

LEGAL UPDATES

NCLAT: IBC-MORATORIUM CANNOT PREVENT PROPERTY ATTACHMENT UNDER PMLA; NCLT CANNOT EXERCISE JURISDICTION IN MONEY LAUNDERING MATTERS

In an appeal filed by RP in NCLAT against the NCLT order, the issue raised was that the NCLT has no legal power to act on the matters under the Prevention of Money Laundering Act (PMLA), 2002. The appeal was heard by Dr. Ashok K Mishra (Member – Technical), Shri. V.P. Singh (Member – Technical) and Justice M. Venugopal (Member – Judicial). The Appellant contested the accuracy, legitimacy, and legality of the order made by the "Adjudicating Authority, arguing that the order is unconstitutional because the attachment proceedings and the order that resulted under the PMLA of 2002 were "Civil Proceedings" and should have been stayed as a result of the "Moratorium" under Sec. 14 of the IBC, 2016 (the "I&B Code"). Furthermore, it was claimed that the "Adjudicating Authority" had overlooked the fact that the "moratorium" had been imposed on all proceedings upon the admission of the "Application" to begin the CIRP. In response, the respondent claimed that the "National Company Law Appellate Tribunal" lacked the authority to view an appeal by the "Appellant/Resolution Professional" to overturn the "Provisional Attachment Order," which had been upheld by the "Adjudicating Authority" (PMLA). It was further argued that the "Adjudicating Authority" under the PMLA Act, 2002, who is also an "Authority" under the I&B Code, cannot review the legitimacy and accuracy of the judgement rendered by a co-equal and coordinate "Adjudicating Authority" under the I&B Code. NCLAT observed that the application filed under Sec. 60(5) of IBC was not a prevalent conferring authority to NCLT (Adjudicating Authority) to check the matters falling under the jurisdiction of some other Authority under PMLA. NCLAT further observed that Sec. 14 of IBC dealt with the provision of the moratorium but it does not hinder the Authority and Officers under PMLA to deny a person of "Proceeds of Crime" if a person is involved in Money Laundering, he would not be allowed to the aid of being indulged in Proceeds of Crime to write off his Civil Indebtedness towards his creditors. Further, NCLAT acknowledged that Sec. 32A of IBC allows for the attachment of assets after permission of the Resolution Plan by the Adjudicating Authority provided that certain conditions are satisfied. NCLAT noted that in the present case, no

approval for a resolution plan has been received to date and thus opined that the Appellant cannot take the provision of Sec. 32-A (2) of IBC into service. Putting forward the objectives of both the laws, NCLAT stated that the purpose of PMLA and IBC seems contrary to each other but in reality, there is no such inconsistency and repugnancy between them, in the context of the fact, shape, text, color, are different and distinct operating in separate spheres. Most importantly, when the annexation of the Proceeds of Crime happens, the Government does not take such actions under the role of Creditors. The appeal was dismissed.