

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-6562/CHN/2019 (Stay)
FPA-PMLA-3282/CHN/2019

M/s. Viceroy Hotels Ltd.
Being represented by its Managing Director ... Appellant

Versus

The Deputy Director,
Directorate of Enforcement, Chennai ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. R. V. Yogesh, Advocate

For the Respondent (ED) : Mr. Aditya Singla, Advocate

CORAM

SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER
23.04.2026

This Order disposes of the Appeal No. FPA-PMLA-3282/CHN/2019 filed by M/s. Viceroy Hotels Ltd. being represented by its Managing Director, against the Order dated 11.09.2019 (Impugned Order) passed by the Ld. Adjudicating Authority (AA) under Section 8 (3) of the Prevention of Money Laundering Act, 2002 (PMLA) in the Original Complaint No. 1118/2019 (OC). The Provisional Attachment Order No. 04/2019 dated 26.03.2019 (PAO), which was confirmed vide the Impugned Order, had attached immovable properties valued at Rs. 315,39,25,225/- from

M/s Viceroy Hotels Ltd. along with movable property of a Skoda vehicle valued at Rs. 11,00,000/-. The immovable properties were in the name of M/s Minerva Enterprises Pvt. Ltd., but owned by M/s Viceroy Hotels Ltd., as the said properties stood transferred to M/s Viceroy Hotels Ltd. through an Order dated 01.05.2007 of the Hon'ble Andhra Pradesh High Court. The CBI had registered FIRs and filed a chargesheet in the Ld. Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai on 16.06.2017 against M/s Best & Crompton Engineering Project Ltd. (BCEPL) among other persons. The investigation by CBI was done on the basis of the complaint filed for the loss of Rs. 364 Crores caused to the consortium of the Banks including Central Bank of India, Andhra Bank and Corporation Bank.

2. Ld. Counsel for the Appellant filed an Application dated 07.02.2024 under Section 32A of the Insolvency and Bankruptcy Code, 2016 (IBC) in the said Appeal. Ld. Counsel stated that M/s Viceroy Hotels Limited ("VHL") had entered into a Business Transfer Agreement ("BTA") dated 02.04.2011 with M/s Mahal Hotels Pvt. Ltd. ("MHPL") towards the Chennai hotel and its business (along with the concomitant assets and liabilities). The total agreed consideration for the BTA was Rs. 480 Crores. The BTA stipulated a Long Stop Date of 30.06.2011 for completion of the transaction. This Long Stop Date was subsequently extended till 31.12.2011. The transaction could not be completed even by the extended Long Stop Date of 31.12.2011. Therefore, VHL and MHPL mutually decided not to take forward the deal. MHPL is stated to have paid

a total sum of Rs. 124,52,70,862/- to VHL towards the BTA. As BTA was mutually terminated, it was stated that these amounts were decided to be treated as advances from MHPL to VHL, which were decided to be repaid. Towards this purpose, a deed of confirmation was executed on 16.09.2013 between VHL and MHPL.

3. Ld. Counsel for the Appellant further argued that around 2016, allegations were levelled against the holding company of MHPL, being M/s Best and Crompton Engineering Project Ltd ("BCEPL"). It was alleged that BCEPL along with other companies belonging to M/s Sujana Group defrauded banks and obtained loans. It was alleged that the funds so obtained from Banks by BCEPL and its group companies were invested using several subsidiaries. The amounts invested in VHL, as a part of the BTA transaction with MHPL, were sourced from such loans. On the premise that the advances supposedly received by VHL as a part of BTA and the interest thereon still continued on the books of VHL, ED proceeded against VHL under PMLA.

4. Ld. Counsel for the Appellant submitted that in the meantime, Corporate Insolvency Resolution Process (CIRP) proceedings were admitted against VHL on 12.03.2018 and moratorium was imposed under Section 14 of the IBC. While the moratorium was continuing, the subject PAO was issued on 26.03.2019 inter alia attaching the Hyderabad Marriott property owned by VHL. The subject PAO was confirmed by the Ld. Adjudicating Authority vide the order dated 11.09.2019 impugned

in the instant Appeal filed on 25.10.2019. As Respondent Directorate was aware of the ongoing CIRP against VHL, the PAO was issued to the Resolution Professional of VHL, who represented VHL in these proceedings. Considering the jurisdictional objections inter alia on the legality of issuing PAO during the pendency of CIRP, the RP filed an application under Section 60 (5) of IBC before the Ld. NCLT, Hyderabad (IA No.287 of 2019 in CP/IB/219HDB/2017) praying for setting aside of the subject PAO. Similar application was also filed by Asset Reconstruction Company India Limited ("ARCIL"), the Financial Creditor of VHL before the Ld. NCLT (IA No.413 of 2019 in CP/IB/219HDB/2017). Ld. Counsel for the Appellant further submitted that both the aforementioned applications were considered elaborately by the Ld. NCLT, which allowed the same vide order dated 11.07.2019. The Respondent Directorate challenged the order dated 11.07.2019 before the Hon'ble High Court of Madras in WP No. 29970 of 2019. The Hon'ble High Court, without going into the merits of the dispute decided the case on jurisdictional grounds. The Hon'ble High Court in its Order dated 02.06.2020 allowed the Writ Petition. The Hon'ble High Court also gave liberty to the Appellant to pursue the remedies under PMLA. By this date, the instant Appeal was filed before the Appellate Tribunal, which is now pending consideration. It is pertinent to note that that judgment dated 02.06.2020 passed by the Hon'ble Madras High Court in WP No. 29970 of 2019 is pending consideration before the Hon'ble Supreme Court in SLP (C) 8259 of 2020.

5. Ld. Counsel for the Appellant stated that in the year 2019, a Resolution Application was submitted. However, the same was rejected by the Ld. Adjudicating Authority on 01.09.2021 due to regulatory reasons, which resulted in a second round of invitation of bids. In this second round, M/s Anirudh Agro Farms Limited ("AAFL") resolution plan was ultimately approved by the Committee of Creditors (COC) with 95.82% voting share and the Letter of Intent was issued on 10.11.2022. Thereafter, the Resolution Professional (RP) moved application under Section 30(6) & 31 of IBC, 2016 r/w Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 & Rule 11 of NCLT Rules, 2016, seeking approval of the resolution plan submitted by AAFL. Ld. NCLT vide Order dated 09.06.2023 rejected the application. The Ld. NCLT's reasoning was based on the operation and enforcement of Performance Bank Guarantee given by the AAFL. The AAFL challenged the Ld. NCLT's rejection Order dated 09.06.2023 before the Hon'ble NCLAT, which vide order dated 06.10.2023, allowed the Appeal. Thus, AAFL's plan was accepted and attained finality. Thereafter, AAFL has also made the necessary payment to the lenders, who have all confirmed the receipt of the agreed amounts. Thus, the Plan's payment terms have been met and complied with.

6. Ld. Counsel for the Appellant pleaded that in VHL CIRP, MHPL had filed a claim stating to be a Financial Creditor. When this claim, was considered by the then officiating RP, ARCIL had challenged such consideration before the Hon'ble NCLT in CA No.

250 of 2018, which came to be rejected by the Ld. NCLT vide order dated 04.10.2018. Ld. NCLT Order dated 04.10.2018 was challenged by ARCIL before Hon'ble NCLAT, which vide Order dated 18.11.2019, allowed the Appeal and set aside the Order of the Ld. NCLT. This Order was not challenged further by MHPL or anyone else, and thus has become final. Thereafter, MHPL tried another attempt by filing another application making the same claim before Ld. NCLT. This application was rejected by Ld. NCLT vide Order dated 02.05.2023, wherein the claim of MHPL against VHL stands rejected. MHPL challenged the Order dated 02.05.2023 before the Hon'ble NCLAT, which vide Order dated 24.11.2023 finally dismissed the Appeal, thus conclusively rejecting the MHPL's claim against VHL. This Order has not been challenged further and thus has become final.

7. Ld. Counsel for the Appellant submitted that the AAFL herein after paying full and final resolution amount, as per statutorily approved Resolution plan, has come into new management of the VHL. The new management of VHL herein does not come under either of the categories mentioned in Section 32A (1) or (2). The new management of VHL, being AAFL, is neither a promoter nor was in the management nor control of the corporate debtor nor a related party. The new management also does not come under Clause (b) of Section 32A (1) or (ii) of 32A (2). Therefore, the immunity under Section 32A is fully applicable to the facts of the present case. Ld. Counsel therefore pleaded that considering Section 32A of the IBC, the subject attachment cannot be

continued against the new VHL, after CIRP. Apart from Section 32A, Section 31 of IBC also bars the continuance of any attachment in the instant case. The entire basis behind issuing the subject PAO against VHL is premised on the assertion that the amounts received as advances from MHPL are still owed by VHL to MHPL. Ld. Counsel stated that such advances cannot be claimed anymore as the same were specifically dealt with and rejected by the Ld. NCLT/NCLAT as elaborated herein above. Therefore, the entire basis to execute the attachment in the hands of VHL is not legally tenable anymore and the Impugned Order along with the PAO be set aside. Ld. Counsel therefore pleaded to allow the Appeal. Ld. Counsel also pleaded to allow the amended Memo of Parties, in view of necessity to replace the Resolution Professional (M/s Viceroy Hotels Ltd.) by M/s Viceroy Hotels Ltd. being represented by its Managing Director, as VHL has been taken over by the new management.

8. Ld. Counsel for the Respondent Directorate drew attention to the reply filed by the Respondent to the Application/MP of 2024 filed by the Appellant on 07.02.2024. The Respondent reiterated the facts of the case stating that M/s Viceroy Hotels was owned by Shri Prabakar Reddy. The details of transactions between BCEPL and M/s Viceroy Hotels through the Company MHPL which was another Group Company of BCEPL were highlighted. Ld. Counsel for the Respondent Directorate submitted that the contention made in the Misc. Petition is solely on the basis of approval of resolution plan submitted by M/s Anirudh Agro Farms Limited, which was

subsequently confirmed by the Hon'ble NCLAT, Chennai, in Company Appeal (AT) (INS) 166 of 2013. At this juncture, it was pertinent to mention that the Hon'ble High Court Delhi in the case of Rajiv Chakraborty (Resolution Professional of M/s EEIL) vs. Directorate of Enforcement, has categorically held that moratorium issued under Section 14 of IBC, 2016, does not affect the powers of Directorate of Enforcement in connection with attachment of properties by relying upon ratio laid in the case of Nitin Jain (Liquidator, PSL Limited) Vs Directorate of Enforcement and in the case of the Deputy Director vs. Axis Bank. The Hon'ble High Court of Delhi in Rajiv Chakraborty Vs DOE has held that "Moratorium imposed under Section 14 of the IBC, 2016, will not preclude the Enforcement Directorate from attaching properties under Sections 5 & 8 of PMLA, by observing that PMLA is a distinct regime aimed to arm enforcement agencies in the fight against crime. The Hon'ble High Court found that PMLA and IBC serve completely different, divergent and distinct purposes.

9. Ld. Counsel for the Respondent submitted that the applicability of Section 32A of IBC is misplaced and misrepresented by the Appellant in the present Misc. Petition. The Appellant has sought protection under Section 32A of IBC, which provides immunity to a corporate debtor undergoing insolvency resolution. However, this provision does not automatically override the provisions of PMLA. Section 32A (1) stipulates that immunity applies only when the new management is not linked to prior offences. In the present case: a) The alleged fraudulent funds were

received by M/s Viceroy Hotels Limited, forming part of its assets. b) The new management under the resolution plan does not alter the fact that the attached property is derived from money laundering. c) The PAO was issued prior to the conclusion of the Corporate Insolvency Resolution Process (CIRP), and thus, Section 32A does not apply retrospectively to absolve past crimes. Ld. Counsel further submitted that the present case is not only limited to diversion of funds to the tune of Rs. 364 Crore but also of causing loss of Rs. 274.60 crores to the consortium of banks, the public financial institutions.

10. Ld. Counsel for the Respondent argued that the present Provisional Attachment Order No. 04/2019 dated 26.03.2019 is valid even if the company has undergone resolution as the attached properties are specifically classified as proceeds of crime. The investigation under PMLA revealed that the diverted proceeds of crime to the tune of Rs. 124 crores were invested in acquiring an ongoing hotel to be constructed at Chennai during 2011 as per the Business Transaction Agreement entered by M/s Mahal Hotels Pvt. Ltd., one of the crony Group associated with M/s Best & Crompton Engineering Projects Limited. The attachment under PMLA, is aimed to prevent unjust enrichment by any party, including a resolution applicant, from assets tainted with money laundering. Thus, allowing the resolution plan to discharge M/s Viceroy Hotels Limited from criminal liabilities under PMLA, 2002, would defeat the very object of the Act. Ld. Counsel submitted that CIRP does not extinguish criminal liability of the corporate debtor. The liability

under PMLA, extends beyond the corporate entity and continues against individuals who were involved in the alleged offence. Ld. Counsel submitted that the right of the statutory authorities under PMLA cannot be hindered by the provisions of the IBC bearing in mind the fact that both statutes operate in separate and distinct fields. Ld. Counsel therefore pleaded to dismiss the Application and the Appeal.

11. We have considered the rival submissions and the material on record. Since, the critical issue to decide is the significance of Section 32A of the IBC for the attachment of the properties made under PMLA, it is imperative to state its provisions as follows:

"32A. Liability for prior offences, etc. (1)
Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled: Provided further that every person who was a "designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner in-charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was

directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of

the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation. For the purposes of this sub-section, it is hereby clarified that, –

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor,

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who

may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

12. In this regard, the Constitutional validity of Section 32A IBC was upheld by **the Hon'ble Supreme Court in its Judgment dated 19.01.2021 in the matter of Manish Kumar Vs. Union of India (UOI) and Ors. [MANU/SC/0029/2021]**. The Judgment has interpreted the provisions of Section 32A of IBC and dealt with the argument which are also being raised by the Respondent in the present case that the proceeds of crime went into the attached properties of Viceroy Hotels Ltd. through MHPL. The relevant paragraphs of the Judgment (supra) are as follows:

"246. Section 32A is challenged by allottees in Writ Petition No. 75 of 2020. The Petitioners in Writ Petition No. 27 of 2020 and Writ Petition No. 579 of 2020, who are creditors (money lenders) also challenge Section 32A.

247. The Petitioners contend that immunity granted to the corporate debtors and its assets acquired from the proceeds of crimes and any criminal liability arising from the offences of the erstwhile management for the offences committed prior to initiation of CIRP and approval of the resolution plan by the adjudicating authority further jeopardizes the interest of the allottees/creditors. It will cause huge losses

which is sought to be prevented under the provisions of the Prevention of Money Laundering Act, 2002.

248. Section 32A is arbitrary, ultra vires and violative of Article 300A and Articles 14, 19 and 21.

249. The stand of the Union, on the other hand, is as follows:

Section 32A provides immunity to the corporate debtor and its property when there is approval of the resolution plan resulting in the change of management of control of corporate debtor. This is subject to the successful resolution applicant being not involved in the commission of the offence. Statutory basis has now been given under Section 32A to the law laid down by this Court in the decision of Committee of Creditors of Essar Steel(supra). This Court took the view therein that successful resolution applicant cannot be faced with undecided claim after its resolution plan has been accepted. The object is to ensure that a successful resolution applicant starts of on a fresh slate. The relevant extracts of the Statement of Objects and Reasons relied upon by the Union of India are as follows:

STATEMENT OF OBJECTS AND REASONS

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2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the

corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.

3. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, inter alia, provides for the following, namely:

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(vii) to insert a new Section 32A so as to provide that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease under certain circumstances.

250. Reliance is also placed on the report of the Insolvency Law Committee. Relevant extracts which have been relied on are as follows:

PREFACE

v. Liability of corporate debtor for offences committed prior to initiation of CIRP-in order to address the issue of liability that fall upon the resolution applicant for offences committed prior to commencement of CIRP, it has been recommended that a new Section should be inserted which provides that when the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter

or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise. The newly inserted Section as mentioned above shall also include protection of property from enforcement action when taken by successful resolution applicant. Also, it was recommended that cooperation and assistance to authorities investigating the offences committed prior to commencement of CIRP shall be continued by any person who is required to provide such assistance under the applicable law.

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Chapter 1: Recommendations regarding the Corporate Insolvency Resolution Process

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17. LIABILITY OF CORPORATE DEBTOR FOR OFFENCES COMMITTED PRIOR TO INITIATION OF CIRP

17.1. Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29A, read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from

proposing a resolution plan and purchasing the property of the corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the property of the corporate debtor may also change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

17.2. However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedings related to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been Approved

17.3. It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it

had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalize the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.

17.5. The Committee noted that the proceedings under the Code, which are designed to ensure maximization of value, generally require transfer of the corporate debtor to bona fide persons. In fact, Section 29A casts a wide net that disallows any undesirable person, related party or

defaulting entity from acquiring a corporate debtor. Further, the Code provides for an open process, in which transfers either require approval of the Adjudicating Authority, or can be challenged before it. Thus, the CIRP typically culminates in a change of control to resolution applicants who are unrelated to the old management of the corporate debtor and step in to resolve the insolvency of the corporate debtor following the approval of a resolution plan by the Adjudicating Authority.

17.6. Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liability must be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the time of or any time following the commission of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29A.

17.7. Thus, the Committee agreed that a new Section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence.

17.8. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased.

Actions against the Property of the Corporate Debtor

17.9. The Committee also noted that in furtherance of a criminal investigation and prosecution, the property of a company, which continues to exist after the resolution or liquidation of a corporate debtor, may have been liable to be attached, seized or confiscated. For instance, the property of a corporate debtor may have been at risk of attachment, seizure or confiscation where there was any suspicion that such property was derived out of proceeds of crime in an offence of money laundering. It was felt that taking actions against such property, after it is acquired by a resolution applicant, or a bidder in liquidation, could be contrary to the interest of value maximisation of the corporate debtor's

assets, by substantially reducing the chances of finding a willing resolution applicant or bidder in liquidation, or lowering the price of bids, as discussed above.

17.10. Thus, the Committee agreed that the property of a corporate debtor, when taken over by a successful resolution applicant, or when sold to a bona fide bidder in liquidation under the Code, should be protected from such enforcement action, and the new Section discussed in paragraph 17.7 should provide for the same. Here too, the Committee agreed that the protection given to the corporate debtor's assets should in no way prevent the relevant investigating authorities from taking action against the property of persons in the erstwhile management of the corporate debtor, that may have been involved in the commission of such criminal offence.

17.11. By way of abundant caution, the Committee also recognised and agreed that in all such cases where the resolution plan is approved, or where the assets of the corporate debtor are sold under liquidation, such approved resolution plan or liquidation sale of the assets of the corporate debtor's assets would have to result in a change in control of the corporate debtor to a person who was not a related party of the corporate debtor at the time of commission of the offence, and was not involved in the commission of such criminal offence along with the corporate debtor.

Cooperation in Investigation

17.12. While the Committee felt that the corporate debtor and bona fide purchasers of the corporate debtor or its property should not be held liable for offences committed prior to the commencement of insolvency, the Committee agreed that the corporate debtor and any person who may be required to provide assistance under the applicable law should continue to provide assistance and cooperation to the authorities investigating an offence committed prior to the commencement of the CIRP. Consequently, the Committee recommended the new Section should provide for such continued cooperation and assistance.

The Additional Solicitor General also places reliance on the Sixth Report of the Standing Committee of Lok Sabha made in March, 2020. The relevant portion according to the learned ASG are as follows:

3.8 "The stakeholders on the above Clause furnished the following suggestion:

Though the Bill gives immunity to the corporate debtor (company as a legal entity) from prior offences, the individuals responsible for committing such offences on behalf of the debtor will still be held liable. The question is whether the debtor should be absolved of all kinds of prior offences with such a blanket immunity.

3.9 The Secretary, Ministry of Corporate Affairs during the sitting held on 15th January, 2020 remarked:

If the bidder, who is coming and participating under the court supervised competitive process, does not get security and is not indemnified, there may be a problem.

3.10 Further, the Ministry furnished the following comment on the above suggestion:

...this provision would only apply where the CIRP culminates in a change in control to a completely unconnected resolution applicant. As such, a resolution applicant has nothing to do with the commission of any pre-CIRP offence whatsoever, and the corporate debtor is now fundamentally not the same entity as the one that committed the crime.

3.11 The Committee are in agreement with the intent of this amendment to safeguard the position of the Resolution Applicant(s) by ring-fencing them from prosecution and liabilities under offences committed by erstwhile promoters etc. The Committee understand the need for treating the company or the Corporate Debtor as a cleansed entity for cases which result in change in the management or control of the corporate debtor to a person who was not a promoter or in the management control of the corporate debtor or related party of such person, or to a person against whom there are material evidence and pending complaint or report by the investigating authority filed in relation to the criminal offence. The Committee agree that this provision is essential to provide the Resolution Applicant(s) a fair chance to revive the unit which otherwise would directly go into liquidation, which may not be as beneficial to the economy. The Committee believe that this ring-fencing is essential to achieve revival or resolution without imposing additional

liabilities on the Resolution Applicant, arising from malafide acts of the previous promoter or management.

251. Apart from the fact that it is intended to give a clean break to the successful resolution applicant, it is pointed out that it is hedged in with ample safeguards to avoid any exploitation. The same are as follows:

106. Section 32A was inserted to give a clean break to successful resolution applicants from the erstwhile management by shielding them and immunizing them from prosecution and liabilities for offences that may have been committed prior to the commencement of the CIRP. Further, ample safeguards have been incorporated in the said provision to prevent any exploitation, namely:

i. The immunity is attracted only when a resolution plan is approved by the Adjudicating Authority under Section 31 and the resolution plan results in the change in management or control of the corporate debtor.

ii. The immunity is granted only to the corporate debtor and its property, where such property is covered under the resolution plan approved by the Adjudicating Authority under Section 31, from any liability or prosecution with regard to offences committed prior to the commencement of the corporate insolvency resolution process.

iii. Any person who was a promoter or in the management or control of the corporate debtor or a related party or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its

business and who was directly or indirectly involved in the commission of such offence shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased.

iv. Section 32A does not bar an action against the property of any person other than the corporate debtor against whom such an action may be taken under such law as may be applicable.

v. Notwithstanding the immunity given under Section 32A, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

252. Section 32A has been divided into three parts consisting of Sub-sections (1) to (3). Under Sub-section (1), notwithstanding anything contained, either in the Code or in any other law, liability of a corporate debtor, for an offence committed prior to the commencement of the CIRP, shall cease. Further, the corporate debtor shall not be liable to be prosecuted for such an offence. Both, these immunities are subject to the following conditions:

i. A Resolution Plan, in regard to the corporate debtor, must be approved by the Adjudicating Authority under Section 31 of the Code;

ii. *The Resolution Plan, so approved, must result in the change in the management or control of the corporate debtor;*

iii. *The change in the management or control, under the approved Resolution Plan, must not be in favour of a person, who was a promoter, or in the management and control of the corporate debtor, or in favour of a related party of the corporate debtor;*

iv. *The change in the management or control of the corporate debtor must not be in favour of a person, with regard to whom the relevant Investigating Authority has material which leads it to entertain the reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a Report before the relevant Authority or the Court. This last limb may require a little more demystification. The person, who comes to acquire the management and control of the corporate person, must not be a person who has abetted or conspired for the commission of the offence committed by the corporate debtor prior to the commencement of the CIRP. Therefore, abetting or conspiracy by the person, who acquires management and control of the corporate debtor, under a Resolution Plan, which is approved under Section 31 of the Code and the filing of the report, would remove the protective umbrella or immunity erected by Section 32A in regard to an offence committed by the corporate debtor before the*

commencement of the CIRP. To make it even more clear, if either of the conditions, namely abetting or conspiring followed by the report, which have been mentioned as aforesaid, are present, then, the liability of the corporate debtor, for an offence committed prior to the commencement of the CIRP, will remain unaffected.;

253. The first proviso in Sub-section (1) declares that if there is approval of a Resolution Plan under Section 31 and a prosecution has been instituted during the CIRP against the corporate debtor, the corporate debtor will stand discharged. This is, however, subject to the condition that the requirements in Sub-section (1), which have been elaborated by us, have been fulfilled. In other words, if under the approved Resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand discharged against the corporate debtor. Under the second proviso to Sub-section (1), however, the designated partner in respect of the liability partnership or the Officer in default, as defined under Section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in-charge or responsible to the corporate debtor for the conduct of its

business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under Sub-section (1). Still further, every person, who was associated with the corporate debtor in any manner, and, who was directly or indirectly involved in the commission of such offence, in terms of the Report submitted and Report filed by the Investigating Authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. Thus, the combined reading of the various limbs of Sub-section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in in-charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence, and they will continue to be liable.

254. Coming to Sub-section (2) of Section 32A, it declares a bar against taking any action against property of the corporate debtor. This bar also contemplates the connection between the offence committed by the corporate debtor before the commencement of the CIRP and the property of

the corporate debtor. This bar is conditional to the property being covered under the Resolution Plan. The further requirement is that a Resolution Plan must be approved by the Adjudicating Authority and, finally, the approved plan, must result in a change in control of the corporate debtor not to a person, who is already identified and described in Sub-section (1). In other words, the requirements for invoking the bar against proceeding against the property of the corporate debtor in relation to an offence committed before the commencement of the CIRP, are as follows:

(i) There must be Resolution Plan, which is approved by the Adjudication Authority under Section 31 of the Code;

(ii) The approved Resolution Plan must result in the change in control of the corporate debtor to a person, who was not-(a) a promoter; (b) in the management or control of the corporate debtor or (c) a related party of the corporate debtor; (d) a person with regard to whom the investigating authority, had, on the basis of the material, reason to believe that he has abetted or conspired for the commission of the offence and has submitted a Report or a complaint. If all these aforesaid conditions are fulfilled then the Law Giver has provided that no action can be taken against the property of the corporate debtor in connection with the offence;

The Explanation to Sub-section (2) has clarified that the words "an action against the property of the corporate debtor in relation to an offence", would include the attachment, seizure, retention or confiscation of such

property under the law applicable to the corporate debtor. Since the word "include" is used under Sub-clause (i) of the Explanation, the word "action" against the property of the corporate debtor is intended to have the widest possible amplitude. There is a clear nexus with the object of the Code. The other part of the clarification, under the Explanation, is found in the second Sub-clause of the Explanation (ii). Under the second limb of the Explanation, the Law Giver has clearly articulated the point that as far as the property of any person, other than the corporate debtor or any person who had acquired the property of the corporate debtor through the CIRP or liquidation process under the Code and who otherwise fulfil the requirement under Section 32A, action can be taken against the property of such other person. Thus, reading Sub-section (1) and Sub-section (2) together, two results emerge-(i) subject to the requirements embedded in Sub-section (1), the liability of the corporate, debtor for the offence committed under the CIRP, will cease; (ii) The property of the corporate debtor is protected from any legal action again subject to the safeguards, which we have indicated. The bar against action against the property, is available, not only to the corporate debtor but also to any person who acquires property of the corporate debtor under the CIRP or the liquidation process. The bar against action against the property of the corporate debtor is also available in the case of a person subject to the same limitation as prescribed in Sub-section (1) and also in Sub-section (2), if he has

purchased the property of the corporate debtor in the proceedings for the liquidation of the corporate debtor.

255. The last segment of Section 32A makes it obligatory on the part of the corporate debtor or any person, to whom immunity is provided under Section 32A, to provide all assistance to the Investigating Officer qua any offence committed prior to the commencement of the CIRP.

256. The contentions of the Petitioners appear to be that this provision is constitutionally anathema as it confers an undeserved immunity for the property which would be acquired with the proceeds of a crime. The provisions of the Prevention of Money-Laundering Act, 2002 (for short, the PMLA) are pressed before us. It is contended that the prohibition against proceeding against the property, affects the interest of stakeholders like the Petitioners who may be allottees or other creditors. In short, it appears to be their contention that the provisions cannot stand the scrutiny of the Court when tested on the anvil of Article 14 of the Constitution of India. The provision is projected as being manifestly arbitrary. To screen valuable properties from being proceeded against, result in the gravest prejudice to the home buyers and other creditors. The stand of the Union of India is clear. The provision is born out of experience. The Code was enacted in the year 2016. In the course of its working, the experience it has produced, is that, resolution applicants are reticent in putting up a Resolution Plan, and even if it is forthcoming, it is not fair to the interest of the corporate debtor and the other stake holders.

257. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale

behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.

258. It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. The new management cannot be the subject matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto. These ingredients are also insisted upon for claiming exemption of the bar from actions against the property. Significantly every person who was associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor. The corporate debtor and its property in the context of the scheme of the code constitute a distinct subject matter justifying the special treatment accorded to them. Creation of a criminal offence as also abolishing criminal liability must ordinarily be left to the judgment of the legislature. Erecting a bar against action against the property of the corporate debtor when viewed in the larger context of the objectives sought to be achieved at the forefront of which is maximisation of the

value of the assets which again is to be achieved at the earliest point of time cannot become the subject of judicial veto on the ground of violation of Article 14. We would be remiss if we did not remind ourselves that attaining public welfare very often needs delicate balancing of conflicting interests. As to what priority must be accorded to which interest must remain a legislative value judgment and if seemingly the legislature in its pursuit of the greater good appears to jettison the interests of some it cannot unless it strikingly ill squares with some constitutional mandate suffer invalidation.

259. There is no basis at all to impugn the Section on the ground that it violates Articles 19, 21 or 300A.”

13. In view of the aforementioned citation from the Judgment (supra), we are unable to agree with the arguments made by the Respondent Directorate. It is also to be noted that the attempt made by MHPL to claim the status of the financial creditor has also been rejected in the Judgment dated 24.11.2023 passed by the NCLAT in Company Appeal (AT) (CH) (INS.) No. 225/2023 in the matter of Mahal Hotel Pvt. Ltd. vs. Dr. Govindarajula Venkata Narasimha Rao. Following conclusions of the said Judgment are reproduced below:

“12. It is seen from the aforementioned observation that while allowing C.A. (AT) (Ins) 633/2018, this Tribunal noted that there is a dispute as to whether Mahal Hotel Pvt. Ltd. comes within the meaning of Financial

Creditor' or not, and has concluded that further, once a decision was taken by the Committee of Creditors to call for a Meeting for removal of Mr. Koteswara Rao Karuchola as RP, it was improper for him to include Mahal Hotel Pvt. Ltd. as Financial Creditor of the Member of the Committee of Creditors. Further, money laundering case having been initiated against Mahal Hotel Pvt. Ltd., the said Hotel cannot be allowed to be Member of Committee of Creditors. It was also observed in paras 11 and 12 that the Adjudicating Authority had failed to notice the aforesaid facts and circumstances and without going into the question of delay in inclusion of Mahal Hotel Pvt. Ltd. as Financial Creditor, has decided the Claim and this Tribunal has set aside the Order dated 04/10/2018, whereby the Adjudicating Authority has directed the RP to revise the Claim submitted by Mahal Hotel Pvt. Ltd.. Therefore, it is crystal clear that the Order of this Tribunal dated 18/11/2019 has set aside the finding of the Adjudicating Authority revising the Claim of the Appellant herein without granting any liberty to once again approach the Adjudicating Authority for adjudication of its Claim. As this Tribunal had examined whether the Appellant is a Financial Creditor within the meaning of Section 5 (7) of the Code, the Appellant herein ought to have preferred an Appeal

*under Section 62 of the Code. It is not in dispute that the Appellant did not challenge these findings by way of an Appeal. Therefore, we find force in the contention of the Learned Counsel for the Respondent that as the Order dated 18/11/2019 has attained finality and the reliefs sought for by the Appellant namely, inclusion of its Claim as a Financial Creditor and as a Member of the CoC, cannot be reargued at this belated stage. It is also brought to the notice of this Bench by that the Appeal challenging the rejection of the Resolution Plan by the Adjudicating Authority vide Order dated 09/06/2023 in C.A. (AT) (Ins) No. 163 & 183/2023 has been allowed by this Tribunal on 06/10/2023 and the 'Plan' has since been implemented. The Hon'ble Supreme Court in a catena of Judgments has held that the approval by the Adjudicating Authority renders the Resolution Plan binding on all the Stakeholders. The Hon'ble Apex Court in the matter of **'Essar Steel India Ltd. Vs. Sathish Kumar Gupta'** reported in [(2020) 8 SCC 531] has observed that the "clean slate" theory is to prevent hydra heads popping up, preventing any past Claims from resurging and thereby leading to any uncertainty regarding the amounts payable by the Resolution Applicant who successfully takes over the business of the Corporate Debtor.*

13. For all the foregoing reasons, the Company Appeal (AT) (CH) (Ins) No. 225/2023, is accordingly dismissed. No Order as to Costs. All connected pending Interlocutory Applications, if any, are closed.”

14. We therefore allow the Application for taking the amended Memo of Parties on record.

15. In view of the aforementioned discussions and analysis, we allow the Application/MP No. 506 of 2024 and Appeal No. FPA-PMLA-3282/CHN/2019 filed by M/s. Viceroy Hotels Ltd. being represented by its Managing Director. Consequently, the Impugned Order along with the Provisional Attachment Order dated 26.03.2019 are set aside. Applications pending, if any, are disposed of accordingly.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member

New Delhi
23rd April, 2026
'AK'