

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

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

M&A In The Indian Technology Sector

February 19, 2025

Unlocking Capital

February 11, 2025

Fintech

January 28, 2025

Research Articles

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?

February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Arbitration Amendment Bill 2024: A Few Suggestions | Legally Speaking With Tarun Nangia | NewsX

February 12, 2025

**What India’s Transition to New Data
Protection Law Means for Global
Businesses**

January 23, 2025

**India 2025: The Emerging
Powerhouse for Private Equity and
M&A Deals**

January 16, 2025
