

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 411 of 2022**

In the matter of:

**Ashok Kumar Sarawagi,
Resolution Professional of Kohinoor Steel Private
Limited
Vs.**

....Appellant

Enforcement of Directorate & Anr.

...Respondents

**For Appellant: Mr. Ratnanko Banerji, Senior Advocate with Ms.
Prachi Gulati, Advocate.**

**For Respondents: Mr. Zoheb Hossain, Mr. Vivek Gurnami, Advocates
for R1.**

ORDER

(Through Virtual Mode)

09.05.2022: Heard Shri Ratnanko Banerji, Learned Senior Counsel for the Appellant and Shri Zoheb Hossain, Learned Counsel appearing for the Respondent.

2. This Appeal has been filed against the order dated 02.03.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in C.P. (IB) No. 82/KB/2019 deciding I.A (IB) No. 74/KB/2022. I.A (IB) No. 74/KB/2022 was filed by the Appellant- Resolution Professional praying for following reliefs:-

“a) Declaration that the Provisional Attachment Order dated December 30, 2021 is null and void and not binding on the Corporate Debtor and the same be ordered to be quashed and/or set aside;

b) Stay of operation of the Provisional Attachment Order dated December 30, 2021;

- c) *Order of injunction restraining the Respondents from giving any effect or further effect to and/ or taking any steps or further steps on the basis of the Provisional Attachment Order dated December 30, 2021;*
- d) *Ad-interim orders in terms of prayers above;*
- e) *Costs of this application be paid by the Respondents;*
- f) *Such further orders or directions be passed as this Hon'ble Tribunal may deem fit and proper."*

3. The Provisional Attachment order passed by the PMLA Court was under challenge in the said I.A, the Adjudicating Authority, after considering the submissions of the parties, made following observations in paragraphs 50 and 52:-

*"50. The Ld. Counsel appearing for the Enforcement Directorate has also referred to the order dated 2nd of May, 2019 passed by the National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 493 of 2019 titled **Varrsana Ispat Limited Vs. Deputy Director of Enforcement** passed on 2nd of May, 2019 wherein it was held that "it is clear that the 'Prevention of Money-Laundering Act, 2002' relates to 'proceeds of crime' and the offence relates to 'money-laundering' resulting in 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 relate to 'proceeds of crime', we hold that Section 14 of the IBC is not applicable to such proceedings".*

52. We have heard the Ld. Counsel for both the parties and perused the record available before this Adjudicating Authority

We are of the view that this Adjudicating Authority, with utmost regard to the order relied upon by the Applicant, is bound by the order dated 3rd of January, 2022 passed by Hon'ble 3 Member Bench of NCLAT which took the view that NCLT is not empowered to

deal with the matters falling under PMLA. In the present case since notice impugned has been issued under the Prevention of Money Laundering Act, 2002 therefore, this application is not maintainable and the same is hereby rejected.”

4. Consequently, I.A (IB) No. 74/KB/2022 was dismissed.

5. Learned Counsel for the Appellant has placed reliance on the judgment of this Tribunal in **“The Directorate of Enforcement v. Manoj Kumar Agarwal- Company Appeal (AT) (Ins.) No. 575 of 2019”** decided on 09.04.2021. He submits that the said judgment has correctly interpreted the provisions of the IBC and the PMLA Act.

6. Shri Zoheb Hossain, Learned Counsel appearing for the Respondent submits that the Adjudicating Authority has correctly relied on the subsequent three Member Bench decision of this Tribunal in **“Kiran Shah v. Enforcement Directorate- Company Appeal (AT) (Ins.) No. 817 of 2021”** decided on 03.01.2022. It is submitted that Kiran Shah’s Judgment has relied on earlier judgment of this Tribunal in **“Varrsana Ispat Limited Vs. Deputy Director of Enforcement- Company Appeal (AT) (Insolvency) No. 493 of 2019”** which stood approved by the Hon’ble Supreme Court also.

7. We have considered the submissions of the Learned Counsel for the parties and perused the record.

8. The issue which has been raised before us is covered by Three Member Bench Judgment in Kiran Shah. Submissions which are sought to be raised by the Counsel for the Appellant were noticed and answered by Three Member

Bench. We may refer to paragraphs 109 and 110 of the Kirah Shah' Judgment, which is to the following effect:-

"109. In so far as the decision in Manoj Kumar Aggarwal case is concerned (reported in 2021 SCC OnLine NCLAT 121), this 'Tribunal' is of the considered opinion that the said decision runs contra to the 'Principle of Stare Decisis'.

110. As far as the present case is concerned, the 'Appellant/Resolution Professional' even though has filed Company Appeal (AT)(Ins) No. 817 of 2021 being dissatisfied with the order dated 31.12.2020 in IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 [filed by the Applicant/IRP for KSL Industries Ltd./Corporate Debtor under Sections 14,18,25 & 60(5) of Code] seeking to set aside the 'Attachment of the Property of the 'Corporate Debtor' by the Respondent/ Enforcement Directorate vide order dated 24.10.2019 passed by the 'Adjudicating Authority' PMLA etc., this 'Tribunal' makes it candidly clear that filing of Application under Section 60(5) of the I & B Code is not an 'all pervasive' one, thereby conferring 'Jurisdiction' to an 'Adjudicating Authority' (NCLT) to determine 'any question/issue of priorities', question of Law or Facts pertaining to the 'Corporate Debtor' when in reality in 'Law', the 'Adjudicating Authority' (NCLT) is not empowered to deal with the matters falling under the purview of another authority under PMLA. Viewed in that perspective, IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 filed by the Applicant/IRP for KSL & Industries Ltd is held by this 'Tribunal' as not maintainable in law. Resultantly, the Appeal fails."

9. Learned Counsel for the Respondent is also right in submission that against the judgment of this Tribunal dated 02.03.2019 in "**Varrsana Ispat Limited**", Civil Appeal No. 5546 of 2019 was filed by Varrsana Ispat Ltd. which Civil Appeal was dismissed on 22.07.2019. The judgment of Varrsana has been relied by Three Member Bench in Kiran Shah.

10. We are of the view that the Adjudicating Authority did not commit any error in rejecting the I.A (IB) No. 74/KB/2022 filed by the Resolution Professional challenging the order passed by the PMLA Court, we do not find any merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Shreesha Merla]
Member (Technical)**

Anjali/nn