

## LEGAL UPDATES

### **HC: APPROVAL OF NCLT TO SELL THE CORPORATE DEBTOR AS A 'GOING CONCERN', PUTS A BAR ON THE POWER OF PROPERTY ATTACHMENT OF ED AS PER PMLA**

The Delhi HC bench presided by Justice Yashwant Varma admitted the writ filed by the corporate debtor in a case related to the interplay of IBC and PMLA wherein the bench maintained the corporate debtor was entitled to initiate the liquidation process, thereby barring the ED ('Respondent') from taking any further coercive or other action against the liquidation process as initiated by the corporate debtor or the liquidator's corpus with respect to the sale of the assets as admitted by the adjudicating authority under IBC. The bench held that the respondent is empowered under PMLA to proceed against the property or attach the property tentatively of the debtor and the same shall stand foreclosed once the adjudicatory forum approves the selected course in the liquidation process. The adjudicating forum on confirming the course that can be executed, the PMLA has to step down. Highlighting the fact that both acts operate over different subject matter thereby serving distinct statutory motives and policies. The HC emphasized that IBC revolves around providing a solution to the debtors in time while PMLA deals with criminal offences such as money laundering and proceeds against attachment or confiscation of property. Further, elucidating that the issue of bringing into synchronization the IBC and PMLA as far as the instant problem is concerned, the same can be solely answered as per Sec. 32A of IBC. If a statute is selected for withdrawing the liabilities and punishment, it is that statute only which should only govern and ascertain the powers of PMLA as per law while the process of liquidation is going on. The HC analyzing the intent and scope of sec.32A of IBC opined that Sec. 32A without a doubt aims to assure the applicant that they can take over the debtor further, assuring the applicant that it will not be punished or be liable for any offence committed by the debtor before the commencement of CIRP. Similarly, it extended a guarantee in respect of the debtor's properties on approval of the resolution plan or sale of assets. Hence, observing that Sec.32A of IBC is of great legislative importance upon the decision of the adjudicating forum wherein it approved the initiation of the liquidation process, and this point must be recognised as a defining point for coming into effect the bar as created by

Sec.32A of IBC. The bench noted that the complete process of resolution and liquidation will be jeopardized if it is held to be otherwise. In conclusion, ruling that upholding the impugned order would result in recognising a right the respondent is entitled to with respect to moving against the properties of the corporate debtor though the adjudicatory authority has approved their sale or transfer which would in turn clearly contradict the intent and purpose of Sec.32A of IBC. The bench held that from the day the sale of the debtor as a 'going concern' is confirmed by the adjudicating forum, the cessation as per Sec. 32A would be deemed as coming into effect.