NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT)(CH)(Ins) No.292/2022 & IA No 612/2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the Impugned Order dated 25.04.2022 in MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 and dated 14.06.2022 in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018)
passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai)

In the matter of:

C Ramasubramaniam Liquidator
of Padmaadevi Sugars Ltd. … Appellant
V
The Deputy Commissioner
of Income Tax (Benami Prohibition) ... Respondent

Present :

For Appellant : Mr. S. Sathiyanarayanan, Advocate

For Respondents : Mr. Rajkumar Jhabakh, Advocate

ORDER

(VIRTUAL MODE)

18.08.2022: Heard, the Learned Counsel Mr. S. Sathiyanarayanan appearing for the Appellant and Mr. Rajkumar Jhabakh, the Learned Counsel appearing for the Respondent / The Deputy Commissioner of Income Tax (Benami Prohibition).

According to the Learned Counsel for the Appellant, the instant Comp App (AT)(CH)(Ins) No.292/2022 is preferred by the 'Appellant' being aggrieved against the orders dated 25.04.2022 in MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 and clarified as per the Order dated 14.06.2022 in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018) passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai).

Earlier, the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai), while passing the 'impugned order' in MA(IBC)/05(CHE)/2020 at Paragraph No.5 had observed the following:-

> *"It is seen from the submissions and the documents that the 1st Respondent has only provisionally attached the said properties, which means that it is for a period of either until further orders or 90 days from the end of month from the date of the notice under Section 24(1) of the Prohibition of Benami Property Transaction Act, 1988; whichever is earlier. It can be seen that the Date of the order for attachment was 01.11.2019 and the date of filing the Application is 03.01.2020 which is only 63 days from the date of attachment order. The Applicant ought to have waited for the said period to expire or for further orders from the 1st Respondent post which, the procedure for revoking the attachment as stipulated under the Prohibition of Benami Property Transaction Act, 1988 should have been preferred.*

The Applicant had sought that as the Corporate Debtor is undergoing CIRP, the provisional attachment Order of the 1st Respondent be raised, failure of which would result in liquidation of the Corporate Debtor. However, as it can be seen that the Corporate Debtor has been ordered for Liquidation vide order of this Adjudicating Authority dated 20.04.2021, the present Application viz., MA(IBC)/05(CHE)/2020 has become infructuous.

Furthermore, from our records, it can be seen that the second prayer sought by the Applicant has been dismissed by this Adjudicating Authority vide daily order dated 25.02.2022. Accordingly, MA(IBC)/05(CHE)/2020 ***stands Closed."***

Apart from the above, the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018) at Paragraph No.2 and 3 had observed the following: -

"The Counsel for the Liquidator / Applicant has represented that in the common order passed in IA(IBC)/599(CHE)/2021, there is an ambiguity as to how to deal with the attachment of the property. On hearing both sides, the Common Order passed by this Tribunal on 25.04.2022 seems to be very clear that the 'Liquidator / Applicant herein to proceed "under the relevant Section to raise the provisional attachment. Additionally, the Respondent has contended that the properties attached are not the Company's properties and thus the same cannot come under the Liquidation Estate. This Adjudicating Authority does not find any conflict between these two statutes as the

Liquidator is not barred by IBC to add the said property into the liquidation estate to proceed with the liquidation proceedings if the said properties are part of the Liquidation Asset unless it is proved otherwise".

Hence, the Liquidator has to take appropriate steps before the concerned forum to get the order for removing attachment. It is for the Liquidator to get the property either as an asset belongs to the liquidation estate or it is a benami property."

and ultimately closed the said MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018).

The Learned Counsel for the Appellant strenuously contends before this 'Tribunal' that the 'impugned two orders' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) being assailed before this 'Appellate Tribunal' are incorrect in 'Law', because of the fact that the 1st Respondent is not 'justified' in passing the 'Order' of 'attachment' of the 'immovable property' of the 'Corporate Debtor', when 'Moratorium' under Section 14 of the Insolvency & Bankruptcy Code, was in force.

The Learned Counsel for the Appellant proceeds to point out that the 'attachment' of the 'immovable property' of the 'Corporate Debtor' by the

1st Respondent is an illegal one, as per decisions of the Hon'ble Supreme Court in

a) *"Alchemist ARC Vs Hotel Gaudavan Private Limited (SC) (2018) 16 SCC 94;*

b) Anand Rao Korada Vs Varsha Fabrics – taxman. Com 474 (SC) (2019);

c) Supremacy of 238 of IBC was upheld in (CIT Vs Monnet Ispat (2018) 169 DTR 263 (SC)]

d) Dreams Infra Private Limited Vs. The Competent Authority Dreams Infra India Private Limited, Karnataka High Court WP No.13477/2020 (GM-RES)

The Learned Counsel for the Appellant takes a stand that the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had failed to take into account of the facts that the 'immovable properties' attached by the 1st Respondent are subject to mortgage with the Financial Creditors viz., 1) Bank of India and 2) Indian Overseas Bank for securing Credit facilities, which was sanctioned much earlier to the 'Impugned Attachment'.

The pivotal point raised in the instant Comp App (AT)(CH)(Ins) No.292/2022, as projected by the Learned Counsel for the Appellant is

whether the immovable property of the Corporate Debtor can be attached by the 1st Respondent, when 'Moratorium' in the Insolvency & Bankruptcy Code, 2016, is in force.

The plea taken on behalf of the Appellant is that the Insolvency & Bankruptcy Code, 2016, being a special enactment, will override 'The Benami Transactions (Prohibition) Act, 1988 (Amended 2016 by Act 43)'.

The Learned Counsel for the Appellant also raises an argument that the 'Adjudication Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had committed an error in not taking into account of the vital fact that the 1st Respondent acted in contravention of Section 33 (5) of the Insolvency & Bankruptcy Code, 2016, to continue with the 'Legal Proceedings' against the Corporate Debtor and its 'Assets'.

The Learned Counsel for the Appellant comes out with a stand that the 'Adjudication Authority' (National Company Law Tribunal, Division Bench – II, Chennai) had failed to observe that the 1st Respondent's Officials failed to assimilate that shares in the capitals of the 'Corporate Debtor' which is the 'subject matter' of a 'Benami Transaction' can only be the benamidar property and not the immovable property of the Corporate Debtor.

To support his contention that the supremacy of Section 238, on Provisions of the I&B Code, 2016, to override other 'Laws' was sustained.

The Learned Counsel for the Appellant seeks an aide of the decision of the Hon'ble Supreme Court in "Alchemist ARC Vs Hotel Gaudavan Private Limited (SC) (2018) 16 SCC at Page No.94" to fortify his stand that 'Attachment' in negation of the ingredients of Section 14 of the Insolvency & Bankruptcy Code, 2016 or non-est in the 'eye of Law'.

While winding up in arguments, the Learned Counsel for the Appellant contends that the 'Impugned Orders' under challenge before this 'Appellate Tribunal' are clearly unsustainable in the 'eye of Law'.

The Learned Counsel for the Appellant adverts to the 'Judgment' of the 'Hon'ble Supreme Court' in the Commissioner of Income Tax -Vs- Monet Ispat, to while winding up, points out that both the impugned orders are clearly unsustainable in the 'eye of Law'.

Conversely, it is the submission of the Learned Counsel for the 1st Respondent / Bank that the 'impugned orders' passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) are perfectly valid in 'Law' and they require no interference in the hands of this 'Tribunal', at the 'Appellate' stage.

Advancing his argument, the Learned Counsel for the 1st Respondent points out that Section 14 of the Insolvency & Bankruptcy Code, 2016, does not prohibit to proceed under the 'The Benami Transactions (Prohibition) Act,

1988 (Amended 2016 by Act 43)', although 'Moratorium' shields the 'Corporate Debtor' from 'Legal Action' during its period of recovery, such a situation, cannot extend to cases that entail 'Benami Transactions'.

The Learned Counsel for the 1st Respondent brings out to the 'Notice' of this 'Tribunal' that in the matter of Deputy Director, Office of the Joint Director, Directorate of Enforcement -Versus- Asset Reconstruction Company India Limited and others (vide Writ Petition No.29970 of 2019), the Hon'ble Madras High Court had observed and held that the 'Moratorium' as per Section 14 of the Insolvency & Bankruptcy Code, 2016 does not affect the 'provisional attachment' order passed under 'Prevention of Money Laundering Act, 2002', as both the 'Laws' on a different field.

The Learned Counsel for the 1st Respondent / The Deputy Commissioner of Income Tax (Benami Prohibition) cites the 'Judgment' of this 'Tribunal' in the Company Appeal No.(AT)(INS) No.817/2021 in the matter of Kiran Shah-Versus-Enforcement Directorate, Kolkata reported in Manu/NL/005 of 2022 at Paragraph 95, is observed as under:-

> *"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."

The Learned Counsel for the 1st Respondent proceeds to make a legal submission that in the 'Judgment' of this 'Tribunal' in Comp App No.(AT)(INS) No.817/2021 dated 03.01.2022 between 'Kiran Shah, Resolution Professional of KSL and Industries Ltd V Enforcement Directorate, Kolkata', the Application under Section 32 (A) of the Insolvency & Bankruptcy Code, 2016 was considered, where an 'Attachment' of the Corporate Debtor's asset was effected under the 'Prevention of Money Laundering Act, 2002'.

In the aforesaid 'Judgment' of this 'Tribunal' in the Comp App No.(AT)(INS) No.817/2021 dated 03.01.2022 between Kiran Shah, Resolution Professional' of KSL and Industries Ltd. Versus Enforcement Directorate, Kolkata, the 'Appellate Tribunal' had considered the repercussion of the ingredients of Section 32 (A) of the Insolvency & Bankruptcy Code, 2016, where 'Attachment' of the Corporate Debtor's Assets was effected under 'Prevention of Money Laundering Act, 2002' and came to the resultant conclusion that an 'Appeal' against the 'Attachment Order' so made, can be preferred before the 'Appellate Authority' under the 'Prevention of Money Laundering Act, 2002' and not before the 'National

Company Law Appellate Tribunal / 'Adjudicating Authority' (National Company Law Tribunal).

It cannot be gainsaid that an 'Attachment' effected under the 'The Benami Transactions (Prohibition) Act, 1988 (Amended 2016 by Act 43)' can be questioned / challenged only under the said Act which is an inbuilt and self-contained one and this 'Appellate Tribunal' (NCLAT) is not empowered to determine the points / issues pertaining to the 'Attachment' under 'The Benami Transactions (Prohibition) Act, 1988 (Amended 2016 by Act 43)'.

To put it precisely, the transaction in issue falls within the ambit of the 'The Benami Transactions (Prohibition) Act, 1988' and viewed in that perspective the invocation of Section 32 (A) and Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 will be of no assistance to the Appellant / Applicant, in the considered opinion of this 'Tribunal'.

The Learned Counsel for the 1st Respondent while summing up, submits that the Appellant / Applicant cannot seek for public 'Law' remedy, under the 'The Benami Transactions (Prohibition) Act, 1988', before this 'Appellate Tribunal'.

It must be borne in mind that in the act / transaction of 'Money Laundering', there is 'Washing the Money'. In case of a 'Benami Transaction', to evade or avoid 'Tax' or 'defrauding' the 'Revenue', the

'Victim' is the 'State' and not the 'individual', which in 'Law' is 'species' of 'fraud'.

The 'onus' of establishing that a particular 'sale' is 'Benami' and the apparent purchaser is not the 'real owner', rests upon the person asserting it to be so. The burden is to be strictly discharged by letting in evidence of a definite character, which will either directly prove the fact of 'Benami' or establish circumstances, unerringly and reasonably and raising an inference of that fact, as per decision of the Hon'ble Supreme Court in Jeydayal Poddar V Bibi Hazre reported in 1974 SCC Page 3.

It comes to be known that the 'provisional Attachment' dated 01.11.2019 was affirmed on 10.11.2021 by the 'Competent Authority,' under Section 24 (3) of 'The Benami Transactions (Prohibition) Act, 1988'. Also, it is crystalline clear that the Applicant / Appellant cannot embark upon a method to avoid / evade / supplant or circumvent the procedural hierarchy, as envisaged under the 'The Benami Transactions (Prohibition) Act, 1988', to be fulfilled by an aggrieved / affected person. To put it succinctly, the Applicant / Resolution Professional of M/s. Padmaadevi Sugars Ltd. cannot take umbrage under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 etc., in preferring an Application in MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 before the Adjudication Authority' (National Company

Law Tribunal, Division Bench – II, Chennai), for the latent and patent reason that the 'procedural wrangle' is to be adhered to and followed by the 'Aggrieved / affected parties' which cannot be 'shaked' or 'shackled with'.

In reality, the ingredients of Section 29 (A) of the 'The Benami Transactions (Prohibition) Act, 1988 (Amended 2016 by Act 43)' deals with the aspect of 'Benami Transactions'

In view of the detailed upshot and this 'Tribunal' on a careful consideration of divergent contentions, keeping in mind, the entire gamut of the facts and circumstances of the instant case in a conspectus and holistic fashion / manner comes to an inevitable, irresistible and inescapable conclusion that the Applicant in Law is not entitled to prefer an 'Application' under MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 before the 'Adjudicating Authority'. Suffice it for this 'Tribunal' to pertinently observe that the said 'Miscellaneous Application' is misconceived one, in the eye of 'Law', and the same is 'per se' is not maintainable. Likewise, the clarification sought for in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018) before the 'Adjudicating Authority' is not maintainable in 'Law'.

Be that as it may, in view of the foregoing detailed discussions and reasons, this 'Appellate Tribunal' unhesitatingly holds that the instant

Company Appeal (AT)(INS) No.292/2022 preferred by the Appellant (as against the impugned orders in MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 and in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018) passed by the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) is devoid of merits and the same fails.

In fine, the instant Comp App (AT)(CH)(Ins) No.292/2022 is **'dismissed'.** No **Costs.** The connected IA/612/2022 (for Stay) is **Closed.** As regards MA(IBC)/05(CHE)/2020 in CP (IB) No.768(CHE)/2018 and in MA(IBC)/543(CHE)/2022 in MA/5/2020 in CP(IB)/768(CHE)/2018) filed by the ('Resolution Professional' and 'Liquidator' of M/s. Padmaadevi Sugars Ltd.) before the 'Adjudicating Authority' (National Company Law Tribunal, Division Bench – II, Chennai) are **'dismissed',** as not maintainable in 'Law'.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ghk/tm