

## Case Comment: Nitin Jain vs. Enforcement Directorate

COURT: High Court of Delhi

DELIVERED ON: December 15, 2021

DECIDED BY: Hon'ble Mr. Justice Yashwant Varma

PETITIONER: Nitin Jain Liquidator PSL Limited

DEFENDANT: Enforcement Directorate

### FACTS

1. Corporate debtor was admitted to the Corporate Insolvency Resolution Process on 15 February 2019.
2. The petitioner was appointed as the Resolution Professional by the Committee of Creditors for M/S PSL Ltd on 30th August 2019.
3. The Committee of Creditors proposed a Liquidator, vide order dated 11th September, 2020, the NCLT passed orders directing liquidation of the Corporate Debtor.
4. A first sale notice was issued on 27 November 2020. However, it did not culminate in any offer coming to be accepted.
5. The process of liquidation was underway when the Petitioner received summons dated 15th January 2021, issued by the Directorate of Enforcement (ED), which was followed up by an email on the 25<sup>th</sup> of January, 2021, where the Petitioner was asked not to dispose of the assets of the said company. A second summon was issued 27 January 2021.
6. Writ petition was filed on 5 March 2021 and the interim order was passed on 17 March 2021 disclosing that the assets and properties of the corporate debtor that were placed for disposal by way of an e-auction initiated in accordance with the provisions of the IBC and after due sanction of the Adjudicating Authority.
7. A revised sale Notice of 19 March 2021 was published where a bid of Rs.425.50 crores was received from M/s Lucky Holdings Private Limited which proposed to take over the assets of the corporate debtor and continue its functioning as a going concern. A letter of intent was sent to the same on 19 April 2021, where a sum of Rs.5crore was deposited by the company. Another Rs.23crore was deposited on 23 April 2021.
8. On 8 September 2021, the Adjudicating Authority approved the sale made while taking note of the order of this Court of 17 March 2021. It provided that the distribution of

assets would abide by the terms of that order and the provisions of Section 53 of the IBC.

9. The order approving the sale was subsequently modified by the Adjudicating Authority by an order of 5 October 2021.
10. On 2 December 2021, i.e., a day before further hearing of the matter, an order of provisional attachment had been issued to the extent of Rs274.60 crores of the corporate debtors' assets.
11. The Liquidator has moved this Court seeking permission for disbursal of part of the sale proceeds which had been received.

## ISSUES

1. Whether the writ petition is maintainable after passing of the order of attachment?
2. Whether the Insolvency and Bankruptcy Code has primacy over the Protection of Money Laundering Act?
3. Whether section 32(A) of IBC is applicable in this particular case?
4. Whether the order of attachment made by the respondents are valid?
5. Whether the liquidation process is liable to proceed further during the pendency of proceedings under the PMLA?

## JUDGEMENT

1. As far as relief (4) is concerned it appears to have become infructuous as the defendants have passed an order of attachment during the pendency of the writ petition. Since the petitioner has not made any formal challenge to the order of attachment, the question of the writ petition being dismissed on the ground of alternative remedy clearly does not arise. The court found that on a comprehensive reading of reliefs (2) and (3) it can be established that the petitioner seeks a restraint against the respondent from interfering in the process of liquidation in accordance with the provisions of the IBC notwithstanding the pendency of proceedings under the PMLA. Both the learned counsels have also made elaborate submissions on the interplay between the IBC and the PMLA as well as the application and scope of Section 32A. The mere issuance of a provisional order of attachment cannot take away the right of the petitioner to urge that

the process of liquidation be allowed to continue despite the pendency of investigation and proceedings under the PMLA. The preliminary objection is thus negated.

2. Both the parties have submitted their arguments with regard to primacy of IBC and PMLA. The respondents in their submissions have cited the case of Directorate of Enforcement Vs. Axis Bank. The Learned Court have taken into consideration the decision in the said case where the argument of IBC having an unbridled or overarching effect over the PMLA was rejected. The learned Judge took into consideration the scheme and the objects of the IBC and the PMLA and held that the two operated in distinct spheres.

IBC is concerned with timely resolution of debts of a corporate debtor, while PMLA is concerned with the criminality attached to the offense of money laundering and to move towards confiscation of properties that may be acquired by commission of offenses specified therein. The authorities under the aforementioned two statutes consequently must be accorded adequate and sufficient leeway to discharge their obligations and duties within the demarcated spheres of the two statutes.

3. The respondent contended that the treatment and disposal of the assets of a corporate debtor during an insolvency resolution is completely different from the process of liquidation. As a result, the provisions of Section 32A of the IBC as may come to be attracted in the case of a CIRP, cannot ipso facto be applied to a case of sale of liquidation assets under Chapter III. The court found that, section 32A in unambiguous terms specifies the approval of the resolution plan in accordance with the procedure laid down in Chapter II as the seminal event for the bar created therein coming into effect. Drawing sustenance from the same, it is concluded that the approval of the measure to be implemented in the liquidation process by the Adjudicating Authority must be held to constitute the trigger event for the statutory bar enshrined in Section 32A coming into effect.
4. As mentioned in section 32A of IBC, the power to attach as conferred by Section 5 of the PMLA would cease to be exercisable once any one of the measures specified in Regulation 32 of the Liquidation Regulations 2016 comes to be adopted and approved by the Adjudicating Authority. The power otherwise vested in the respondent under the

PMLA to provisionally attach or move against the properties of the corporate debtor stands foreclosed once the Adjudicating Authority has approved the mode selected in the course of liquidation. The Liquidator though obliged to administer and oversee the affairs of the corporate debtor in accordance with the provisions of the IBC, cannot strike a position of not cooperating with the competent authorities under the PMLA.

5. The Liquidator is held entitled in law to proceed further with the liquidation process in accordance with the provisions of the IBC. The Court grants liberty to the petitioner to move the Adjudicating Authority for release of the amounts presently held in escrow in terms of the interim order passed in these proceedings.