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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 23rd May, 2023

+ **W.P.(C) 3852/2022 & CM APPL. 27740/2023**
FROST INTERNATIONAL LTD & ORS. Petitioners
Through: Mr Shahan Ulla & Mr. Krishan Kumar, Advs. (M:9871452750)

versus

DIRECTORATE OF ENFORCEMENT & ANR..... Respondents
Through: Mr. Zoheb Hossain, Counsel for the ED with Mr. Vivek Gurnani, Mr. Kavish Garach and Mr. Vivek Gaurav, Advs. (M: 9769842146)

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned judgment dated 28th February 2022 passed by the Adjudicating Authority in Original Complaint No. 1503 of 2021 and the impugned Provisional Attachment Order No. 09 of 2021 (*hereinafter* 'PAO') dated 28th June, 2021 whereby certain assets of the Petitioners have been attached under Section 8 of the Prevention of Money Laundering Act, 2002 (*hereinafter* 'PMLA'). The details of the properties are as under-

<i>Sr. No.</i>	<i>Property Holder</i>	<i>Description of Property</i>	<i>Value in Rs. (in Crores)</i>
1.	M/s Frost International Limited	402, Kalpana Plaza, 24/147 B, Birhana Road, Kanpur	0.90
2.	M/s Frost International Limited	Half office accommodation no.403, Kalpana Plaza, 24/147 B, Birhana Road, Kanpur	0.41
3.	M/s Frost International Limited	Half office accommodation no.403, Kalpana Plaza, 24/147 B, Birhana Road, Kanpur	0.41

4.	M/s Frost International Limited (earlier known as Meta Cam)	410, Kalpana Plaza, 24/147 B, Birhana Road, Kanpur	0.33
5.	M/s Frost International Limited	411, Kalpana Plaza, 24/147- B, Birhana Road, Kanpur	0.29
6.	M/s. R.S. Builders Pvt. Ltd.	One Part of 114/107, Lakhanpur, Kanpur.	1.76
7.	Smt. Suman Jayant Desai (since expired on 06.01.2019) and Mr. Uday Jayant Desai	One Part of 114/107, Lakhanpur, Kanpur.	1.76
8.	M/s Frost International Limited	Property C-69, Okhla Industrial Area, Phase-I, New Delhi.	11.13
9.	M/s Frost International Limited	S-279, Panchsheel Park, New Delhi.	13.61
10.	Mr. Sunil Lalchand Verma	510-511, B-Wing, Crystal Plaza, Andheri West, Mumbai.	1.54
11.	Smt. Nilima Uday Desai and Rita Sunil Verma	D-954, 3 rd Floor, New Friends Colony, New Delhi.	8.90
12.	Mr. Anoop Kumar Baldevraj Wadhera and Smt. Poonam Anoop Kumar Wadhera	T-18/1, DLF City Phase3, Gurgaon, Haryana	5.92
13.	Mr. Anoop Kumar Baldevraj	T-18/2, DLF City Phase3, Gurgaon, Haryana	4.12

	<i>Wadhera and Smt. Poonam Anoop Kumar Wadhera</i>		
14.	<i>M/s Frost International Limited</i>	<i>C-70, Okhla Ind. Estate, Phase-I, New Delhi.</i>	<i>11.13</i>
15.	<i>M/s Frost International Limited</i>	<i>907-908, 9th Floor, The Meadows Tower, Sahar Plaza, Kondvita Village, J.B. Nagar, Andheri (East), Mumbai 400059</i>	<i>6.75</i>
16.	<i>M/s Frost International Limited</i>	<i>909-910, 9th Floor, The Meadows Tower, Sahar Plaza, Kondvita Village, J.B. Nagar, Andheri (East), Mumbai 400059</i>	<i>7.59</i>
17.	<i>M/s Frost International Limited</i>	<i>Office Space 4, 4A, 4B, 4C, 4D on the third floor at SB Tower premises no.37, Shakespeare Sarani, Ward 63 of KMC Kolkata</i>	<i>10.09</i>
18.	<i>M/S Globiz Exim Pvt. Ltd.</i>	<i>Shop No.1 to 4, Oberoi Chambers-I, CTS No.645, Village Oshiwara, Andheri West, Mumbai.</i>	<i>18.36</i>
19.	<i>M/s NSD Nirman Pvt. Ltd.</i>	<i>Shop 101 to 108, 1st Floor, Oberoi Chambers I, Plot bearing CTS No.645 and 646, Off Link Road, Village Oshiwara, Andheri West, Mumbai-40058</i>	<i>23.69</i>
20.	<i>M/s Frost International Limited</i>	<i>Apartment No.T-22, 401, Tower 22, Apt. No.401, third Floor, admeasuring 2830.04 sq. ft., Commonwealth Games Village, National Highway-24, Adjacent to Akshardham Temple, Noida Crossing, Delhi-110092.</i>	<i>7.02</i>
21.	<i>M/s Frost International Limited</i>	<i>Office Unit No. 709, 7th Floor, C Wing bldg.. One-BKC, Bandra Kurla Complex, G Block Plot No. C-66, Bandra (E), Distt.</i>	<i>44.45</i>

		<i>Mumbai-40051 in the name of Frost International Limited</i>	
22.	<i>M/s Frost International Limited</i>	<i>Residential Flat on Ground Floor of Plot No. 38 Block-E, Greater Kailash Part-1, New Delhi.</i>	<i>5.14</i>
23.	<i>M/s Frost International Limited</i>	<i>Land at SF No 188/3A, Village KalanagaRajpatti, Tuticorin, Tamilnadu.</i>	<i>0.026</i>
24.	<i>M/s Frost International Limited</i>	<i>Land at S.F. No 338/8A, Sayamalai, Tirunelveli, Tamilnadu.</i>	<i>0.0325</i>
25.	<i>M/s Frost International Limited</i>	<i>Land at S.F. No 22/1 Chittikalam Tirunelveli, Tamilnadu.</i>	<i>0.0375</i>
26.	<i>M/s Frost International Limited</i>	<i>Land at S.F. No 96/1A & 96/1B, Village Mahendravadi, Tirunelveli, Tamilnadu.</i>	<i>0.03</i>
27.	<i>M/s Frost International Limited</i>	<i>Land at S.F. No 100/2 & 100/3, Village KalanagaRaipatti, Tuticorin, Tamilnadu.</i>	<i>0.028</i>
28.	<i>M/s Frost International Limited</i>	<i>Office No. 406 Shail's Mall Changispur, Taluka City, Ahmedabad, in name of FIL</i>	<i>0.19</i>
29.	<i>M/s Frost International Limited</i>	<i>516, Kalpana Plaza, 24/147-B, Birhana Road, Kanpur.</i>	<i>0.2085</i>
Total			Rs.185.85 Crores.

3. The case of the Petitioners was that the 180 days period after the PAO was passed, as prescribed under the PMLA, has expired. Thus, the confirmation of the same is contrary to law.

4. Initially, vide order dated 7th March, 2022, the present petition had been dismissed on the ground of *forum non-conveniens*.

5. This order was challenged in a Letters Patent Appeal being LPA No.262/2022 wherein the matter was remanded to this Court.

6. On 19th April, 2022, after considering the submissions made, the following interim order was passed the operative portion of which is extracted hereunder.

“2. The challenge in the present petition is to an order passed by the Adjudicating Authority confirming a provisional attachment order in terms of Section 8 of the Prevention of Money Laundering Act, 2002 (PMLA).

*3. The Court is apprised that the appellate authority is yet to be constituted and consequently, the petitioner is constrained to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Attention of the Court has further been invited to orders of final disposal passed by the Court on numerous other writ petitions raising identical challenges. For the purpose of evaluating, prima facie, the merits of the challenge raised, the Court takes note of the submission that the Adjudicating Authority proceeded to confirm the order of provisional attachment after the expiry of a period of 180 days. It is in that context reliance is placed on the decision rendered by a learned judge of the Court in the case of **Vikas WSP and Others Vs. Directorate Enforcement and Another**, 2020 SCC Online Del. 1732. The Court also notes that an LPA has been preferred against the said decision and on which on 08.01.2021, directions were framed for parties to maintain status quo with regard to ownership, possession and encumbrance upon the attached properties.*

*4. Matter requires consideration. **Till the next date of listing, the respondent shall stand restrained from taking further steps as contemplated under Section 8 of the PMLA. The petitioner shall also stand restrained from disposing of or creating any third party rights or encumbering the properties which form subject matter of the provisional order of***

attachment.”

7. The matter has since then been pending and the interim order is continuing.

8. Today, an application has been moved on behalf of the Petitioner No.1 Company-Frost International Limited through the Resolution Professional (*hereinafter* ‘RP’) as the company has now gone into insolvency proceedings. Proceedings have commenced in the National Company Law Tribunal (‘NCLT’). Further, vide order dated 9th February, 2023, the NCLT has declared a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (*hereinafter* ‘IBC’).

9. In addition, the RP- Mr. Amit Chandrakant Shah has been appointed to handle the day to day affairs of the company and to carry out the mandate as directed by the NCLT.

10. The submissions on behalf of the company by Id. Counsel representing the RP is that since a large number of assets of the company have been attached, the resolution process itself has been adversely affected. Accordingly, he prays that the interim order granted ought to be vacated.

11. Mr. Zoheb Hussain, Id. Counsel appearing for the Directorate of Enforcement (*hereinafter* ‘ED’) submits that the attachment is prior to the declaration of moratorium under Section 14 of the IBC and would, therefore, not be affected by the moratorium. However, he further submits that the present writ petition was filed primarily on the ground that at the relevant point in time, the Appellate Tribunal was not functioning. The relevant portion of the writ petition is extracted below:

“2. It is pertinent to note that *the Petitioners are constrained to approach this Hon’ble Court since the*

Appellate Tribunal for PMLA has been non-functional since the year 2020, as the seat of the Ld. Chairperson is lying vacant and no effective hearing of any Appeal is taking place. As such, the only efficacious remedy available with the Petitioners is vide the present Writ Petition. Although the Petitioners are in the process of preparing and filing their respective appeals within the statutory limitation period of the PMLA, the Petitioners apprehend that the Respondent No. 1 may take coercive steps against the Petitioners and their statutory right to Appeal may get frustrated due to the non-functioning of the Appellate Tribunal, PMLA.”

12. The above submission is without prejudice to the argument that the attachment is in accordance with law and Section 14 does not bar the attachment by the ED.

13. Having considered the submissions made on behalf of the RP as also the ED, there is no doubt that the issue relating to the expiry of 180 days and the manner in which the same would affect the PAO, is pending in **Vikas WSP and Others Vs. Directorate Enforcement and Another, 2020 SCC Online Del. 1732**. However, the same being a legal issue, there are various other submissions also which may have to be considered in the present matter, bearing in mind that the Petitioner Company has gone into insolvency and moratorium has been declared.

14. Admittedly, the Tribunal under the PMLA is functioning and the Petitioner is free to approach the Tribunal under Section 26 of the PMLA.

15. The Petitioner has already filed an appeal before the Appellate Tribunal, which is stated to have been dismissed for non-prosecution.

16. However, since the Petitioner was already before this Court and was granted interim protection, it is deemed appropriate to permit the Petitioner

Company through the RP to approach the Appellate Tribunal for restoration of its appeal within the next two weeks. The Appellate Tribunal would proceed to hear the appeal in accordance with law.

17. The Petitioner, if it has not already filed, is also permitted to file the stay application before the Appellate Tribunal, which shall be considered by the Appellate Tribunal and the orders shall be passed on the same.

18. Till the said orders are passed in the stay application of the Petitioner, the interim order dated 19th April, 2022 already granted by this Court, shall continue and the same shall be subject to the further orders of the Appellate Tribunal.

19. Insofar as the issue of lapsing of 180 days is concerned, if any decision is rendered by the Id. Division Bench of this Court in **Vikas WSP (supra)** or any other binding decisions are rendered, the same shall be applicable to the present proceedings as well.

20. The contentions of the RP, who is representing the Petitioner in respect of the applicability of the IBC and its effect thereof, shall also be considered by the Appellate Tribunal.

21. The present petition along with all pending applications, if any, is disposed of in these terms.

22. It is clarified that this Court has not expressed any view on the merits of the case.

23. The next date of hearing stands cancelled.

PRATHIBA M. SINGH
JUDGE

MAY 23, 2023/dk/rp