

Insolvency and Bankruptcy Hotline

August 30, 2022

DISSECTING THE INSOLVENCY CODE: ATTACHMENT BY ENFORCEMENT DIRECTORATE OF A CORPORATE DEBTOR'S ASSETS

This article was originally published by IBC Laws on August 29, 2022.



INTRODUCTION

Being a nascent law, the Insolvency and Bankruptcy Code, 2016 ("IBC") has faced several challenges in its interpretation and implementation due to overlap of certain aspects with other statutes in force. One such issue is the overlapping implementation of the IBC with the Prevention of Money Laundering Act, 2002 ("PMLA"). Both PMLA and IBC are special legislations, enacted for specific purposes. However, situations such as the attachment of assets of a corporate debtor ("CD") during its corporate insolvency resolution process ("CIRP") often may lead to an apparent conflict between the application of PMLA and IBC.

In the recent past, there has been a rising trend of attachment of assets of a CD by the Enforcement Directorate under the PMLA, during the subsistence of CIRP of the CD. Post such attachment, resolution professionals ("RPs") have approached National Company Law Tribunals ("NCLTs") to seek release of such attached assets in order to effectively continue with the ongoing CIRP. However, through various orders, the NCLTs and National Company Law Appellate Tribunal ("NCLAT") have directed RPs to approach special courts designated under the PMLA to seek release of such attached assets.

In one such order, the NCLAT had relied upon a judgment of the Delhi High Court ("Delhi HC") in *Deputy Director, Directorate of Enforcement Delhi v. Axis Bank & Ors.* ("**Axis Bank**"). The Delhi HC in *Axis Bank*, amongst other things, held that the object and purpose of PMLA is distinct from that of IBC and therefore, both statutes must be harmoniously interpreted rather than one having an overriding effect over the other.

Section 14 of the IBC imposes a moratorium on the institution and continuation of legal proceedings against a CD after the commencement of its CIRP. However, the Delhi HC categorically held that such a moratorium will not have any impact on the powers of the ED to attach the assets of the CD after the commencement of CIRP.

The Delhi HC did not specifically discuss the issue of whether an NCLT has the requisite jurisdiction to entertain an application seeking release of assets attached under the PMLA after the commencement of CIRP. However, NCLTs and the NCLAT have relied upon the judgment in *Axis Bank* to hold that they do not have the requisite jurisdiction to entertain such applications.

For complete article, please click [here](#).

— Adimesh Lochan, Arjun Gupta & Sahil Kanuga

You can direct your queries or comments to the authors

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