NCLAT HOLDS IBC MORATORIUM DOES NOT PROTECT ALLEGED PROCEEDS OF CRIME FROM PMLA ACTION

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, in Value Wise Consultancy Private Limited v. Deputy Director, Directorate of Enforcement & Ors., has held that the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC") does not bar proceedings initiated by the Enforcement Directorate ("ED") under the Prevention of Money Laundering Act, 2002 ("PMLA") in respect of assets alleged to constitute proceeds of crime. The Tribunal clarified that the IBC and the PMLA operate in distinct statutory spheres and that insolvency proceedings cannot be used to shield assets derived from criminal activity.

ANALYSIS

- The appeals arose from actions taken by the Enforcement Directorate during the Corporate Insolvency Resolution Process ("CIRP") of Siddhi Vinayak Logistics Limited, including the withdrawal of approximately Rs. 2.29 crore from the corporate debtor's bank account, attachment of its vehicles and issuance of directions restraining customers from releasing payments to the corporate debtor.
- The liquidator challenged the ED's actions on the ground that they violated the moratorium imposed under Section 14 of the IBC and the restrictions applicable during liquidation under Section 33(5) of the IBC.
- The NCLAT dismissed the appeals and held that the IBC and the PMLA serve different legislative objectives. While the IBC is intended to facilitate insolvency resolution and maximise the value of the corporate debtor's legitimate assets for stakeholders, the PMLA is a penal statute enacted to identify, attach, retain and confiscate proceeds of crime.
- The Tribunal held that the protection afforded by the moratorium under Section 14 of the IBC, and the restrictions contained in Section 33(5) during liquidation, do not extend to assets alleged to be proceeds of crime. Consequently, proceedings initiated by the Enforcement Directorate under the PMLA may continue notwithstanding the commencement of CIRP or liquidation.

- Relying upon the Supreme Court's decision in Embassy Property Developments Pvt. Ltd. v. State of Karnataka, the NCLAT reiterated that the jurisdiction of the National Company Law Tribunal ("NCLT") under Section 60(5) of the IBC is not unlimited and cannot be invoked to adjudicate disputes falling exclusively within the domain of another special statute.
- Accordingly, the Tribunal held that challenges to attachment orders, notices issued under Section 50 of the PMLA, or retention of assets by the Enforcement Directorate must be pursued before the authorities, Special Court or appellate forums specifically constituted under the PMLA, and not before the NCLT or NCLAT under the IBC.

KEY TAKEAWAYS

- The NCLAT has reaffirmed that the IBC and the PMLA operate in separate and independent fields, with each statute serving distinct legislative purposes.
- The moratorium under Section 14 of the IBC does not protect assets alleged to constitute proceeds of crime from attachment, retention or confiscation under the PMLA.
- Insolvency proceedings cannot be used as a mechanism to defeat or suspend criminal and public law proceedings initiated under the PMLA.
- The jurisdiction of the NCLT under Section 60(5) of the IBC remains limited and does not extend to adjudicating the legality of actions taken by the Enforcement Directorate under the PMLA.
- Insolvency professionals, liquidators and resolution professionals seeking relief against PMLA measures must pursue the remedies available under the PMLA framework, including proceedings before the designated authorities, Special Court and appellate forums constituted under that statute.
- The notification is attached here in :

Click Here