

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 4373 OF 2021
AND
I.A. 5680 OF 2023
IN
C.P. IB NO 843 (ND) OF 2018

IN THE MATTER OF:

INGRAM MICRO INDIA PVT. LTD.

...Operational Creditor

Versus

DR. JAIN VIDEO ON WHEELS LTD.

... Respondent

AND IN THE MATTER OF:

MR. VIKRAM KUMAR,
Resolution Professional of Dr. Jain Video on Wheels Ltd.

...Applicant

Versus

DIRECTORATE OF ENFORCEMENT

...Respondent

Order Delivered on: 02.09.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Bhargav Thali, Advocate.

For the RP : Mr. Abhishek Anand, Mr. Karan Kohli, Ms.
Vaishnavi, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. I.A. 4373 OF 2021

- i.** The instant Application is being filed by the Applicant i.e., the Resolution Professional for Dr. Jain Video on Wheels Limited (Corporate Debtor) under Section 14(1) read with Section 60(5) of the Code seeking the following reliefs:
 - a. Allow the present Application; and*
 - b. Stay the proceedings before the Adjudicating Authority, PMLA being O.C. No. 1469 of 2021 seeking confirmation of Provisional Attachment Order dated 31.03.2021 as the same being covered under "proceedings" as mentioned in Section 14 of the Code; and*
 - c. Issue Appropriate directions for removal of provisional attachment by the Respondent vide order dated 31.03.2021 in terms of the provisions of the PMLA Act on the property of the Corporate Debtor being Industrial Plot located at B-22, D-9(part), D-10 located at Surajpur Site-C industrial Area, Village, Gulistanpur, Tehsil Sadar, Distt. Gautam Budh Nagar admeasuring 4654 Sq. meter being clearly in teeth of the moratorium as declared under Section 14 of the Code by this Hon'ble Adjudicating Authority; and*
 - d. During the pendency of the present Application pass ex-parte ad-interim order directing the Respondent not to confirm the provisional attachment order dated 31.03.2021 in terms of Section 8(1) of the PMLA Act, 2002;*
 - e. pass such other or further order / order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.*
- ii.** The brief facts giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -
 - a.** The Applicant submitted that on 31.03.2021, the Respondent attached the property of the Corporate Debtor, namely the industrial plot situated at B-22, D-9 (part), D-10, Surajpur Site-C Industrial 43-70 Krishn Area, Village Gulistanpur, Tehsil Sadar, District Gautam Budh Nagar under Section 5(1) of Prevention of Money Laundering Act, 2002 ("PMLA Act").

- b.** On 03.06.2021, Corporate insolvency Resolution Proceedings (“CIRP”) was initiated against the Corporate Debtor by this Hon’ble Adjudicating Authority wherein Manoj Kulshrestha was appointed as Interim Resolution Professional. Thereafter on 09.06.2021, Public Announcement in FORM A was made wherein the last date of submission of the claim was 22.06.2021. 06.07.2021
- c.** The CoC in its 1^a meeting replaced the Interim Resolution Professional and appointed the Applicant herein as the Resolution Professional.
- d.** Vide order dated 13.08.2021 this Adjudicating Authority allowed the Application bearing I.A. No. 3193 of 2021 filed by Punjab National Bank for replacement of the IRP and appointment of the Applicant as Resolution Professional as resolved by the CoC.
- e.** On 08.06.2021, the Respondent issued a show cause notice to the Corporate Debtor under Section 8(1) of the PMLA Act 2002 through its directors seeking reasons to show cause why the provisional attachment order in respect to the properties should not be confirmed representing proceeds of crime.
- f.** The Adjudicating Authority, PMLA on 31.07.2021 observed that no reply has been received to show cause dated 08.06.2021 and a final opportunity was given to file a reply on or before 10.08.2021 and furthermore, rejoinder was to be filed by 20.08.2021.
- g.** In the 4th meeting of Committee of Creditors, the Applicant apprised the members of CoC about the activities to be done prior to issuing Form G. Pursuant thereto, in the interest of a resolution of the Corporate Debtor, the Applicant requested the CoC to consider approving publication of revised Form G with extended timelines so that all efforts can be made towards a resolution of the Corporate Debtor. The member of Committee of Creditors approved the revised timelines along with revised FORM-G.
- h.** The Applicant published revised FORM-G dated 10.09.2021 with the revised timelines thereby, extending the last date of submissions of EOI which was published in Business Standard (English) and Business Standard (Hindi).

i. As the provisional attachment of the property was causing hindrance in the CIRP of the Corporate Debtor, the Applicant filed the present Application.

2. I.A 5680 OF 2023

i. The instant Application is being filed by the Applicant i.e., the Resolution Professional for Dr. Jain Video on Wheels Limited (Corporate Debtor) under Section 14(1) read with Section 60(5) of the Code seeking the following reliefs:

a. Allow the present Application; and

b. Kindly declare that Order dated 06.12.2021 passed by the Adjudicating Authority, PMLA has been passed in violation of Section 14 of the I & B Code as no proceedings could have been continued against the Corporate Debtor; and

c. Issue appropriate directions to the Respondent to de-attach the property of the Corporate Debtor being Industrial Plot located at B-22, D-9(part), D-10 located at Surajpur Site C industrial Area, Village, Gulistanpur, Tehsil Sadar, Distt. Gautam Budh Nagar ad-measuring 4654 Sq. meter, being an asset of the Corporate Debtor and crucial for the successful Resolution of the Corporate Debtor;

d. During the pendency of the present Application stay the operation of Order dated 06.12.2021 passed by PMLA, Adjudicating Authority whereby, Provisional Attachment Order dated 31.03.2021 has been confirmed;

e. pass any such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.

ii. The brief facts giving rise to filing of the instant Application, which are just and necessary for adjudication, are narrated hereunder: -

a. The Hon'ble PMLA Adjudicating Authority vide order dated 06.12.2021 confirmed the Provisional Attachment Order dated 31.03.2021 passed by the Respondent attaching the property of the Corporate Debtor. On 08.09.2023, the Applicant wrote a Letter to the Hon'ble PMLA Adjudicating Authority to provide a copy of the order dated 06.12.2021.

b. As the attachment of the property was causing hindrance in the CIRP of the Corporate Debtor, the Applicant filed the present Application.

3. SUBMISSIONS OF THE APPLICANT:

- i.** It is the case of the Applicant that continuance of proceedings against the Corporate Debtor before the Hon'ble PMLA Adjudicating Authority is in contravention to the principal of Moratorium as imposed by this Adjudicating Authority under Section 14 of the Code. Section 14 of the Insolvency and Bankruptcy Code, 2016 provides that there shall be prohibition for initiating and continuing of any suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority till the completion of the Corporate Insolvency Resolution Process of the Corporate Debtor.
- ii.** The aim and object of PMLA under Section 5 for attaching the property alleged to be involved in money laundering is to avoid concealment, transfer or dealing in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under chapter III of PMLA. However, it is pertinent to mention herein that Section 14(1) (b) of the Code relating to moratorium is seen on insolvency commencement date, the Adjudicating Authority is required to pass an order declaring moratorium, inter alia, prohibiting, "transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or legal right or beneficial interest therein, thus the moment CIRP is initiated, the property of the Corporate Debtor is protected by such moratorium.
- iii.** The Applicant submitted that despite the moratorium imposed by this Adjudicating Authority which stays the ongoing proceedings against the Corporate Debtor, the Hon'ble PMLA Adjudicating Authority passed the impugned order dated 06.12.2021 confirming the Provisional Attachment Order dated 31.03.2021 passed by the Respondent attaching the property of the Corporate Debtor.
- iv.** The Applicant, to buttress its arguments, placed reliance on the following cases:
 - a.** *Rajendra K. Bhutia vs. Maharashtra Housing and Area Development Authority and Ors. (Civil Appeal No. 12248 of 2018).*

- b. Alchemist Asset Reconstruction Company Ltd. v. M/s Hotel Gaudavan Pvt Ltd. Civil Appeal No. 16929 of 2017.**
- c. P. Mohanraj and others v. M/s Shah Brothers Ispat Pvt. Ltd. 2021 SCC OnLine SCC 152.**
- d. Sterling SEZ and Infrastructure Limited versus Deputy Director, Directorate of Enforcement M.A 1280/2018 in C.P. 405/2018.**
- v.** It was further submitted by the Applicant that the proceedings under the PMLA Act are “civil proceedings” as has been held by the Hon’ble Appellate Tribunal for PMLA in of **Bank of India v. The Deputy Director Directorate of Enforcement, Ahmedabad FPA-PMLA-2872/AHD/2019** dated 18.06.2019.
- vi.** It was submitted that Section 238 of the Code contains a non-obstante clause which provides an overriding effect over any other law for the time being in force or any instrument having effect by virtue of any such law. In view of the aforesaid provisions of the Code, the provisions of the Code prevail over the provisions of PMLA Act and hence, Section 14 of the Code has overriding effect on any provision of the PMLA Act as far as it is in conflict to the provisions of the Code. Reliance was placed on **The Directorate of Enforcement v. Sh Manoj Kumar Agarwal & Ors. Company Appeal (AT) (Ins.) No. 575 of 2019.**
- vii.** The Latin maxim “*Leges Posteriores Priores Contraries Abrogant*” which states that if two special statutes contain non-obstante clauses, then the non-obstante clause in the later special legislation shall take precedence over the prior conflicting law. In view of the above, in the present case, it can be seen that both legislations, i.e., PMLA and IBC contain a non-obstante clause under Section 71 and Section 238 of their respective acts and hence the issue comes to a logical end with the latter overriding the former as has been held in **Solidaire India Limited Vs. Fairgrowth Financial Services Limited and Ors, (2001) 3 SCC 71.**
- viii.** Therefore, it is evident from the settled position of law that even the continuation of proceedings before the Adjudicating Authority, PMLA for

confirmation would be hit by Section 14 of IBC and furthermore, Section 238 of the Code providing an overriding effect to the IBC over the PMLA Act.

- ix.** It was submitted that from the perusal of the above, it is evident that the Directorate of Enforcement have no right to attach the property of the "Corporate Debtor" undergoing Corporate Insolvency Resolution Process and the only remedy available with the Directorate of Enforcement is to file its claim before the Resolution Professional as has been held in ***JSW Steel Limited Versus Mahender Kumar Khandelwal & Anr. in Company Appeal (AT) (Insolvency) No. 957 of 2019***. Further reliance was placed on ***Ashok Kumar Sarawagi vs. Enforcement Directorate & Anr.in Special Leave Petition (Civil) Diary No(S). 30092/2022***.
- x.** The Applicant submitted that decisions of the Hon'ble PMLA Adjudicating Authority vide order dated 06.12.2021, and the Provisional Attachment Order dated 31.03.2021 of Respondent are bad in law and have been passed in violation of Section 14 of the Code and the property of the Corporate Debtor which is attached by the Respondent should be de-attached for successful resolution of the Corporate Debtor. This will ensure that properties of the Corporate Debtor are available for achieving the salutary objectives under the IBC i.e., to provide time bound insolvency resolution, maximization of value of assets, to promote entrepreneurship, availability of credit and balance interest of all the stakeholders.

4. SUBMISSIONS OF THE RESPONDENT:

- i.** The Respondent, ED herein, submitted that pursuant to the Hon'ble Allahabad High Court's order [WP No. 3301/2011, dated 15.11.2011], the CBI registered an FIR [ECIR/04/LKZ/2012, dated 14.04.2012] against the Corporate Debtor for offences under Sections 120B, 420, 409 IPC, and Section 13 of the Prevention of Corruption Act, 1988. The FIR revealed a conspiracy involving inflated bills worth Rs. 7,88,85,765 for Mobile Medical Units, causing a loss of Rs. 2,83,66,316 to the government exchequer, constituting proceeds of crime under Section 2(1)(u) of the PMLA. Funds were diverted to M/s Mehul Enterprises, which ceased filing reports with the

Ministry of Corporate Affairs in 2011, indicating an intent to project tainted funds as untainted.

- ii.** The ED provisionally attached the Corporate Debtor's industrial plot (B-22, D-9(part), D-10, Surajpur Site-C, Gautam Budh Nagar, 4654 sq. meters) on 31.03.2021 under Section 5 of the PMLA which was confirmed on 06.12.2021. The attachment was for an equivalent value of Rs. 2,83,66,316, with the property valued at Rs. 3.80 crores in 2018.
- iii.** It was submitted that the principle that this Adjudicating Authority does not have jurisdiction to entertain a challenge to a provisional attachment order passed under section 5 (1) of the Prevention of Money Laundering Act 2002, which also stands confirmed by the Adjudicating Authority, PMLA is no longer res integra. Reliance was placed on **[Company Appeal (AT) (Insolvency) No. 817/2021] titled Kiran Shah Vs Enforcement Directorate**. Enforcement Directorate, wherein the Hon'ble NCLAT, while observing that the decision in ED vs Manoj Kumar Aggarwal (reported in 2021 SCC OnLine NCLAT 121 runs per contra the 'Principle of Stare Decisis', held that the NCLT is not empowered to decide the questions of law or fact falling under the purview of another authority under PMLA and directed the Corporate Debtor to approach 'Competent Forum' by pursuing its remedy under the Prevention of Money Laundering Act, 2002' to its logical end or any other Jurisdictional Forum' (other than the purview of 1 & B Code, 2016,).
- iv.** It was further submitted that the NCLT being an adjudicating authority under the Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC") cannot examine the correctness and validity of a decision by a co-ordinate and co-equal Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA") and therefore, the NCLT had rightly rejected the application directing the Resolution Professional (hereinafter "RP") to approach the competent appellate forum being the PMLA Appellate Tribunal. The scope of the jurisdiction of the NCLT has also been settled by a larger bench of the Hon'ble Supreme Court in **Embassy Property Developments Pvt. Ltd. vs. State of Karnataka & Ors. 2019 SCC OnLine SC 1542**.

- v. It was submitted that this Tribunal has no power to interfere with the PAO which has already been confirmed by the Ld. Adjudicating Authority, PMLA under Section 8 of the PMLA. The PAO having been confirmed by the Ld. Adjudicating Authority, PMLA, the Resolution Professional herein can now only approach the relevant appellate authority under PMLA. The PAO dated 31.03.2021 is not amenable to the jurisdiction of this Hon'ble Tribunal and its validity has been confirmed by the Adjudicating Authority under Section 8 of the PMLA. Reliance was placed on **IA No. 3058/2020 titled Manohar Lal Vij vs. The Directorate of Enforcement. in (IB)-1205/(ND)/2019, Sundeep Kumar Bafna vs. State of Maharashtra & Anr. (2014) 16 SCC 623, Directorate of Enforcement vs. Sh. Anil Kumar Goel & Anr. in WPA 6575 of 2020 and Mr. Shailendra Singh, Resolution Professional of Foxdom Technologies Pvt Ltd vs. Directorate of Enforcement, IA 4698 of 2023 in IB-102(ND)/2022.**
- vi. It was submitted that the protection under Section 32A(2) of the Code to the assets of the Corporate Debtor for commission of offences prior to the initiation of CIRP is not available in the present case. The benefit of Section 32A will not be available in this case as evident from the plain reading of the provision for the reason that proceeds of crime attached cannot be the subject matter of resolution plan and also because there is no approved resolution plan and therefore there is no question of applicability of section 32A of IBC. Reliance was placed on **Manish Kumar v. Union of India 2021 5 SCC 1.**
- vii. The legislature, in order to implement the clean slate theory and to give the successful resolution applicant a clean break from the past misdemeanours of the corporate debtor, came out with a legislative amendment in the form of Section 32A of the IBC, whereby only after the approval of the Resolution Plan or sale of liquidation assets, would the embargo or bar against any form of attachment kick in.
- viii. A plain reading of Section 32A of the IBC as interpreted by this Hon'ble Court in Manish Kumar (supra) would show that there is no bar in the law from making attachments under PMLA, of any property which are proceeds of crime belonging to a corporate debtor prior to the approval of a resolution

plan. This Court has held that there must be an approved resolution plan for the bar on attachment to kick in.

- ix.** It is an admitted fact that in the present case, the resolution plan has not been approved and therefore, the protection under Section 32A of IBC would not get triggered.
- x.** This does not mean that the petitioner is remediless, rather if any creditor approaches the Ld. Special Court, PMLA, or the Adjudicating Authority, PMLA/Appellate Tribunal, PMLA and is able to prove his bona fide and his interest in the property, which is under attachment, such a person can seek release of such property either under sub- section (2) of section 8 of PMLA or second proviso of sub section (8) of section 8 of PMLA, in accordance with law.
- xi.** The decision in P. Mohanraj dealt with a quasi-criminal dispute between a debtor and a creditor would not apply to a case of attachment of proceeds of crime.
- xii.** It was further submitted that PMLA is a special legislation aimed at dealing with the offence of money laundering and will therefore have primacy over the Insolvency and Bankruptcy Code, 2016 in proceedings relating to money laundering. The PMLA is a specific/special law governing money laundering in the country and no exceptions can be made to it unless specifically provided for by the Parliament. There is no power conferred upon the NCLT under the IBC to interfere with a provisional attachment order passed under Sec 5 of the PMLA. The PMLA is a complete code in itself containing effective remedial measures available to affected persons. In this case, remedies under Section 8, 26 and 42 of the PMLA Act 2002 are available to any person aggrieved by the orders passed under Section 5 of the PMLA ordering provisional attachment of the properties as has been held in ***Rai Foundation vs. Directorate of Enforcement [WP (Crl.) No. 100/2015, dated 20.02.2015]***. In fact, the Applicant herein has already availed of the remedy by approaching the Hon'ble Appellate Tribunal where his matter remains pending.
- xiii.** Reliance was further placed on the following:
 - a. Varrsana Ispat Ltd. vs. Deputy Director, ED [Civil Appeal No. 5546/2019, dated 22.07.2019.***

- b. Deputy Director, ED vs. Axis Bank [2019 SCCOnLineDel 7854].**
- c. Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, (2013) 7 SCC 439.**
- d. Gautam Kundu vs. Directorate of Enforcement (2015) 16 SCC 1.**
- e. P. Chidambaram vs. Directorate of Enforcement (2019) 9 SCC 24.**
- f. Andhra Bank versus Sterling Biotech Limited (Company Appeal (AT) (Insolvency) No. 612 of 2019).**
- g. LIC v. D.J. Bahadur (1981) 1 SCC 315.**
- h. U.P. SEB v. Hari Shankar Jain, (1978) 4 SCC 16.**

- xiv.** If 'proceeds of crime' which happens to be assets of a corporate debtor are attached by the Directorate of Enforcement under the Prevention of Money Laundering Act, then such property not being operational debt would not form part of the resolution plan and the Government/ED not being operational creditor would not form part of the Committee of Creditors.
- xv.** It is an equally well settled principle of law that a person committing the offence of money laundering cannot be permitted to avail of the proceeds of crime to get a discharge of his civil liability towards his creditors for the simple reason that such assets are not lawfully his to claim. Further, the IBC cannot be an amnesty route for an accused under the PMLA, and the entire confiscation regime under PMLA and its objects will be defeated if the Hon'ble NCLAT starts interfering with provisional attachment orders without the authority of law.
- xvi.** In the this regard, it is also pertinent to note that the decision of the Hon'ble NCLAT in Varrsana Ispat (supra) was subsequently followed by in the case of **Rotomac Global Private Ltd. vs. Deputy Director, Directorate of Enforcement, Company Appeal (AT) (Insolvency) No. 140 of 2019**, wherein at the conclusion of the CIRP process no viable and feasible resolution plans were received and the Adjudicating Authority ordered liquidation, it was held that the judgment in the case of Varrsana Ispat Ltd. (supra) would apply, and therefore the Directorate of Enforcement is not precluded from attaching the property of the Corporate Debtor, owing to a mere invocation of a moratorium. Further reliance was placed on above view in **Rajiv Chakraborty vs.**

Directorate of Enforcement 2022/DHC/004739, Leo Meridian Infrastructure Projects and Hotels Ltd. IA No. 54/2020 in CP(IB) No. 43/7/HDB/2018. Further, the Hon'ble Supreme Court in the case of **Biswanath Bhattacharya vs Union of India (2014 4 SCC 392)** has taken notice of civil forfeiture and criminal forfeiture, while also approvingly citing the view that a person in position or control over assets which directly or indirectly constitute proceeds of crime has no property rights in those assets and no valid title to them.

xvii. Further, the PMLA was enacted to fulfill India's commitments under UN resolutions, as reflected in its preamble. Allowing the IBC to override PMLA would undermine these obligations and weaken India's stance against money laundering globally.

5. ANALYSIS AND FINDINGS:

- i.** We have heard the learned Counsel for the parties and perused the material on record, including the relevant judicial precedents relied upon by the Learned Counsel.
- ii.** The present Applications (I.A. 4373 of 2021 and I.A. 5680 of 2023) have been filed by the Resolution Professional of the Corporate Debtor under Section 14(1) read with Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), essentially seeking directions from this Adjudicating Authority to stay the proceedings initiated by the Directorate of Enforcement under the Prevention of Money Laundering Act, 2002 ("PMLA"), and to set aside the provisional attachment order dated 31.03.2021, which has subsequently been confirmed by the Adjudicating Authority under PMLA on 06.12.2021. The grievance of the Resolution Professional is that such attachment hinders the Corporate Insolvency Resolution Process ("CIRP") and violates the moratorium under Section 14 of the Code.
- iii.** The Applicant contends that the moratorium under Section 14 bars any proceedings or orders against the assets of the Corporate Debtor. It is argued that PMLA proceedings are in the nature of "civil proceedings" and hence squarely covered under Section 14. Reliance has been placed on *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, (2021), *Alchemist ARC v. Hotel Gaudavan Pvt.*

Ltd., (2017), and other precedents to contend that continuation of attachment proceedings is hit by Section 14. It is also urged that by virtue of Section 238 of IBC, the Code shall override provisions of PMLA, being a later special statute. The Applicant therefore seeks de-attachment of the subject property and availability of the same for resolution purposes.

- iv.** The Respondent, Enforcement Directorate has opposed the Application on the ground that the attachment has been made under Section 5 of the PMLA in respect of “proceeds of crime” arising out of an FIR by the CBI. The provisional attachment has already been confirmed by the PMLA Adjudicating Authority under Section 8 of the Act. It is argued that this Adjudicating Authority under IBC has no jurisdiction to interfere with orders passed under PMLA, which is a self-contained and special code with appellate remedies available to the aggrieved person. Reliance has been placed on *Embassy Property Developments Pvt. Ltd. v. State of Karnataka* (2019), *Varrsana Ispat Ltd. v. Deputy Director, ED* (2019), *Kiran Shah v. ED* (2021), and other judgments to contend that NCLT cannot sit in appeal over decisions of another adjudicating authority under a different statute. The Respondent further submits that Section 32A of the IBC, which protects the assets of the Corporate Debtor from action for prior offences, comes into effect only after approval of a resolution plan, which is not the case here.
- v.** The moot point before us is whether this Adjudicating Authority under the IBC can direct de-attachment or stay of attachment proceedings initiated and confirmed under PMLA in respect of properties of the Corporate Debtor during the pendency of CIRP.
- vi.** The Hon’ble Supreme Court in ***Embassy Property Developments Pvt. Ltd. (2019) 11 SCC 1*** and the Hon’ ble NCLAT in ***Kiran Shah vs Enforcement Directorate 2022 SCC OnLine NCLAT 2*** have categorically held that this Adjudicating Authority cannot adjudicate upon matters falling outside the scope of the IBC and within the exclusive domain of statutory/quasi-judicial authorities constituted under other legislations. The only remedy that is available to the Applicant herein is to approach the Ld. Adjudicating Authority, PMLA where the matter is presently sub-judice.

- vii.** Further, the Hon'ble NCLAT in ***Varrsana Ispat Limited versus Deputy Director of Enforcement (Company Appeal (AT) (Insolvency) No. 493 of 2018***), has held that Section 14 of the IBC is not applicable to proceedings under the Prevention of Money laundering Act, 2002 which was also upheld by the Hon'ble Supreme Court.
- viii.** The precedents relied upon by the Applicant are not applicable to the matrix of the present case due to the distinguishable facts and circumstances.
- ix.** We also note that Section 32A of the IBC, specifically delineates the extent of immunity granted to Corporate Debtors and their assets in respect of offences committed prior to initiation of CIRP. This immunity is available only post approval of a resolution plan, and not during the pendency of CIRP. In the present case, no resolution plan has yet been approved, and therefore, the bar under Section 32A does not come into operation.
- x.** It is also important to bear in mind that the object of the PMLA is distinct, i.e., to prevent money laundering and to confiscate "proceeds of crime", and if this Adjudicating Authority directs de-attachment of such property, it would amount to trenching upon the jurisdiction of a coordinate adjudicating authority under PMLA. The principle of harmonious construction requires that both statutes be allowed to operate in their respective fields, and the remedies provided under PMLA (Sections 8, 26, 42) are available to the Applicant.
- xi.** Accordingly, this Adjudicating Authority, deriving its jurisdiction from the provisions of the Code, lacks the authority to adjudicate upon an order issued by the Adjudicating Authority under PMLA or to direct the Enforcement Directorate to release the attachment.
- xii.** In view of the above discussion, we are of the considered opinion that this Adjudicating Authority under the IBC does not have jurisdiction to interfere with or set aside attachment orders passed and confirmed under PMLA. The remedy of the Applicant lies before the appropriate forum under the PMLA and not before this Adjudicating Authority.

xiii. The Applications i.e. **I.A. 4373 of 2021 and I.A. 5680 of 2023** filed by the Applicant under section 60(5) of the Code are accordingly **dismissed** as being devoid of merit.

No order as to costs.

-SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

-SD/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

I.A. NO. 6351 OF 2023
IN
C.P. IB NO 843 (ND) OF 2018

IN THE MATTER OF:

INGRAM MICRO INDIA PVT. LTD.

...Operational Creditor

Versus

DR. JAIN VIDEO ON WHEELS LTD.

... Respondent

AND IN THE MATTER OF:

PLUM SALONS PVT. LTD.

...Applicant

Versus

COMMITTEE OF CREDITORS, DR. JAIN VIDEO ON WHEELS LTD.

...Respondent No.1

MR. VIKRAM KUMAR,

Resolution Professional of Dr. Jain Video on Wheels Ltd.

...Respondent No.2

SPSS INFRASTRUCTURE PVT. LTD.

...Respondent No.3

Order Delivered on: 02.09.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. Bhargav Thali, Advocate.

For the RP : Mr. Abhishek Anand, Mr. Karan Kohli, Ms.
Vaishnavi, Advocates.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application is filed on behalf of Plum Salons Pvt. Ltd. under section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") seeking the following reliefs:

- a. *Direct an inquiry and investigation in respect of the eligibility of the Respondent No 3 and the declarations and statements made by in the CIRP of the Corporate Debtor either through the Resolution Professional or appointment of an independent committee/forensic auditor/SFIO;*
- b. *Direct the Respondents to place on record before this Hon'ble Tribunal all records, including net-worth certificates of the Respondent No 3, reports prepared under S 29A of the IBC, 2016, minutes of the CoC meetings pertaining to the financial eligibility and compliance of the Respondent No 3 under S 29A, IBC, 2016;*
- c. *Declare the Respondent No 3 to be ineligible to submit a Resolution Plan, and consequently reject the Resolution Plan of the Respondent No 3;*
- d. *Direct the CoC/Respondent No 1 to reconsider the Resolution Plan of the Applicant;*
- e. *In the interim, stay proceedings pertaining to the acceptance of the Resolution Plan of the Respondent No 3 during the pendency of the present Application;*
- f. *Pass ad-interim, including ad-interim ex-parte reliefs in terms of the above; and*
- g. *Pass any other/further order(s) as this Hon'ble Adjudicating Authority may deem fit and proper to secure the ends of justice.*

2. SUBMISSIONS OF THE APPLICANT:

i. The Corporate Insolvency Resolution Process of the Corporate Debtor commenced pursuant to the Order dated 03.06.2021 passed by this Hon'ble Tribunal in a Section 9 Application filed by Micro Ingram India Pvt. Ltd being CP (IB) No 843/ND/2018.

- ii.** Pursuant to the commencement of the CIRP of the Corporate Debtor, the Respondent No 2 came to be appointed as the Resolution Professional of the Corporate Debtor. The appointment of the Resolution Professional was confirmed by this Adjudicating Authority vide order dated 13.08.2021.
- iii.** Initially, pursuant to a Form G published by the Respondent No 2 in September 2021, the Applicant herein submitted its Resolution Plan, which came to be rejected by the Respondent No 1 on 01.04.2022, and the Respondent No. 1 voted in favour of liquidation of the Corporate Debtor.
- iv.** However, pursuant to an Application being IA No 2185/2022 filed by the Applicant herein, this Adjudicating Authority, vide Order dated 15.05.2023, directed the Respondent No. 2 to reconsider the Resolution Plan of the Applicant and also issue a fresh Form G for invitation of fresh Resolution Plans in respect of the Corporate Debtor.
- v.** On 14.06.2023, the Respondent No 2 published a fresh Form G in the Business Standard (Hindi and English Edition) New Delhi. Simultaneously, the Respondent No 2 also issued a Request for Resolution Plans (RFRP) dated 16.06.2023, setting out therein the parameters for participation by prospective Resolution Applicants. Clause 1.9.3 of the said RFRP mandates that only a body corporate (i.e. company) having a minimum net worth of Rs. 3 Crores and above for the Financial Year ending 31.03.2023 would be considered eligible to submit a Resolution Plan in respect of the Corporate Debtor. As such, it is clear that any company, which did not meet such eligibility criteria could not and would not have qualified to submit its Resolution Plan in the CIRP of the Corporate Debtor.
- vi.** Pursuant to the Form G dated 14.06.2023 and the RFRP dated 16.03.2023, the Applicant herein (being qualified to participate) submitted its Resolution Plan on 10.08.2023. Along with the Applicant, the Respondent No 3 and one Subhlaxmi Investment Advisory Pvt. Ltd. (Subhlaxmi) also submitted their respective Resolution Plans with the Respondent No 2 around the same time. It is a matter of record that pursuant to requests and suggestions by the Respondent No 1, the Applicant herein has revised its Resolution Plans on several occasions.

- vii.** Sometime in the beginning of September 2023, the Punjab National Bank (being lead members of the Respondent No 1- CoC), requested the Respondent No 2 to adopt an inter-se challenge method between the Resolution Applicants so as to presumably derive maximum value for the Corporate Debtor. The Applicant, along with the Respondent No 3 participated in the said inter-se challenge method. Accordingly, thereafter, the Applicant herein submitted its revised Resolution Plan in terms of the outcome of the said inter-se challenge, and remained under the belief that it has submitted the most competitive Resolution Plan. The Respondent No 3 also submitted its revised Resolution Plan with the Respondent No 2.
- viii.** The said plans were put to e-voting before the Respondent No 1 sometime towards the end of September 2023, and the Applicant thereafter awaited the outcome of such e-voting remaining under the belief that it was the highest/H-1 bidder in the process. The results of the voting were shared with the Applicant only after about a month of the voting, and only pursuant to repeated requests from the Applicant.
- ix.** While things stood thus, the Applicant herein received documents from an anonymous/unknown source which purport to suggest that the Respondent No 3 did not meet the minimum financial eligibility criteria to participate in the process and the Respondent No 3 is a benami company, with the real identity of its actual promoter being hidden. The said package contained documents which inter alia purport to be bank statements of the Respondent No 3 and the ITR statements of the alleged Promoter of the Respondent No 3. A perusal thereof would show the following:
- a. The bank statements show the entire capital structure of the Respondent No 3 is bogus which has been generated and increased by rerouting and laundering of monies through repeated cyclical bank transactions in the period between 12.06.2023 and 14.06.2023, i.e. immediately preceding the issuance of the Form G on 14.06.2023. A sum of Rs. 2 Crores appears to have been cycled between the Respondent No 3, the purported Promoter, and some third party about 10 times, between 12.06.2023 and 14.06.2023; and

- b. The ITR of the purported promoter of the Respondent No 3 for the last FY, whereunder it is clear that his declared income of Rs. 4.90 Lacs is not commensurate with his purported investment in the Respondent No 3.
- x.** Having been shocked upon a perusal of the said documents, yet being unsure, the Applicant conducted an inspection of the documents of the Respondent No 3 as available with the ROC. Upon perusal of the same, the following facts emerged:
- a.** The Respondent No 3 was only incorporated on 14.03.2023.
 - b.** A Form INC-20A and bank statement (of ICICI Bank) attached therewith, shows that the initial paid-up capital of Rs. 1,00,000/- (Rupees One Lacs) was paid-up into the bank account of the Respondent No 3 only on 12.06.2023. As such, it appears that between 14.03.2023 and 12.06.2023, the Respondent No 3 did not have any paid-up capital in the company with its bank account only having a sum of Rs. 40,000/- until such date.
 - c.** Furthermore, from a Form MGT-14 and a Form SH-7 (filed on 13.06.2023), and a notice attached therewith, it appears that it only on 22.05.2023, was the authorised capital of the Respondent No 3 was purported to be increased to Rs. 20 Crores.
 - d.** On 21.06.2023, the Respondent No 3 uploaded a Form PAS-3 whereby it appears that the paid-up capital of the Respondent No 3 was increased to Rs. 20 Crores pursuant to allotment of shares worth Rs. 19,99,00,000/- on a rights basis between the promoters. Coincidentally, the allotment of shares and increase in the share capital of the Respondent No 3 took place immediately pursuant to the multiple cyclical bank transactions of Rs. 2 Crores each between the Respondent No 3, its promoter and a third entity in the period between 12.06.2023 and 14.06.2023.
 - e.** The Applicant issued a Notice dated 15.11.2023 (through counsel) to the Respondent Nos 1-2, bringing the above-mentioned information to their notice, and requested them to look into the matter so as to avoid any derailment of the CIRP of the Corporate Debtor.

- f.** Despite the above being brought to the notice of the Respondent Nos 1-2, no action has been taken by them to inquire into the bona fides and eligibility of the Respondent No 3. Instead, the Respondents are choosing to ignore the serious apprehensions against the Respondent No 3 and have taken steps to seek approval of its Resolution Plan before this Hon'ble Tribunal.
- g.** It is evident from the above that the Respondent No 3, prima facie, appears to have participated in the CIRP of the Corporate Debtor on the basis of fraudulent and false declarations and statements. The facts set out above would show that the Respondent No 3 was not eligible in terms of the RFRP dated 16.06.2023, and that given the benami nature of its ownership, any due diligence conducted in respect of Section 29A of the IBC, 2016 also cannot be deemed to be correct. It would be evident that the benami owner has put up a front only to get over the rigours of Section 29A and consequently participate in the CIRP with extraneous and mala fide motives. As such, the participation of the Respondent No 3 in the CIRP of the Corporate Debtor, and its Resolution Plan are both non-est, and further render the Respondent No 3 to consequences under law.
- h.** It is further submitted that acceptance/ allowance of resolution plans of parties who actively attempt to mislead the CoC, Resolution Professional and this Hon'ble Tribunal must not and ought not to be permitted. The same is in gross contravention of the IBC, 2016 and its spirit. In the event such parties are permitted to participate in CIRPs and are rewarded with acceptance of resolution plans, the same would hamper the very purpose of the IBC, 2016, viz. a meaningful resolution of insolvent corporations for the benefit of its stakeholders.
- i.** The conduct of the Respondent No 3 in the instant process is deliberately aimed at defeating the objective of the IBC, 2016, and make unlawful gains at the cost and detriment to all stakeholders of the Corporate Debtor. It is submitted that the Applicant herein is also gravely prejudiced. It is the Applicant whose Resolution Plan stands prejudiced as a result of

the wrongful acceptance of the Resolution Plan of the Respondent No 3 on the basis of false declaration.

- j.** It is further evident that the Respondent Nos 1-2, despite being in receipt of the such information, remain unfettered in attempting to further reward the malicious intent of the Respondent No 3. As such, the Applicant is constrained to file the instant Application.
- xi.** To buttress its arguments, the Applicant relied on the following cases:
- a.** M.K. Rajagopalan v. Dr Periasamy Palani Gounder, (2024) 1 SCC 42.
 - b.** Kalyani Transco v Bhushan Power and Steel Ltd. & Ors, 2025 INSC 621.
 - c.** Rare Asset Reconstruction V. Mr. Subrata M Maity, I.A. (IBC)/105(CHE)/2021 in IBA/307/2019 before the Hon'ble NCLT, Chennai dt. 29.03.2022.
 - d.** Innoventive Industries v. ICIC Bank, (2018) 1 SCC 407.
 - e.** PRIO S.A. v Mr. Pravin R. Navandar, CA AT (INS.) No. 1650 of 2023 before the Hon'ble NCLAT, Delhi.
 - f.** Bipin Sharma v. Earth Infrastructure Ltd., CA AT (INS.) No. 1112 of 2020 before the Hon'ble NCLAT, Chennai dt. 27.04.2022.

3. SUBMISSIONS OF THE RESPONDENT NO. 2:

- i.** The 16th meeting of the CoC was convened by the Respondent No.2 on 16.06.2023, wherein, various matters were discussed by the Answering Respondent pertaining to approval of eligibility criteria for PRA's, approval of evaluation matrix, etc. Further, the Respondent No. 2 informed the members of the CoC with respect to Request for Resolution Plan ("RFRP") which is to be issued to the PRA's.
- ii.** The 17th meeting of the CoC was convened by the Answering Respondent on 18.08.2023, wherein, the Answering Respondent intimated the members of CoC that 3 (three) Resolution Plans were received by the Answering Respondent:
 - Plum Salons Private Limited
 - SPSS Infrastructure Private Limited
 - Subhlaxmi Investment Advisory Private Limited

- iii.** The 19th meeting of CoC was convened by the Answering Respondent on 28.08.2023 wherein, the Resolution Plan submitted by the PRA's were placed before the CoC for its approval and the said Resolution Plan were kept open for voting from 30.08.2023 to 08.09.2023.
- iv.** The Resolution Plans as received from the PRAS were put to voting on the 21st meeting of the CoC as convened by the Answering Respondent on 06.09.2023. That the e-voting commenced on 06.09.2023 and ended on 10.10.2023. The members of the CoC unanimously approved the Resolution Plan submitted by SPSS Infrastructure Pvt. Ltd.
- v.** It is submitted that the Appellant has no locus standi to seek the reliefs as sought in the present appeal. The Applicant submitted a resolution plan which was duly evaluated and analysed by the Committee of Creditors and the same was rejected by the Committee of Creditors, which is a commercial decision of the CoC and therefore, the Appellant has no locus standi to challenge the commercial decision of the Committee of Creditors. Reliance was placed on ***Shrawan Kumar Agrawal Consortium v Rituraj Steel Pvt Ltd, Company Appeal (AT) (INS) No. 1490 of 2019, IMR Metallurgical Resources AG V. Ferro Alloys Corporation Limited & Ors, Company Appeal (AT) (Insolvency) No. 272 of 2020, M.K. Rajagopalan v S. Rajendran & Ors, Company Appeal (AT) (CH) (INS) No. 58 of 2023.***
- vi.** The Applicant being unsuccessful resolution applicant cannot challenge the commercial wisdom of the CoC as it is paramount with limited judicial intervention.
- vii.** Reliance was placed on ***Arun Kumar Jagatramka Vs. Jindal Steel and Power Limited and Another, (2021) 7 SCC 474, Vallal RCK Vs. M/s Siva Industries and Holdings Limited and Others, Civil Appeal No. 1811-1812 of 2022, of IMR Metallurgical Resources AG Vs. Ferro Alloys Corporation Limited and Ors., C.A. (AT) (INS) No. 272 of 2020, Rajesh Kumar & Ors. Vs. Rabindra Kumar Mintri & Anr., C.A.(AT) (INS)No. 1489 of 2022, Committee of Creditors of Essar Steel India Limited Through Authorised Signatory v. Satish Kumar Gupta & Others, [2019 SCC Online SC 1478], Kalpraj Dharamshi & Anr. v. Kotak Investment***

Advisors Ltd. & Anr., Civil Appeal Nos. 2943-2944 of 2020, Arun Mittal & Anr. v. Narmada Cereals Pvt. Ltd. & Ors., Company Appeal (AT) (Ins) No. 161 of 2022, K. Sashidhar v Indian Overseas Bank & Ors, Civil Appeal No. 10673 of 2018.

- viii.** In view thereof, it is quite clear that the Applicant by way of the present Application is indirectly trying to raise the issue of Respondent No. 3 being barred under Section 29A of the Code by stating frivolous and ambiguous averments. It is further submitted that an undertaking qua eligibility of Respondent No. 3 on affidavit under Section 29A of the Code has also been filed after thorough check and consideration by the Answering Respondent herein.
- ix.** The Applicant has raised the following contentions in its application, which are neither maintainable nor the same holds any ground qua the objections raised by the Applicant: -

| S.NO. | OBJECTION | SUBMISSION |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Capital Structure of Respondent No.3 is bogus as the same has been generated and increased by rerouting and laundering of monies through repeated cyclical bank transactions | The Applicant has neither stated any ineligibility or disqualification of any of the provisions of the Code qua the Resolution Applicant. However, merely on apprehensions, without there being a judicial order passed any Court or Tribunal to declare that the Capital Structure of Resolution Applicant is bogus as the same has been generated and increased by rerouting and laundering of monies through repeated cyclical bank transactions has alleged the same. In the |

| | | |
|---|----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | absence of any order by any Court of Law declaring the same, the objection raised by the Applicant is clearly misconceived and contrary to the provisions of the Code. Even otherwise, the issue that eligibility is to be tested on the date of submission of plan is not <i>res integra</i> . |
| 2 | ITR of promoter of Respondent No.3 for the last F.Y. has declared income of Rs. 4.90 lacs do not commensurate with the purported investment in Respondent No.3 | That the contention of the Applicant to consider the ITR of the promoter of Respondent No.3 is clearly misconceived as the Resolution Applicant is a separate legal entity being SPSS Infrastructure Pvt Ltd and the promoter of Respondent No.3 is not the Resolution Applicant. Thus, the ITR of the promoter of Respondent No.3 has no bearing in so far as eligibility criteria is concerned or for the purposes of evaluating the sources of funds by the Committee of Creditors. |
| 3 | No paid-up capital between 14.03.2023 and 12.06.2023. Paid up Capital increased on Rs. 20 crores and consequential allotment of Shares | That the contention of the Applicant is further misconceived. As per the Hon'ble Supreme Court the eligibility is to be checked as on the date of submissions of resolution plan. Further, the Committee of Creditors in its commercial wisdom has approved the resolution plan. |

- x. Respondent No.3 was incorporated on 14.03.2023 and therefore, as per Section 3(2) of the Income Tax Act it will be deemed that the said Assessee will have no previous year for the said assessment year and thus the same would not apply to Respondent No.3. Accordingly, the Respondent No.3 submitted its net-worth Certificate duly certifying the net-worth criteria as on 15.06.2023. Therefore, the contention of the Applicant is not only misconceived but the same is contrary to the position of law.

- xi.** Even otherwise, without prejudice to the above, it is submitted that the Hon'ble Supreme Court has settled the position of law that eligibility of a Resolution Applicant is required to be seen and considered at the time of submission of resolution plan.
- xii.** Reliance was placed on ***Hari Babu Thota, Civil Appeal No. 4422/2023, Arcelormittal India Private Limited Vs. Satish Kumar Gupta & Ors., (2019) 2 SCC 1.***
- xiii.** Admittedly, the Applicant was a Prospective Resolution Applicant and was granted an opportunity in terms of Regulation 36A(11) of IBBI (CIRP) Regulations, 2016 whereby the Applicant could have objected to the inclusion of SPSS Infrastructure Pvt Ltd in the Provisional List within a period of 5 days. However, admittedly, no objection was ever raised by the Applicant at the relevant period of time. It is submitted that the Provisional List was circulated on 08.07.2023 and the period to raise any objection expired 13.07.2023. Admittedly, no objection was ever raised by the Applicant at the relevant period of time. Reliance was placed on ***IDBI Trusteeship Ltd. v. Reliance Broadcast Network Ltd., CP(IB) No. 310 of 2022*** and ***Singh Raj Singh v. SRS Meditech Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 522 of 2020.***
- xiv.** It is only for the first time, the Applicant raised the alleged and frivolous contentions on 15.11.2023 i.e. after the resolution plan of SPSS Infrastructure Pvt Ltd was approved by the Committee of Creditors and the resolution plan of the Applicant was rejected.
- xv.** The CoC already approved resolution plan and the same is pending approval before the Adjudicating Authority. Reliance was placed on ***Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited in Company Appeal (AT)(Ins) No 1490 of 2010.***
- xvi.** It has been held in a catena of judgments including the latest judgment of the Hon'ble Supreme Court in the matter of ***Ebix Singapore Private Limited versus Committee of Creditors of Educomp Solutions Limited & Anr. in Civil Appeal No. 3224/2020***, that time is of essence of the Insolvency and

Bankruptcy Code, 2016 and that CIRP process must be completed within the timelines provided in the code and underlying Regulations.

xvii. It is submitted that in fact the CoC in its 19th CoC meeting convened on 29.08.2023 considered the net worth of all the three PRA's wherein it was also discussed that while the net worth of Applicant is only Rs. 350.64 Lacs, however, the financial value of Resolution Plan of the Applicant is Rs. 982 Lacs. The CoC whilst approving the Resolution Plan of Respondent No. 3 took note of all the aspects of all the three Resolutions Plans and ultimately in its commercial *wisdom approved the Resolution Plan of Respondent No. 3.*

4. SUBMISSIONS OF RESPONDENT NO. 3:

- i.** The Resolution Plan submitted by the Successful Resolution Applicant (SRA)- Respondent No. 3 herein has been accepted by 100 % voting of the Committee of Creditors (CoC). It is a settled preposition of law that the Adjudicating Authority cannot under judicial review trespass upon a business decision of the majority of the Committee of Creditors. The CoC in its wisdom by taking all relevant factors into account with respect to the plans submitted by the Resolution Applicants have arrived at its commercial decision that the answering respondent would be in a better position to pay off the creditors of the Corporate Debtor and also will maximize the value of the assets of the corporate debtor. The law is well settled in this regard. As such, the applicant herein cannot seek to mark upon an enquiry by this Hon'ble Court into the commercial decision of the 100% of the COC. It is for the COC to decide as to which of the Resolution Applicant would be in a better position to pay of the creditors in a time bound and effective manner. Therefore, the application filed by the Unsuccessful Resolution Applicant deserves an outright dismissal on this legal ground itself.
- ii.** The eligibility criteria provided in the detailed expression of interest issued by the Resolution Professional (RP) did not provide any specific date and only mentioned the term “immediately preceding financial year”, contradictory to what the applicant has been alleging in this IA that the Net Worth should be as on 31-03-2023.

- iii.** The Applicant is harping upon the condition of having a minimum of 3 crores and above in the immediately preceding financial year. In this regard it is submitted that the SRA-Company was incorporated on 14.03.2023 as a new company, as such the said condition was 'preceding financial year' would not apply in case of the company which has been incorporated for the first time on 14.03.2023 i.e. just 16 days before 31.03.2023. Further, the net worth of SRA has been certified by the Chartered Accountant vide certificate dated 15.06.2023 as 19.80 crores and as per certificate dated 05.09.2023, it is 19.76 crores in comparison to the net worth of Unsuccessful Resolution Applicant, Applicant herein of just 3.5 crores. Further, the Applicant has conveniently referred to the condition of minimum net worth before this Adjudicating Authority, but has not referred to Clause B of the Expression of Interest (EOI) wherein the COC and RP has been provided with the power upon consideration of the entire facts and circumstances to waive off a particular condition in their best discretion and wisdom. The entire state of facts was available before the COC in the form of all requisite documents of the SRA and as such in its true wisdom, the COC by 100% majority has approved the Resolution Plan submitted by the SRA-Respondent No. 3.
- iv.** Even if the net worth as on 31.03.2023 is required to be considered in case of the SRA-respondent no.3, the last date for submission of Expression of Interest (EOI) as per FORM G dated 13.06.2023 was 03.07.2023 and the last date for filing objections was 08.07.2023. The said Resolution Plans were considered and approved by the COC in its 17th and 18th Meeting held on 18.08.2023 and 22.08.2023. As such, on the date of consideration by the COC, the SRA was meeting the net worth condition, as is clear on perusal of the certificates granted by the CA. The law is well settled in this regard. As such, the wisdom of the COC in ascertaining a commercial decision as to which of the Resolution Applicants would serve their interests in a better way cannot be questioned in a court of law and that too by an Unsuccessful Resolution Applicant. Therefore, the Application deserves to be dismissed on this score as well.

v. The Applicant has further referred to various banking transactions of the promoter of the SRA-Respondent No. 3. In this regard it is submitted that such banking transactions cannot under any law of land can be made a ground to set aside a commercial wisdom of the COC, who by 100% vote have accepted the Resolution Plan submitted by the SRA-Respondent No. 3. The Applicant cannot by invoking the provisions of Section 60 (5) of the IBC, 2016 seek directions from this Hon'ble Court to set aside a commercial wisdom of the COC, who by 100% vote have considered and decided that the SRA-Respondent No. 3 would be most suitable to pay off the creditors of the Corporate Debtor. Such a direction sought by the Applicant is unknown to law, as such, the application filed by the applicant deserves to be dismissed.

5. ANALYSIS AND FINDINGS:

- i. We have heard the submissions made by the learned counsel for both the Applicant and the Respondents and have perused the documents placed on record.
- ii. The present Application has been filed by *Plum Salons Pvt. Ltd.*, an unsuccessful Resolution Applicant, under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking, inter alia, inquiry into the eligibility of Respondent No. 3 – *SPSS Infrastructure Pvt. Ltd.*, a declaration of its ineligibility under Section 29A, rejection of its Resolution Plan, and reconsideration of the Applicant's own plan.
- iii. The Applicant contends that Respondent No. 3 was incorporated only in March 2023 and did not meet the eligibility criteria of minimum net worth of ₹3 crores as stipulated in the RFRP dated 16.06.2023. According to the Applicant, Respondent No. 3 inflated its share capital through circular banking transactions immediately prior to issuance of Form G. The Applicant submits that such acts were fraudulent and designed to circumvent Section 29A of the Code. It is argued that despite bringing these facts to the notice of the CoC and Resolution Professional, no inquiry was undertaken, and instead the CoC has proceeded to approve the plan of Respondent No. 3, thereby prejudicing the Applicant's plan.

- iv.** The Resolution Professional (Respondent No. 2) and Respondent No. 3 have opposed the application. It is submitted that three Resolution Plans were duly received and placed before the CoC, which after deliberation approved the plan of Respondent No. 3 by 100% voting share. The eligibility of Respondent No. 3 was considered by the CoC on the basis of documents and net worth certificates. It is further submitted that the Applicant, being an unsuccessful Resolution Applicant, has no locus standi to challenge the commercial wisdom of the CoC. Reliance is placed on several decisions of the Hon'ble Supreme Court and NCLAT to contend that judicial review cannot extend to questioning the merits of a commercial decision taken by the CoC. Respondent No. 3 additionally submits that its net worth stood at ₹19.80 crores as certified by a Chartered Accountant, which was considered by the CoC, and that the Applicant's allegations are misconceived and belated.
- v.** It is not in dispute that the Resolution Plan submitted by Respondent No. 3 has been approved by the CoC with 100% voting share, whereas the plan of the present Applicant did not find favour. It is now well settled through a catena of judgments including **K. Sashidhar v. Indian Overseas Bank [(2019) 12 SCC 150]**, **Committee of Creditors of Essar Steel v. Satish Kumar Gupta [(2019) SCC Online SC 1478]**, **Vallal RCK v. Siva Industries [(2022) 8 SCC 664]** that the commercial wisdom of the CoC is paramount and the Adjudicating Authority cannot sit in appeal over such decision, save and except on limited grounds provided in Section 30(2) of the Code.
- vi.** The above-quoted judgements make it clear that the "Commercial wisdom of CoC" is to be given paramount status. This Adjudicating Authority is not endowed with the powers of jurisdiction or authority to analyse or evaluate the commercial decision of the CoC.
- vii.** In the present case, the objections sought to be raised by the Applicant pertain to alleged financial ineligibility of Respondent No. 3 and supposed irregularities in its funding structure. These contentions were neither raised at the appropriate stage in terms of Regulation 36A(11) of the CIRP Regulations. The CoC, being fully aware of the documents and net worth certificates, deliberated

upon all plans and, in its commercial wisdom, chose to approve the plan of Respondent No. 3 unanimously.

- viii.** Further, the Applicant, being an unsuccessful Resolution Applicant, cannot claim any vested right to have its plan reconsidered. The settled position of law is that an unsuccessful Resolution Applicant has no locus to challenge the decision of the CoC once its plan has been rejected. Entertaining such belated challenges would derail the time-bound nature of the CIRP and run contrary to the very objective of the Code. This is rooted in the principle that CIRP must remain efficient and insulated from unwarranted challenges, ensuring the timely resolution of corporate insolvencies.
- ix.** Insofar as the judgments relied upon by the Applicant are concerned, the same are distinguishable on facts and do not advance the case of the Applicant in the present matter.
- x.** Accordingly, we find no merit in the present application.
- xi.** In view of the aforesaid facts and circumstances, especially that the Appellant do not have any locus standi to maintain the application bearing **I.A No. 6351 of 2023**, the Application stands **dismissed**.
- No order as to costs.

-SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

-SD/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**