

LEGAL UPDATES

NCLAT: THE LIQUIDATOR IS DUTY-BOUND TO TAKE CONTROL OF THE CORPORATE DEBTOR'S ASSETS AND ATTACHMENTS UNDER THE STATE ACT AND SHALL NOT BE THE BAR

The National Company Law Tribunal at New Delhi (NCLAT) noted that when a corporate debtor is in the IBC liquidation stage, the seizure or attachment of its accounts under the State Act cannot constitute an impediment; it observed that *"At the stage of liquidation, the liquidator would be duty bound to take control of assets of Corporate Debtor. Any attachment to such extent under the State Act will have to give way to IBC, and obstruction has to be removed."*

On examination, it came to light that –

- (i) the Corporate Debtor applied to the Appellant and agreed to abide by its Rules, Regulation, and Bye-laws and started trading,
- (ii) the Corporate Debtor failed to repay the amount and was declared a defaulter,
- (iii) subsequently, the Maharashtra Protection of Interest of Depositors ('MPID') Court attached Corporate Debtor's properties.

Hon'ble NCLAT noted that *"...although Section 14 of the MPID Act (which is an Act earlier to IBC) has effect notwithstanding anything inconsistent with any other law, the said Section 14 would be subject to the subsequent Code promulgated by the Government of India which has amended laws related to insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner."*

Hon'ble Tribunal clarified that "MPID aims to protect the interest of Depositors. IBC is broader and aims to consolidate and amend laws relating to re-organization and insolvency resolution of corporate persons and partnership firms and individuals promptly for maximisation of value of assets of such persons." and further observed that *"The scheme aims at balancing the interest of all stakeholders. This will include the interest of Depositors."*

Thus, IBC has broader contours. Letting one set of creditors march over others is not permissible.”

Additionally, Hon’ble Tribunal emphasised that the procedure for taking cognisance of an offence (as per Section 3 of the PMLA) is provided in Section 13 of the MPID Act and that the rules of the CrPC apply to warrant trial cases are used. The Hon’ble Tribunal further stated, *“Thus, for attachment under the MPID Act, Section 14 of the IBC dealing with Moratorium would apply, and the provisions dealing with powers of IRP, RP, and duty to take into custody and control the assets of the Corporate Debtor would be enforceable.*