

## LEGAL UPDATES

### **BOMBAY HC: OFFENCES UNDER IBC ARE NOT TRIALABLE BEFORE ASJ**

In a writ petition decided by a single bench headed by Justice Sandeep K. Shinde, the HC quashes the 'issue process' by ASJ against the petitioner. HC considered the issue of whether ASJ can 'issue process' on a complaint filed by IBBI. The single bench held that the process was without jurisdiction and therefore, not sustainable. HC opined that the special court delineated under sec.435(2)(a) of the Companies Act("the Act") comprises MM or JM(1st Class) and that the special court has the authority to try 'issue process' for offences under IBC/Code. HC further referred to sec.435(2)(b) of the Act and stated that on perusal of said section, a special court comprising of session judge can adjudicate only upon the offences under the act. Thus, the HC stated that the special court under sec.435(2)(b) of the Act is not empowered to adjudicate upon the offences other than the act. HC further remarked that the special court under sec.435(2)(b) of the Act has the jurisdiction to adjudicate "cases of other offences," or offences under the Code and the offences with imprisonment less than 2 years and punishable under the Act. HC asserted that the intentional exclusion of the phrase "under this Act" in sec.435(2)(b) of the Act and the deliberate inclusion of the said phrase in sec.435(2)(a) of the Act must be treated as an unambiguous mandate of the legislature to exclude the jurisdiction of session judge/ASJ. Hence, the writ was allowed and the proceeding by ASJ was quashed for lack of jurisdiction.