

## **Insolvency and Bankruptcy Board of India**

**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

**20<sup>th</sup> February 2023**

***Subject: Judgment<sup>1</sup> dated 17<sup>th</sup> February, 2023 of Gujarat High Court in the matter of Welspun Steel Resources Private Limited Vs. Union of India [R/Special Civil Application No. 19387 Of 2022]***

### **I. Brief background:**

Assets of the CD (ABG Shipyard Limited) were offered for sale pursuant to auction held under the directions of the Hon'ble Supreme Court. The petitioners herein were the successful bidders who have paid the entire sale consideration and were given sale certificates. On 21.09.2022, the liquidator informed the petitioners that the Deputy Director of Directorate of Enforcement had passed provisional attachment order in respect of the 'specific assets' that were sold to the petitioners. Aggrieved by the order of attachment, petitioners filed a WP for quashing and setting aside the order of attachment dated 21.09.2022, to the extent it attaches the assets that were sold to the Petitioners.

### **II. Issue:**

Whether the assets acquired by the petitioners can at all be said to be '*proceeds of crime*' as defined in section 2(1)(u) of the Prevention of Money Laundering Act (PMLA)?

### **III. Findings & Observations of the Hon'ble High Court –**

1. High Court while quashing and setting aside the order of attachment *viz-a-viz* the properties of petitioners, observed that the assets, the petitioners have acquired are those assets which are not acquired as a result of criminal activity and therefore cannot be said to be 'proceeds of crime'.
2. It further observed that if the authorities were given a free hand to pass orders of attachment of properties which were acquired by a successful bidder in a liquidation process, on a presumption that such acquisition was as a result of a criminal activity, could be contrary to the interest of value maximization of the corporate debtor's assets by substantially reducing the chances of finding a willing resolution applicant or a bidder in liquidation.
3. It held that to arrive at a determination that the assets are proceeds of crime, the foremost requirement is that the authority has to have 'reason to believe' on the basis of material in its possession. 'Reason to believe' cannot arise from mere suspicion, gossip or rumour. Mere alleged fraudulent transactions and diversion of funds, cannot automatically lead to a conclusion that the properties acquired by the petitioners are proceeds of crime. The mere allegation that CD had used the credit raised from the bank for purposes other than intended purposes to carry out circular transactions with various group companies and making overseas investments, cannot sustain. There is no explanation as to how the properties standing in the name of CD and which form part of the assets sold to the petitioners are proceeds of crime as the assets are neither overseas asset nor that of the group companies.

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#### **IV. Conclusion:**

Hon'ble High Court held the specified assets of the sold to the petitioners not to be treated as assets falling within the purview of having been acquired from '*proceeds of crime*' and the Deputy Director of Directorate of Enforcement was directed to release the properties from such attachment.

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