

Rotomac Global Pvt. Ltd vs Deputy Director, Directorate Of ... on 2 July, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) (Insolvency) No. 140 of 2019

[arising out of Order dated 10th January, 2019 by NCLT, Allahabad Bench, in I.A. No. 150/2018 IN CP No. (IB) 70/ALD/2017]

IN THE MATTER OF:

Rotomac Global Private Limited,
(Through Anil Goel, Liquidator)

... Appellant

Vs.

Deputy Director,
Directorate of Enforcement

... Respondent

Present :

For Appellant : Mr. Kanishk Khetan and Mr. Abhishek Pratap
Singh, Advocates

Mr. Anil Goel, Liquidator (in person)

For 1st Respondents: Mr. Nitesh Rana and Mr. A.R. Aditya Advocates

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Bank of Baroda initiated 'Corporate Insolvency Resolution Process' against 'Rotomac Global Private Limited' (Corporate Debtor). After the conclusion of the 'corporate insolvency resolution process' in absence of any viable and feasible resolution plan, the Adjudicating Authority ordered for liquidation of the 'Corporate Debtor'.

2. The Directorate of Enforcement of Delhi Zonal Office-I vide order ECIR No. 01/DLZO-I/2018 dated 18th February, 2018 started investigation for commission of offence under Section 3 of 'Prevention of 'Money Laundering Act, 2002' punishable under Section 4 of the said Act on the basis of information/material from CBI dated 18th February, 2018 under section 420, 467, 471, 468 & 120-B IPC and Section 13(2) r/w 13(1)(d) of the Prevention and Corruption Act.

3. In the investigation under the provisions of 'Money Laundering Act, 2002' it found that accused persons having misappropriated/ diverted bank funds, committed criminal breach of trust and laundered the money so diverted.

4. The Directorate of Enforcement, basing on the material and evidences on record and exercising the powers conferred by Sub-Section (1) of Section 5 of the 'Prevention of Money Laundering Act, 2002', passed a Provisional Attachment Order No.08/2018 dated 28.05.2018 attaching the properties provisionally lying in name of 'Corporate Debtor' 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 allowed to do so by the Directorate.

5. It is further stated that the properties in question and mentioned in PAO that were attached fall within the definition of 'Proceeds of Crime' in terms of Section 2(1)(u) of the PMLA and the same were provisionally attached vide PAO No. 08.2018 dated 28.05.2018. It is further stated that the property provisionally attached constitutes the value of such proceeds of crime.

6. The Liquidator filed an application for direction on Directorate of Enforcement for release of assets of the 'Corporate Debtor'. It was contended by the respondent that in view of Section 9 of PMLA, in case an order of Company Appeal (AT) (Insolvency) No. 140 of 2019 confiscation has been made under sub-section (6) of Section 8 of the PMLA in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.

7. It is contended that the mortgage or creating a charge over the properties of the Corporate Debtor in favour of the banks and other lenders is only encumbrance of the properties. It is contended that in view of Section 9, if confiscation has been made under sub-section (6) of Section 8, such property shall vest in the Central Government free from all encumbrances.

8. It is also contended that State will have first right to confiscate the proceeds of crime over the right of person to recover their debts from an accused. It is stated that the Applicant/Liquidator has got alternative remedies available U/s 8, 26 and 42 of the PMLA Act, 2002. It is for the Applicant/Liquidator to project his case before the appropriate Authority U/s 8, 26, and 42 of the PMLA Act, 2002, in case, if the rights of the secured creditors or other creditors is affected.

9. Having heard the learned counsel for the parties, the Adjudicating Authority by impugned order dated 10th January, 2019 rejected the application giving rise to the present application preferred by the Liquidator of 'Rotomac Global Private Limited'. Similar question fell for consideration before this Appellate Tribunal in 'Varrsana Ispat Limited vs. Deputy Director, Directorate of Enforcement' - Company Appeal (AT) (Insolvency) No. 493 of 2018' wherein this Appellate Tribunal taking into consideration the provisions of Section 4 of 'Prevention of Money Laundering Act, 2002' observed and held as follows :

Company Appeal (AT) (Insolvency) No. 140 of 2019 "8. Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' is to prevent the money laundering and to provide confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

9. Section 2(1) (u) of the 'Prevention of Money Laundering Act, 2002' defines "proceeds of crime"

which reads as follows:

"2. Definitions. (1) In this Act, unless the context otherwise requires, (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property"

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10. Chapter II relates to 'offence of money-laundering' and Section 3 therein relates to 'offence of money- laundering, which reads as follows:

"3. Offence of money-Laundering.-

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

11. 'Punishment for money-laundering' is prescribed under Section 4 as follows:

"4. Punishment for money-laundering - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but Company Appeal (AT) (Insolvency) No. 140 of 2019 which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words" which may extend to seven years", the words "which may extend to ten years" had been substituted."

12. From the aforesaid provisions, it is clear that the 'Prevention of Money-Laundering Act, 2002' relates to 'proceeds of crime' and the offence relates to 'money-laundering' resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the 'Prevention of Money Laundering Act, 2002' or provisions therein relates to 'proceeds of crime', we hold that Section 14 of the 'I&B Code' is not applicable to such proceeding.

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13. In so far as penalty is concerned, offence of money-

laundering is punishable with rigorous imprisonment which is not less than three years and has nothing to do with the 'Corporate Debtor'. It will be applicable to the individual which may include the Ex-Directors and Shareholders of the 'Corporate Debtor' and they cannot be given protection from the 'Prevention of Money Laundering Act, 2002' and such individual cannot take any advantage of Section 14 of the 'I&B Code'. This apart, we find that the attachments were made by the Deputy Director of Directorate of Enforcement much prior to initiation of the 'Corporate Insolvency Resolution Process', therefore, the 'Resolution Professional' cannot derive any advantage out of Section 14.

14. As the 'Prevention of Money Laundering Act, 2002' relates to different fields of penal action of 'proceeds of crime', it invokes simultaneously with the 'I&B Code', having no overriding effect of one Act over the Company Appeal (AT) (Insolvency) No. 140 of 2019 other including the 'I&B Code', we find no merit in this appeal. It is accordingly dismissed. No costs." The case of the Appellant being covered by 'Varrsana Ispat Limited' (Supra), the present appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya] Chairperson [Justice A.I.S. Cheema] Member (Judicial) [Kanthi Narahari] Member (Technical) New Delhi 2nd July, 2019 /ns/ Company Appeal (AT) (Insolvency) No. 140 of 2019