

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH.**

INTERLOCUTORY APPLICATION NO. 150_/2018

IN THE MATTER:

CP No. (IB)70/ALD/2017

Mr Anil Goel,
The Liquidator,
In the matter of M/s. Rotomac Global
Private Limited

Applicant

Vs

Ms Ramanjit Kaur Sethi.
Deputy Director,
Directorate of Enforcement

Respondent

JUDGMENT/ORDER DELIVERED ON 14.09. 2018.

CORAM :

Sh. V.P. Singh, Hon'ble Member (Judicial)

Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Liquidator : Sh. Subham Agarwal, Adv.

For the Directorate of Enforcement: Sh. Om Prakash Mishra, Adv.

AS PER: V.P. Singh, Hon'ble Member (Judicial)

Order/Judgment

1. The present application is filed under section 35(1)(n) of Insolvency and Bankruptcy Code, 2016 by the Applicant (Mr Anil Goel), Liquidator appointed by this Tribunal vide its order dated 24.08.2017 seeking directions against the Respondent, i.e. Deputy Director, Directorate of Enforcement for de-attachment and restoration of properties attached through Provisional Attachment Order.
2. Brief facts of the case as under:
 - 2.1 The order for commencement of Liquidation proceedings reiterated Section 33(5) of IBC, 2016 whereby the provisions state that when a

liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.

2.2 Respondent, Deputy Director, Directorate of Enforcement, Delhi Zonal Office, issued Provisional Attachment Order No. 08/2018 dated 28.05.2018 under PMLA through which the respondent has provisionally attached the properties, which are part of Liquidation estate, on the ground of it being proceeds of crime irrespective of the fact that most of these properties were purchased before the alleged commencement of money laundering.

2.3 That the Provisional Attachment Order issued by the Respondent under PMLA, 2002 violates section 33(5) read with section 238 IBC, 2016.

3. In reply to present petition Special Public Prosecutor, Director of Enforcement stated as under:

3.1 M/s. Rotomac Global Private Limited was sanctioned Non- Fund Based and Fund Based limits of Rs. 2129.00 Crores under consortium of 7 Banks. Presently outstanding amount in the books of accounts of different banks is Rs. 2919.39 Cr.

3.2 Investigation done under the provisions of PMLA, 2002 so far has revealed that accused persons have misappropriated /diverted banks funds, committed criminal breach of trust and laundered the money so diverted. The Investigations has revealed that M/s. Rotomac Global Private Limited has indulged in merchanting trade with limited number of buyers and sellers wherein it used to receive back the discounted Letter of Credit amount from the overseas beneficiary after deduction of 1.5% to 2% commission by them either directly into the accounts of Rotomac group companies or into the accounts of overseas companies controlled by Mr.Vikram Kothari. This discounted LC amount was then used by M/s. Rotomac Global Private Limited for other business activities such as FDR, Iron ore purchase and investment in real estate.

3.3 That, the main object of PMLA is to prevent money laundering by confiscating the property involved in money laundering. That, under the Prevention of Money Laundering Act, 2002, the mandate is for

attachment/ confiscation of properties and prosecution. Therefore, by material & evidences on record and in exercise of the powers conferred upon the under Sub-Section (1) of Section 5 of the Prevention of Money-Laundering Act, 2002, a Provisional attachment order (PAO) no. 08/2018 dated 28.05.2018 was issued attaching the properties provisionally lying in name of M/s. Rotomac Global Private Limited and its directors wherein it was further ordered that the same shall not be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or unless specifically permitted to do so by the Directorate. After that, as contemplated in section 5(5) of PMLA, 2002, a original complaint stating the facts of attachment was filed before Ld. Adjudicating Authority at Delhi on 25.06.2018. That, in addition to above, it is submitted that the properties in question and mentioned in PAO fall within the definition of "Proceeds of Crime" regarding section 2(1)(u) of the PMLA and hence, the same were provisionally attached vide PAO No. 08/2018 dated 28.05.2018

4. Having heard both the parties issue for our consideration is *Whether Provisional Attachment Order by the Directorate of Enforcement under PMLA is violative of Insolvency and Bankruptcy Code?*

Counsel for Applicant stated that the IBC, 2016 would override the provisions of PMLA, 2002 since the IBC, 2016 is a later statute with a non-obstante clause and relied upon the judgement of **Solidare India Limited v. Fair Growth Financial Services Private Limited & Ors. (2001) 3 SCC 71**, further relied upon Hon'ble apex court vide order dated 10/08/2018 in SLP (C) 6483/2018 **PR. Commissioner of Income Tax Vs Moneet Ispat and Energy Ltd.** has laid down that "Given section 238 of the Insolvency and Bankruptcy Code, 2016 it is obvious that the code will override anything inconsistent contained in any other enactment, including Income tax."

Further, the counsel for applicant argued that Section 33 (5) of IBC are interpreted ejusdem generis with the word "suit" proceedings of attachment under the PMLA being civil proceedings would still fall within the section.

Attention is also invited to the decision of Hon'ble Madras High Court of M. Saraswathy V/s Adjudicating Authority PMLA /E.D in CrI. O.P. No- 2240 of 2011 *wherein para No.- 50, 51, 52, 53, 54 the Hon'ble Madras High Court has discussed the decision of Division Bench of Hon'ble Andhra Pradesh High Court in case of B.Ramaraju and the opinion of the Constitution Bench in M/s Kemka & Co. (Agencis) Pvt. Ltd and held that the provisions of attachment and confiscation under PMLA will have retrospective effect as these are not criminal in nature.* Further the Gujarat High Court in Special Criminal Application (Quashing) no. 150 of 2015 Paresha G. Shah Vs State of Gujarat has laid down that the attachment proceedings under the Prevention of Money laundering Act are civil in nature.

However, counsel for the respondent argued IBC cannot override the provisions of the PMLA, as scope and objective of both statute is different , the proceeding under the provisions of Prevention of Money Laundering Act, 2002 are distinct and criminal in nature and different from Insolvency & Bankruptcy code, 2016 (hereinafter referred as IBC). The purpose & scope of both Acts are altogether different.

Before going into controversy of whether IBC will have overriding effect or not, it is pertinent to mention here that Directorate of Enforcement has attached the Property of the Corporate Debtor after the order of liquidation order has been passed by this Tribunal. As per Section 36 of the Code a liquidation Estate has to be formed by the Resolution Profession and as it is mentioned in the subsection (g) of the Section 36 of the Code that any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest has to be formed a part of Liquidation Estate. In the present case attachment of the following properties of corporate debtor is made by the Respondent under PMLA through the Provisional Attachment Order 08/2018 dated 28.05.2018:

LIST OF PROPERTIES

Sl. No.	Description of property being attached	Date of Purchase	Charge on the property
1.	Office No. 901 on 9 th Floor, “Raheja Complex”, Nariman Point, Mumbai	28/06/2010	United Bank of India
2.	Office No. 401 and 402, Fourth Floor, Wing – C, Lotus Corporate Park, Western Express Highway, Goregaon (E), Mumbai	19/06/2010	United Bank of India (31.10.2013)
3.	Office No. 511, 513 & 515 at Fifth Floor, Pinnacle Corporate Tower, (Near – Royal Office), Prahalad Nagar, Satelite, Vijalpur, Ahmedabad	12/03/2011	Bank of Baroda (16.06.2014)
4.	Open Plot No. 77, Survey No. 62 at Mauji Rakhail, Distt. Ahmedabad	24/01/2011	Bank of Baroda (16.06.2014)
5.	Unit No. 201 at Second Floor, Part of Premises No. 63/2, The Mall Kanpur	26/09/2016	Allahabad Bank
6.	Office No. 201, 202, 223 and 223A at Second Floor, Part of Premises No. 63/2, The Mall City Centre, Kanpur Nagar	Information is being procured	Freehold
7.	Open Land bearing Premises No. 24/6, Talsa Kothi, Mall Road, Kanpur Nagar	07/04/2011	Allahabad Bank
8.	Flat No. 803, at 8 th Floor, “Shyam Vrund Apartment”, Ring Road Satelie, Ahmedabad	12/10/1999	Allahabad Bank
9.	Open Land Situated at Moje-Kolat, Taluka Sanand Distt – Ahmedabad	12/08/2010	Bank of India
10	Plot No. A – 101 to 106, A – 128 to 130, A – 134 to A – 157 at Karma-Bhumi – 2, Mauje – Vansajda Dhedia, Takalol, Distt. Gandhi Nagar	14/10/2010	Bank of India
11	Premises No. CF – II, Industrial Area Panki, Site No. 3, Kanpur Nagar	7/11/2002	Working Capital Consortium of 7 Banks Date 6/10/2015
12	Premises No. D-2, Industrial area Panki, Site No. 3, Kanpur Nagar	28/08/2002	Working Capital Consortium of 7 Banks Date 6/10/2015
13	Premises No. D-3, Industrial area Panki, Site No. 3, Kanpur Nagar	22/02/2002	Working Capital Consortium

			of 7 Banks Date 6/10/2015
14	Premises No. D-4 & D-5, Industrial area Panki, Site No. 3, Kanpur Nagar	22/02/1993	Working Capital Consortium of 7 Banks Date 6/10/2015
15	Premises No. D-6, Industrial area Panki, Site No. 3, Kanpur Nagar	22/02/1993	Working Capital Consortium of 7 Banks Date 6/10/2015
16	Premises on Plot No. 788/P, Paiki National Highway No. 81, Gram-Moje Rojoda Bavla, Ahmedabad	9/09/2010	Working Capital Consortium of 7 Banks Date 6/10/2015
17	Premises on Plot No. 415, Paiki Village – Moraiya, Taluka – Sanand, Ahmedabad	9/09/1998	Working Capital Consortium of 7 Banks Date 6/10/2015
18	Plant and Machinery including mould electrical at Ahmedabad		
19	Plant and Machinery including mould electricals at Kanpur		
20	Other fixed assets such as office equipments, Furniture & Fixture, A.C., Vehicles etc.		

From the above list, it is not clear whether creditors have relinquished their security interests regarding the properties, against which bank's charge subsists. In most of the properties against which provisional attachment order has been passed, bank charge subsists. Given the provision of Section 36 (g) of the Code, a property of the corporate debtor can form part of liquidation estate, wherein the secured creditor has relinquished the security interest regarding the property. At this, it is not clear whether the banks has relinquished the charge on the above mentioned properties of the Corporate Debtor or not.

Hence, we are of the view before deciding the question of validity of the provisional attachment order under PMLA; we first direct the Liquidator to provide us with the details of the attached assets on which the Bank has relinquished security interests. Further notices to be issued to Central Government through Regional Director, to clarify their stand on the issue. The liquidator should submit its report within 15 days from the receipt this order.

List the matter on 3rd Oct 2018 for hearing.

SAROJ RAJWARE,
MEMBER (T)

Dated: 14.09.2018

V.P. SINGH,
MEMBER (J)