

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8222 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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EAST INDIA ENTERPRISE THRO PROPRIETOR RAJESHBHAI
BHOLABHAI RAMANI

Versus

MINISTRY OF FINANCE DEPARTMENT OF REVENUE THROUGH THE
DIRECTOR

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Appearance:

MS. KRUTI M SHAH(2428) for the Applicant(s) No. 1,2,3,4,5

DS AFF.NOT FILED (N)(11) for the Respondent(s) No.

10,11,12,13,14,15,16,17,18,20,3,5,6,7,8,9

MR ANIP A GANDHI (2268) for the Respondent(s) No. 19

MR DEVANG VYAS (2794) for the Respondent(s) No. 1,2

MR ADITYA GUNDECHA FOR MR NARENDRA L JAIN(5647) for the
Respondent(s) No. 4MS MONALI BHATT, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 2

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 24/06/2021

CAV JUDGMENT

1. **RULE.** Service of notice of rule is waived by learned advocates appearing for the respective respondents. With the consent of both the sides, the matter is taken up for final hearing today.

2. By way of this petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioners had made prayer in paragraph-10(B) to vacate the **Provisional Attachment Order : PAO / MBZO-II / 02 / 2019 dated 18.06.2019** passed by the Deputy Director, Mumbai Zonal Office-II, Directorate of Enforcement, respondent No.2 herein, under sub-Section (1) of Section 5 of the **Prevention of Money Laundering Act, 2002** (for short, “the PMLA”) whereby, the movable properties, i.e. 6170 Nos. of commercial vehicles of M/s. Siddhi Vinayak Logistic Limited (Corporate Debtor), have been provisionally attached under the provisions of the PMLA for a period of 180 days from the date of the order with the further condition that the said properties shall not be removed, parted with or

otherwise, dealt with, without the prior permission from the said authority.

2.1 Learned advocate Ms. Kruti M. Shah for the petitioners referring to the order passed in Writ Petition (ST) No.280 of 2021 between Raman Roadways Private Limited v. State of Maharashtra & others, submitted that a petition with similar facts was moved before the High Court of Judicature at Bombay and the matter of Provisional Attachment dated 18.06.2019 in relation to movable properties of 6170 vehicles of the Corporate Debtor was dealt with. She stated that 4826 trucks which had been taken away by the Official Liquidator of the Company In Liquidation under the provisions of the **Insolvency and Banking Code, 2016** (for short, “the IB Code”) was ordered to be released by the Adjudicating Authority under the PMLA by order dated 03.12.2019 passed in O.C. No. 1160 of 2019 before which the complaint was filed by the Deputy Director, Directorate of Enforcement, where the Official Liquidator had filed his objections / reply. Learned advocate Ms. Shah submitted that since the Provisional Attachment

Order has been removed, she does not press for the relief sought for in paragraph-10(B) of the petition.

2.2 The petitioners have also prayed to issue appropriate directions to the respondent - Regional Transport Offices to complete the proceedings of transfer of the vehicles purchased by the petitioners from the Court appointed Official Liquidator of the Corporate Debtor.

3. The facts, in a nutshell, are as under :-

The Bank Security & Frauds Cell (BS & FC) of C.B.I., Mumbai registered five different FIRs against M/s. Siddhi Vinayak Logistics Ltd. (Corporate Debtor) and its Directors between the years 2015 to 2018 invoking various sections under the **Indian Penal Code, 1860** and Sections 13(2) read with Section 13(1)(d) of the **Prevention of Corruption Act, 1988**. Each FIR is based on the complaint filed by five different Banks about cheating and forgery causing wrongful loss to the Banks by the said Corporate Debtor and its Directors. One of the Banks, i.e. Punjab National Bank

approached the **National Company Law Tribunal, Ahmedabad Bench** (for short, “the NCLT”) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, “the IB Code”) read with Rule 4 of the **Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016** with a prayer to initiate Corporate Insolvency Resolution Process against the “Corporate Debtor”, which application was numbered as C.P. No. (IB) 89 of 2017. The said application came to be disposed of by the NCLT by order dated **12.09.2017** by which the said Company was admitted under the Corporate Insolvency Resolution Process (CIRP) and (i) Mr. Dushyant C. Dave was appointed as the Insolvency Resolution Professional (IRP) under Section 13(1)(c) of the IB Code and the said IRP was directed to cause public announcement of the initiation of “Corporate Insolvency Resolution Process” and to call for submission of claims under Section 13(1)(b) read with Section 15 of the IB Code and Regulation 6 of the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** (ii) moratorium was ordered under Section 13(1)(a) of the IB Code prohibiting

certain acts, as specified in Section 14 of the IB Code. Thereafter, the Insolvency Resolution Professional filed an application under Section 33 of the IB Code before the NCLT in **I.A. No.411 of 2018 in C.P. (IB) No.89 of 2017** seeking liquidation of the Corporate Debtor Company. After hearing both the sides, the NCLT passed the order dated **19.11.2018** by which the Insolvency Resolution Professional was appointed as “Liquidator” under Section 34(1) of the IB Code. The Liquidator took over custody and control of all the assets of the Corporate Debtor under Section 35(1)(b) of the IB Code and thereafter, issued the E-Auction Sale Notice on 08.02.2019. The petitioners herein participated in the auction proceedings and purchased certain number of vehicles, for which the Official Liquidator has issued “Certificate of Sale of Movable Property” in their favour. Pursuant thereto, the Official Liquidator informed the respondent – Regional Transport Offices to initiate and complete the process of transfer of ownership of the vehicles in the name of the buyers – auction purchasers.

4. On 18.06.2019 the respondent No.2 issued the Provisional Attachment Order : PAO / MBZO-11 / 02 / 2019 under sub-Section (1) of Section 5 of the PMLA, by which the movable properties, i.e. 6170 numbers of road vehicles of the Corporate Debtor, were ordered to be provisionally attached for a period of 180 days. The petitioners-auction purchasers made representation dated 14.08.2019 to the respondent-Department seeking release of the movable properties from attachment. When no heed was given to the representation made by the petitioners, they preferred the present petition before this Court.

5. It appears that during the pendency of this petition, the **Adjudicating Authority (Under the PMLA)** passed the order dated **03.12.2019**, by which the Provisional Attachment Order dated 18.06.2019 was partially confirmed to the effect that out of 6170 Trucks, 4826 Trucks were traced out and their possession was secured and that out of the said 4826 Trucks, 2336 Trucks were sold in auction proceedings and the sale proceeds have been deposited with Punjab National Bank;

insofar as the remaining 2490 Trucks are concerned, the same are yet to be auctioned by the Official Liquidator. Thus, out of 6170 Trucks, 4826 Trucks were with the Official Liquidator and for the remaining 1334 Trucks, the attachment was confirmed.

6. Learned advocate Ms. Kruti M. Shah appearing for the petitioners submitted that the petitioners are not connected with the proceedings initiated against the Company in Liquidation – M/s. Siddhi Vinayak Logistic Limited in any manner whatsoever. The petitioners had purchased the subject vehicles in the E-auction proceedings conducted by respondent No.4 - Official Liquidator in pursuance of the order dated 19.11.2018 passed by the NCLT. It is contended that when the NCLT had already passed an order appointing an Official Liquidator for the sale of the assets of the Company In Liquidation, the Adjudicating Authority under the PMLA ought not to have passed the Provisional Attachment Order dated 18.06.2019 in respect of the assets, particularly when, more than 4000 vehicles had already been sold to different persons /

entities through the E-auction. The said order of Provisional Attachment of the subject vehicles has caused severe financial loss and undue hardships to the petitioners, as the petitioners had purchased the vehicles by obtaining by obtaining huge loans from third parties and the value of the vehicles lying in the parking yard would depreciate by each passing day.

6.1 Learned advocate Ms. Shah submitted that though the petitioners had purchased the vehicles through E-auction, their names have not been entered in the R.T.O. records and therefore, the petitioners are not able to sell or ply the vehicles. The petitioners are staring at huge financial loss and they would have to close down its business, if the vehicles are not transferred in their names as every passing day would further deteriorate the physical condition of the vehicles. It was, therefore, submitted that the order of attachment passed by the Adjudicating Authority under the PMLA was unjust and improper.

6.2 Learned advocate Ms. Shah further submitted that taxes

are levied on vehicles using the road and not on vehicles which did not use the road at all. Thus, the use of roads by the vehicles is a relevant factor for the levy of taxes. In this context, she has placed reliance upon a decision of the Apex Court in the case of **State of Gujarat and Ors. v. Kaushikbhai K. Patel and Anr., (2006) SCC 615**, wherein it has been held that where a motor vehicle is not using the road, no tax could be levied thereon.

7. Mr. Devang Vyas, learned Additional Solicitor General of India appearing on behalf of respondent Nos.1 & 2, submitted that the proceedings under the IB Code and under the PMLA are independent proceedings. He submitted that the Company In Liquidation and others had cheated the respondent-Banks to the tune of Rs.1609.78 Crores, which is public money. The preliminary investigations under the PMLA had revealed that the Company In Liquidation had either brought back the majority of loan amounts in their bank accounts or the said loan amount was utilized for the repayment of their liability on account of purchase of vehicles / loan amount, etc. The

investigations also revealed that the majority of the amount so received by the Company In Liquidation in their account was utilized mainly for repayment of loan amount in respect of the vehicles mortgaged with the bank authorities, for the payment of the outstanding amount to the suppliers of vehicles. The remaining amount was utilized by the said Company for other purposes such as loans and advances and other expenses, etc. Thus, it was found that a major part of the loan amounts were directly and / or indirectly utilized for acquiring the vehicle fleet.

7.1 It was urged by the learned Additional Solicitor General that the proceeds generated out of the criminal activity was routed, placed and integrated through complex web of transactions so as to disguise the trail of the proceeds and its origin. On the basis of the material collected during the investigation, the Adjudicating Authority under the PMLA came to the conclusion that the properties acquired / held by the Company In Liquidation and its Directors were liable for attachment and accordingly, passed the Provisional Order of

Attachment and the subsequent order of partial attachment. It was, accordingly, submitted that this Court may not interfere with the orders of provisional / partial attachment passed by the PMLA authority.

8. Learned Additional Public Prosecutor Ms. Bhatt submitted that the petitioners have to comply with the mandatory procedure prescribed under the Motor Vehicles Act and the Rules framed thereunder for transfer of the vehicles in their names. By relying on the documents produced by the respondent Nos.5 & 6 – Regional Transport Offices at Vadodara and Surat respectively, it is contended that the petitioners have not completed necessary documentation and have also not paid the mandatory amount of taxes / fees prescribed under the relevant rules and therefore, their names could not be entered in the R.T.O. records. It was, accordingly, urged that no relief may be granted in favour of the petitioners.

9. Learned advocate Mr. Gundecha appearing for Mr. Narendra Jain appearing for respondent No.4 – Official

Liquidator submitted that the petitioners had purchased the vehicles in the E-auction proceedings conducted in pursuance of the order passed by the NCLT. He submitted that by complying with the provisions of the Motor Vehicles Act and the Rules framed thereunder can get ownership of the vehicles transferred in their names. The Official Liquidator had already made a request to the respondent – Regional Transport Offices of Gujarat for the withdrawal of the Provisional Attachment Order so as to permit transfer of the vehicles as and when the relevant papers are submitted by the buyers.

10. Learned advocate Mr. Anip Gandhi appearing for respondent No.19 – Bank adopted the submissions advanced by the learned counsels for the respondents.

11. Before we advert to the merits of the case, it would be useful to refer to certain provisions of the IB Code in order to get a better insight into the issue on hand. **Section 5(21)** of the IB Code defines the term ‘*operational debt*’ to mean a claim in respect of the provision of goods or services including

employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. **Section 53** of the IB Code relates to ‘**Distribution of assets**’. It lays down the mechanism for the distribution of proceeds from the sale of the liquidation assets. Priority is given to secured financial creditors over unsecured financial creditors. In other words, Section 53 provides with a waterfall mechanism, which requires that higher-tiered creditors receive interest and principal payments, while the lower-tiered creditors receive principal payments after the higher-tiered creditors are paid back in full. The dues of the Central and State Government, including that of the respondent-Regional Transport Offices, could be classified as ‘operational debt’ and could be paid / settled in accordance with sub-Sections (e) and (f) of Section 53 of the IB Code. In terms of the waterfall mechanism, the dues of respondent-Regional Transport Office comes much lower in priority.

12. At this stage, a reference to **Section 238** of IBC would be

relevant, which pertains to - **“Provisions of this Code to override other laws”**. It provides that the provisions of IB Code shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force or any instrument having effect by virtue of any such law. In other words, the IB Code has a overriding effect over any other law for the time being in force, which includes the Motor Vehicles Act and the Rules framed thereunder. Upon the Corporate Debtor being sent to liquidation, it is the procedure prescribed under the IB Code that comes into play and becomes all encompassing for the purpose of realization of all dues and debts by creditors or any other stakeholders from the Corporate Debtor.

13. On a plain reading of the above provisions of the IB Code, it is clear that statutory dues, which come within the meaning of ‘operational debt’, could be claimed against the Corporate Debtor only under the provisions of the IB Code and not under any other law. All such claims have to be lodged with the Official Liquidator and are payable under the

waterfall mechanism provided in Section 53 of IB Code. The petitioners have produced on record the demand Notice issued against the Corporate Debtor by one of the respondent-Regional Transport Offices claiming payment of taxes in respect of some of the subject vehicles. However, the amounts so due from the Corporate Debtor, considering that these are statutory dues in respect of the vehicles which were sold by the Official Liquidator and which belong to the Corporate Debtor, would not be in terms of the provisions of the Motor Vehicles Act and the Rules framed thereunder, but would necessarily have to be under the provisions of the IB Code. In other words, the dues relatable to the vehicles belonging to the Corporate Debtor can only be recovered under the provisions of the IB Code, i.e. the waterfall mechanism under Section 53 of the IB Code and not from the petitioners, being the auction-purchasers. The petitioners could be held liable to pay statutory dues in respect of the subject vehicles, which have been claimed by the respondent – Regional Transport Offices after their purchase by the petitioners in April 2019, only from the date when they had purchased the subject vehicles after

having exercised their right to raise objections to such claim.

14. Considering the overall facts of the case and the provisions of the IB Code, it would be appropriate to direct the petitioners to make payment of the statutory dues from the date of purchase of the subject vehicles by the petitioners, which would be made subject to other proceedings in relation to the said vehicles since the petitioners, being the auction purchasers, could not be asked to make payment of the statutory dues claimed against the Corporate Debtor in liquidation in respect of vehicles prior to their date of purchase by the petitioners.

15. For the foregoing reasons, the petition is partly allowed subject to the following conditions:-

- (i) The respondents – Regional Transport Offices, Gujarat and Maharashtra are directed to complete the transfer proceedings of the subject vehicles purchased by the petitioners from the Court appointed Official

Liquidator of M/s. Siddhi Vinayak Logistic Ltd., which shall be subject to the outcome of the proceedings that may be pending under the provisions of the PMLA or under any other corresponding law.

(ii) The concerned respondent – Regional Transport Offices are directed to inform the petitioners in writing the statutory dues in respect of the subject vehicles purchased by the petitioners FROM THE DATE OF THEIR PURCHASE BY THE PETITIONERS on or before 15th July 2021.

(iii) If the dues are informed in writing on or before the said date, the petitioners shall make payment of FIFTY PERCENT (50%) of the said amount within THREE WEEKS from the date of such communication, which shall be subject to the outcome of the proceedings before the authority concerned under the Gujarat Motor Vehicles Tax Act / Maharashtra Motor Vehicles Tax Act.

(iv) The above process shall be concluded within FOUR WEEKS from the date of receipt of writ of this order.

(v) The respondents are granted liberty to move the respondent – Official Liquidator for their dues by making appropriate application as required under the law.

With the above directions, the petition stands disposed of. Rule is made absolute to the above extent. Direct service is permitted. Registry to send a writ of this order by E-mail / Fax forthwith.

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(GITA GOPI, J)

PRAVIN KARUNAN

THE HIGH COURT
OF GUJARAT

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