitted there is no escape from the conclusion that the application needs to be admitted.

Conclusions:

59. In terms of the foregoing discussion, we are of the view that this instant application under Section 7 of the IBC is squarely maintainable and therefore, we **ALLOW** the application bearing **Company Petition (IB) No. 652/KB/2019** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

i. The Application filed by **State Bank of India (Financial Creditors),** under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate**

Insolvency Resolution Process in respect of **R. P. Info Systems Ltd. (Corporate Debtor).**

ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

a) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment decree or order in any court of law, Tribunal, arbitration panel or other authority;*

b) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*

c) *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any

other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vi. The Applicant has proposed the name of **"Ramanathan Bhuvaneshwari",** Address: C-006, Pioneer paradise, 24th Main Road, 7th Phase, JP Nagar, Bengaluru – 560078, Mobile: +91 9945527606, Email ID: bhoona.bhuvan@gmail.com, Registration No. IBBI/IPA/-002/IP-N00306/2017-18/10864**,** as the "IRP". We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Exhibit "C" at Page 42-48**,** to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or ICSI IIP. In addition, further necessary disclosures have

been made by **"Ramanathan Bhuvaneshwari"** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **"Ramanathan Bhuvaneshwari"** as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

viii. During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

x. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.

xi. The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

xii. In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

xiii. Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

xiv. The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.

xv. The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

60. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

61. Post the Company Petition on **01/04/2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 19th Day of February, 2024.

Bose, R. K. [LRA]/ Animesh, D. [Steno]