

## LEGAL UPDATES

### **NCLT: ASSESSMENT ORDERS OF THE IT DEPARTMENT REGARDING THE PRE-CIRP PERIOD ARE "UNSUSTAINABLE IN LAW"**

The Hon'ble NCLT invalidated the Income Tax Department's assessment decisions against the Corporate Debtor for the time frame prior to the initiation of the CIRP, and held that the same is bad in law.

The Hon'ble NCLT observed that –

(i) Throughout the moratorium, the IT Department continued the assessment proceedings against the Corporate Debtor, and also passed the Impugned Assessment Orders.

(ii) Despite being aware of CIRP and the Corporate Debtor's moratorium status, the Department failed to submit its claims for any of the assessment years before the RP as required by IBC;

The Appellate Tribunal referred to Section 32(A) of the IBC, and observed that *"...the Corporate Debtor, on approval of the Resolution Plan by the Adjudicating Authority and on change in management, is immune from the proceedings which pertain to the pre-CIRP period."*;

The Hon'ble Tribunal while passing the order also relied on the ruling by the Hon'ble Apex Court in Ghanashyam Mishra, which states that all claims that are not included in the resolution plan shall be deemed extinguished as of the date the adjudicating authority approved the resolution plan. This includes any claims for statutory dues owed to the Central Government, any State Government, or any local authority.

Thereby allowing the appeal, The Hon'ble Appellate Tribunal concluded that *"...the Assessment Orders...passed by the Income Tax Department, which pertain to the period before initiation of the CIR process of the Corporate Debtor, which is now led by the New Management on approval of the Resolution Plan, are unsustainable in law and without jurisdiction."*