

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 1495 of 2024 &
I.A. No. 1987 of 2025

(Arising out of Order dated 04.07.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court – II) in I.A. No. 01/2024 in CP (IB)-635/PB/2021)

IN THE MATTER OF:

Vantage Point Asset Management Pte. Ltd. ...Appellant

Versus

Gaurav Misra Resolution Professional of
Alchemist Infra Reality Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Dhruv Mehta, Sr. Adv. with Mr. Palash S. Singhai, Mr. Harshal Sareen Mr. Kartikey Shharma, Advocates.

Ms Prachi Johri, Adv. Mirgangi Parul, Advocates for Intervenor in I.A. No. 1987/2025.

For Respondents : Mr. Zohab Hossain, Special Counsel for ED Mr. Vivek Gurnami, Mr Vivek Gaurav, Mr Satyam, Advocates.

Mr Krishnendu Datta, Sr. Advocate with Ms Varsha Banerjee Advocates for R1.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Appellant a Successful Resolution Applicant (“**SRA**”) challenging the order passed by National Company Law Tribunal, New Delhi Bench (Court – II) allowing IA No.01 of 2024 filed by the Resolution Professional (“**RP**”) for approval of Resolution Plan to the limited extent to the findings and directions given in paragraphs 60 and 61 of the impugned order observing that ‘*it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard*’. In

paragraph 61, the relief sought regarding directions to the Directorate of Enforcement (“**ED**”) to release property attached by it was rejected.

2. In the Appeal, following prayers have been made by the Appellant:

- “a. Pass an order setting aside the finding at Para 60 in the Impugned Order dated 04.07.2024 passed in IA No.01 of 2024 in CP (IB) No. 635/PB/2021 by the Ld. Adjudicating Authority, New Delhi Bench II wherein the Adjudicating Authority refused to enlarge the protection of Section 32A of me to uplift the attachment by Enforcement Directorate over the properties; and
- b. Pass an order for release of properties and accounts seized and attached by Central and State Agencies including Enforcement Directorate, Income Tax, Himachal Pradesh Government/ Authorities etc. to uphold the legislative scheme of Section 32A of IBC;
- c. Pass any such further or other order(s) as this Hon’ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the case to grant justice to the Appellants.

3. The Appeal was heard by this Tribunal and vide judgment and order dated 13.08.2024, the Appeal was allowed and this Tribunal set aside the findings recorded in paragraph 60 of the impugned order. It was held that SRA was entitled to relief of extension of benefit of Section 32A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”). The ED aggrieved by the order filed an IA No.6625 of 2024 praying for recall of the judgment dated 13.08.2024, pleading that the Applicant – ED was proper party in the Appeal and the judgment of this Tribunal dated 13.08.2024 has been delivered without hearing the Applicant. The parties were heard on IA No.6625 of 2024 and vide our

judgment and order dated 09.01.2025, we have recalled the judgment dated 13.08.2024. While recalling our judgment in paragraph 17, this Tribunal observed as follows:

“**17.** In result, IA No.6625 of 2024 is allowed. The judgment dated 13.08.2024 is recalled. We make it clear that recall of judgment dated 13.08.2024, shall have no effect on the order dated 04.07.2024 passed by Adjudicating Authority approving the Resolution Plan and the Resolution Plan shall be implemented as approved on 04.07.2024 and the recall of this judgment is only for consideration of limited issue as noted above. IA No.7235 of 2024 is accordingly disposed of.”

4. The ED was impleaded as Respondent No.2 in the Appeal. A counter affidavit to the Appeal has been filed by the ED on 01.04.2025. All the parties were heard in the Appeal and judgment was reserved on 10.09.2025.

5. It is necessary to notice brief facts giving rise to the Appeal:

- (i) The Corporate Debtor (“**CD**”) – Alchemist Infra Realty Limited is a public limited company, incorporated on 02.04.2008. The CD is involved in real estate development, construction of commercial/ residential and industrial buildings.
- (ii) The Securities and Exchange Board of India (“**SEBI**”) filed a complaint dated 16.03.2016 against the CD before the ED. The ED on 28.09.2016 recorded ECIR against the CD for commission of offences punishable under Section 24 of the Securities and Exchange Board of India Act, 1992, which is a

scheduled offence under the Prevention of Money Laundering Act, 2002 (“**PMLA**”).

- (iii) On 24.01.2019, the ED passed a provisional attachment order under Section 5 of the PMLA. The CD filed a Writ Petition (Civil) No.4974 of 2018 challenging the actions of the ED. The learned single Judge allowed the ED to issue order under the PMLA. An LPA was filed by the CD, being LPA No.104/2019, in which an order dated 13.02.2019 was passed by the Division Bench of the Delhi High Court, staying the order of learned single Judge dated 22.01.2019. The Division Bench stayed further proceedings under the PMLA Act and directed that the CD shall not alienate the property in any manner and status qua with regard to the property in question shall be maintained.
- (iv) The Section 7 application was filed by M/s Technology Parks Limited against the CD being CP(IB) No.635/PB/2021 for initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the CD. The Adjudicating Authority by its order dated 23.03.2022 commenced the CIRP proceedings against the CD and one Mr. Gaurav Misra was appointed as Interim Resolution Professional (“**IRP**”).
- (v) In the CIRP of the CD, publication was made by the IRP. The Committee of Creditors (“**CoC**”) was constituted, which consisted of Financial Creditors, i.e. Technology Parks

Limited having 43.29% vote percentage and Financial Creditors in a class (Investors) having vote share of 56.71%. The Authorised Representative was appointed for the creditors in a class. The RP issued Information Memorandum on 05.04.2023. In the CIRP, Resolution Plans were received and were considered by the CoC.

- (vi) The Resolution Plan submitted by the Appellant came to be approved by the CoC on 18.10.2023. Letter of Intent was issued to the Appellant on 20.10.2023. The RP filed an IA before the Adjudicating Authority praying for approval of Resolution Plan being IA No.01 of 2024. The SRA in its reliefs and concessions has also prayed that attachment by the ED be directed to release.
- (vii) The Adjudicating Authority vide order dated 04.07.2024 allowed IA No.01 of 2024 and approved the Resolution Plan, however, while considering the reliefs prayed by the SRA to release the attachment, which attachment was made by the ED on 24.01.2019, the Adjudicating Authority directed the SRA to resort to the remedies available under the PMLA for release of attachment in accordance with law, which findings have been recorded in paragraphs 60 and 61 of the judgment. Aggrieved by findings and observations in paragraphs 60 and 61, insofar as it refused the prayer of the Appellant to release the attachment by ED, this Appeal has been filed.

6. The reliefs prayed by the Appellant in this Appeal have already been extracted by us above. As noted above, the Appeal was initially heard and allowed on 13.08.2024, which order was recalled on the application filed by the ED holding that ED was a necessary party, who was not impleaded in the Appeal. After the application filed by the ED being IA No.6625 of 2024, the IA was allowed the judgment was recalled and the ED was impleaded as Respondent No.2 in the Appeal, who has filed a reply on 01.04.2025.

7. We have heard Shri Dhruv Mehta, learned senior Counsel appearing for the Appellant; Shri Krishnendu Datta, learned senior Counsel appearing for the RP; Shri Zohab Hossain, learned Special Counsel for the ED; and Ms. Prachi Johri, learned Counsel appearing for the Intervenor in IA No.1987 of 2025.

8. Shri Dhruv Mehra, learned senior Counsel appearing for the Appellant in support of the Appeal submits that Resolution Plan of the CD having been approved by the CoC and the Adjudicating Authority, the SRA, who is an unrelated party to the CD, is entitled for the benefit of Section 32A of the IBC. The provisional attachment by the ED, which was made on 24.01.2019 cannot continue after approval of the Resolution Plan. After initiation of the CIRP and the approval of the Resolution Plan, no action can be taken against the property of the CD. No order of confiscation having been made with regard to the assets of the CD prior to initiation of CIRP, no confiscation can now be made after approval of the Resolution Plan. The ownership of the assets still continues with the CD

and RP has rightly included the assets of the CD in the Information Memorandum, on which the CD has ownership rights. It is submitted that by mere provisional attachment of the assets, the CD cannot be denied the right to use of the assets, nor its ownership is lost on the assets on mere provisional attachment. It is submitted that legislative scheme as delineated by Section 32A is that once a Resolution Plan is approved and there is change in the management or control of the CD, to a person, who was not the promoter or in the management or control of the CD or a related party or a person, with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, the liability of the CD for the offences committed prior to the commencement of the CIRP shall cease. Thus, liability of the CD had ceased, and provisional attachment cannot be carried any further, nor any proceedings under PMLA under Section 8 can be continued as on date. Hence, the provisional attachment has to be treated to have ceased and Adjudicating Authority has not correctly appreciated the legislative scheme under Section 32A and has erred in directing the SRA to approach the PMLA Authorities for release of the attachment. In the facts of the present case, there was no occasion for SRA to approach the PMLA Authority for release of the attachment, which provisional attachment shall come to an end on extension of benefit of Section 32A to the SRA (Appellant herein). Section 32A also applies to action taken prior to initiation of CIRP. Even though, provision is not retrospective, but the

same is retroactive. The statutory interpretation has to be adopted to give the provision a comprehensive construction from the object of the legislation. After the approval of Resolution Plan, there cannot be any threat of criminal proceedings against the CD or attachment or confiscation of its assets. It is by virtue of operation of law and immunities provided to SRA from prior offences of erstwhile management as well as any action on the assets of the CD. Section 32A protects the property of the CD from any attachment and restraint in proceedings connected to the offences committed prior to the commencement of the CIRP. The Hon'ble Supreme Court and this Tribunal has categorically laid down that after approval of the Resolution Plan, no liability of any prior offence can be fastened on the SRA on conditions as mentioned in Section 32A being fulfilled. It is submitted that Explanation to Section 32A(2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an "action against the property" of the CD, from which immunity would be available shall include the attachment, seizure, retention or confiscation of such property under such law. Insertion of Section 32A in the IBC in the year 2020 represents the last expression of intent of the legislature and thus the embodiment of the extent to which the provisions of the PMLA are to give way to proceedings initiated under the IBC. Through Section 32A, the legislature has authoritatively spoken of the terminal point where the powers under the PMLA would not be exercisable. The legislature being conscious about the relevant provisions of the PMLA, has used negative language in

Section 32A(2) of the IBC, which implies a prohibition to take any action against the CD, whether it is by way of attachment or confiscation upon the approval of Resolution Plan. Learned Counsel for the Appellant has placed reliance on judgments of the Hon'ble Supreme Court and this Tribunal in support of his submissions and submits that true import of Section 32A has already been laid down by the Hon'ble Supreme Court in ***Manish Kumar vs. Union of India - (2021) 5 SCC 1*** and judgment of this Tribunal.

9. Shri Krishnendu Datta, learned senior Counsel appearing for the RP supported the submission of the Appellant and contend that by mere provisional attachment of assets of the CD ownership of the CD on the assets are not lost and CD still continues to be the owner and is entitled to use the assets of the CD and RP was well within his rights to include the assets in the Information Memorandum. Shri Datta submits that Appellant was clearly entitled for the benefit of Section 32A of the IBC and after approval of the Resolution Plan, neither the RP nor the SRA is liable to file any proceedings before the Adjudicating Authority or the PMLA for release of the attachment.

10. Shri Zohab Hossain, learned Counsel appearing for the ED refuting the submissions of learned Counsel for the Appellant submits that the provisional attachment by the ED took place on 24.01.2019, i.e. much before the initiation of the CIRP. It is submitted that the Division Bench of the High Court in LPA passed an order on 13.02.2019 directing the ED not to alienate the property in any manner and to maintain a status qua,

which clearly prohibited the RP to include the assets as assets of the CD in the Information Memorandum. It is further submitted that in view of the provisional attachment as well as order of the Delhi High Court, the assets could not have been lawfully formed part of any unencumbered asset pool for resolution. It is submitted that bar under Section 32A from taking action against the property of the CD kicks in only after approval of the Resolution Plan. The provisional attachment having been made on 24.01.2019, is not affected by subsequent approval of the Resolution Plan. The assets of the CD, which are proceeds of crime, cannot be made part of Resolution Plan. The proceeds of crime cannot be utilized for discharging a civil debt. It is submitted that provisional attachment order could not be confirmed owing to the order passed by the Delhi High Court in LPA No.104/2019 DATED 13.02.2019. The combined effect of provisional attachment order as well as restraint order of Delhi High Court is that properties continue to remain under prohibition against transfer, alienation, conversion or disposition. The protection of Section 32A of the IBC cannot apply to the present case, since the attachment was made well before initiation of CIRP. The bar on action under Section 32A is '*in futuro*' and get triggered only after approval of Resolution Plan, which is not the factual position here. Shri Hossain relying on judgment of the Delhi High Court in ***Rajiv Chakraborty RP of eiel VS. ed – (2022) SCC OnLine Del 3703*** submits that bar under 32A operates only once a plan is approved and attachments made prior to such approval will continue to operate unaffected. Reliance has been placed on paragraph

115 of the above judgment. Shri Zohab Hossain further relied on three Members Bench judgment of this Tribunal in **Anil Kohli vs. ED – Company Appeal (AT) (Ins._ No.389 of 2018** where provisional attachment was held to be valid and was held to be not affected by CIRP. In similar facts and circumstances, it was held that Section 32A is not applicable. It is submitted that the above three Members Bench judgment fully convers the present issue and the relief claimed by the Appellant in this Appeal cannot be allowed. The Resolution Plan could not have overridden subsisting statutory attachment and NCLT has rightly rejected the prayer of the Appellant to direct release of provisional attachment. The resolution process cannot be utilized as a device to nullify consequences under criminal law. The legislative intent of the PMLA is to ensure the integrity of investigations and prevent unlawful alienation of attached assets. Learned Counsel for the Respondent has placed reliance in **Manish Kumar vs. Union of India – (2021) 5 SCC 1** and submits that the Appellant’s argument that ‘action’ includes confiscation fails to consider that the 2nd proviso to Section 8(8) of PMLA, which permits the Special Court to release attached properties in favour of the victims of the offence even prior to confiscation which is not barred under the IBC. While enacting the IBC the Parliament was conscious of the PMLA and yet it neither made any specific reference by way of an ouster of PMLA nor did it take away any powers already conferred under the PMLA. The general non-obstante clause contained in Section 238 of the IBC cannot be construed to take away any powers under the PMLA. The PMLA being a

special law to tackle and curb money laundering, should receive precedence over the IBC only to the extent of properties or assets which are the proceeds of crime. Neither NCLT nor this Tribunal have the jurisdiction to direct the ED to release property attached by the ED in exercise of its powers under PMLA. The PMLA being a special law dealing with proceeds of crime, it has primacy over IBC to the extent of an attachment made prior to the commencement and much prior to an approval of Resolution Plan. In support of above submission, the learned Counsel has relied on various judgments of this Tribunal and the Hon'ble Supreme Court, which we shall notice while considering the submissions in detail. It is submitted that when ED attaches the proceeds of crime, it does not stand as a creditor to the CD and proceeds of crime is not an operational debt. It is further submitted that M/s. Technology Park Ltd. is a related entity of the CD, who has initiated Section 7 proceedings. The entire Alchemist Group has been under investigation and SEBI has already imposed penalty and has also recovered amount and Financial Creditor in a class, which consists of thousands of investors have suffered and the object of proceedings under the PMLA is to reimburse the investor, who had suffered at the hands of the CD. The SRA is a related party of the CD, who triggered the CIRP and in Plan approval has also played an important role.

11. Ms. Prachi Johri, learned Counsel appearing for the Intervenor in IA No.1987 of 2025 submits that Depositors/Investors in the CIRP of the CD has filed a claim where claim of Rs.537.26 crores was admitted. The

Depositors were part of the CoC having 56.71% voting in the CoC. The CoC approved the Resolution Plan with 100% vote share. The Resolution Plan provided for 100% refund of the admitted claim of the Depositors. Vacation on the charge of property of CD by the ED is necessary for successful implementation of the Resolution Plan. The Intervenors support the submission of the Appellant. The property was only attached by the ED under Section 5 and proceedings under Section 8 of the PMLA have not been started, which is no longer possible. The Depositors are opposing the attachment and confiscation of the property by the ED.

12. Shri Zohab Hossain was also permitted to respond to IA No.1987 of 2025. Learned Counsel for the ED has refuted the plea raised by the Intervenors. It is submitted that SRA has proposed to pay only Rs.137 crores against the admitted claim of Rs.557 crores, whereas related party has been proposed to be paid 77% of the admitted amount. The attached property could never have been the subject matter of the Resolution Plan and ED has been receiving complaints from various Investors.

13. We have considered the submissions of learned Counsel for the parties and have perused the record.

14. The present Appeal has been filed by the SRA, whose Resolution Plan has already been approved. No Appeals have been filed by any aggrieved person, including the ED to challenge the approval of Resolution Plan. The SRA has filed this Appeal praying for limited prayers as noted above and is aggrieved only with respect to findings and observations made in paragraphs 60 and 61 of the impugned order,

insofar as Adjudicating Authority refused to grant relief claimed by the SRA for release of attachment by the ED. Paragraphs 60 and 61 of the impugned order, which are relevant for considering issues raised between the parties are as follows:

“**60.** In sum and substance, the SRA/CD would be entitled to no other relief/concession/waiver except those, which are available to it as per the provisions of Section 31(1) and 32A of IBC, 2016. Nevertheless, the properties which are already attached by ED, under PMLA would not be released and it would be for the SRA to resort to the appropriate proceedings to seek remedy in this regard. In any case, the changed management covered under Sec. 32A(1)(a) & (2)(i) of IBC, 2016, would not be entitled for any criminal consequences for the offences committed by the ex-management of the CD prior to commencement of the CIRP. It is also noticed that though in the certificate furnished by the RP in Form-H prescribed under Regulation 39(4) of IBBI (CIRP) Regulations, 2016, as also in the Affidavit filed by him, the RP has authenticated that the SRA does not suffer any ineligibility under Sec. 29A of IBC, 2016, but in terms of provisions of Sec. 30(1) of the Code, a Resolution Applicant should submit the Resolution Plan along with an affidavit stating that he is eligible under Sec. 29A to submit a Resolution Plan, to the Resolution Applicant. We could not find any such affidavit filed by SRA on record. Nevertheless, in the interest of justice we deem it appropriate to give an opportunity to SRA to file the affidavit required in terms of provisions of Sec. 29A read with Sec. 30(1) of the IBC, 2016.

61. In the backdrop of aforementioned factual position, discussion, analysis and findings, **the IA-01/2024 filed by the RP for approval of the Resolution Plan is allowed. The Plan submitted by the SRA, certified by the RP is approved subject to filing of Affidavit of SRA under Section 29A r/w Sec. 30(1) of IBC, 2016 by the RP within 15 days of this Order.** It is made clear that no relief/concession is accorded to the SRA. The relief sought

regarding direction to ED to release the property of the CD attached by it is specifically rejected. It would be open to SRA to resort to the remedies available under PMLA for release of the attached properties in accordance with law. As has been noted hereinabove, the SRA has committed that it would implement the plan irrespective of the fact that no relief/concession sought by him is granted by this Tribunal. If the affidavit of SRA under Sec. 29A read with Sec. 30(1) of the Code is not filed within 15 days from the date of uploading of this order, the application for approval of plan would be deemed to be rejected and the security amount deposited by the SRA would stand forfeited.”

15. From the submissions which have been made by the parties, following are the issues which need consideration in this Appeal :

- (1) Whether due to provisional attachment of the assets of the CD vide order dated 24.01.2019, the assets could not have been included in the assets of the CD in the Information Memorandum nor could be part of the Resolution Plan?
- (2) Whether due to restraint order passed by the Delhi High Court dated 13.02.2019 passed in LPA No.104 of 2019, assets of CD could not be made part of the Information Memorandum, nor could have been dealt in the Resolution Plan?
- (3) Whether the Appellant is not entitled to the benefit of Section 32A of the IBC, consequent to the approval of Resolution Plan dated 04.07.2024 by the Adjudicating Authority, due to the reason that provisional attachment order was issued by the ED on 24.01.2019, much prior to initiation of CIRP on 23.03.2022?

- (4) Whether the findings and observations of the Adjudicating Authority as contained in paragraphs 60 and 61 of the impugned order requiring the SRA to resort to appropriate proceedings to seek release of the attachment, is in accordance with the statutory scheme as delineated under Section 32A of the IBC?
- (5) What is the effect and consequence of approval of Resolution Plan of the CD by order dated 04.07.2024 on the provisional attachment made by ED by order dated 24.01.2019?
- (6) Relief, if any, to which the Appellant is entitled to in this Appeal?

Question No. (1)

16. The submission of the counsel for the Directorate of Enforcement is that due to Provisional Attachment Order dated 24.01.2019 as well as vide order of the Delhi High Court dated 13.02.2019, the assets of the corporate debtor could not be included in the information memorandum and could not have been made part of the resolution plan. We need to first notice the first question as to whether due to provisional attachment of the assets of the corporate debtor dated 24.01.2019 assets could not have been included in the information memorandum. Answer of the said question has to be found out from the scheme of the PMLA Act, 2002. Section 2 of the PMLA Act, 2002 contains definition clause. Section 2(d) defines attachment, which is as follows:

“2. Definitions.–

(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

²[(da) "authorised person" means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);]"

17. The provisional attachment is provided for in Section 5, which we already noticed above. In the present case, Provisional Attachment Order was passed by the Directorate of Enforcement on 24.01.2019. Sub-Section (5) Section 3 provides that every order of attachment shall cease to have effect after the expiry of period specified in on the date of order made under sub-Section (3) of Section 8 whichever is earlier. In the present case, no proceeding has been initiated under Section 8, hence, there is no applicability of Section 8(3). Sub-Section (4) of Section 5 provides as follows:

“5. Attachment of property involved in money-laundering.–

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.”

18. Sub-Section (4) of Section 5 thus clearly provides that provisional attachment under Section 5 shall not prevent the person interested in the enjoyment of the immovable property attached under sub-Section (1) from such enjoyment, thus, despite the attachment of assets of the corporate debtor, corporate debtor was fully entitled to enjoy the property. The scheme of Section 8 as noted above contemplate that it was only after conclusion of Trial & Special Court finds that offence of money laundering have been committed, it shall order confiscation of the property use in the

offence. The present is the case where proceeding under Section 8 has not even commenced, no order of confiscation being there, the property has not vested, the rights of the corporate debtor has not been vested in the property under the PMLA Act. By the attachment of the assets, the ownership rights of the corporate debtor are not divested, nor it can be said that the corporate debtor does not continue to be the owner of the asset. The scheme under the PMLA itself, clarifies that despite attachment the corporate debtor is entitled to enjoy the property. Property is defined under Section 2(v), which is as follows:

“2. Definitions.–

(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

19. Section 29 of the IBC provides for preparation of information memorandum. Regulation 36 of the [IBBI \(Insolvency Resolution Process for Corporate Persons\) Regulations, 2016](#), (for short the CIRP Regulations, 2016) deals with the information memorandum. Under Regulation 36(2) of the CIRP Regulations, 2016, require RP to give details of assets of liability. Regulation 36(2)(a) is as follows:

“36. Information memorandum.

(2) The information memorandum shall highlight the key selling propositions and contain all relevant information which serves as a comprehensive document conveying significant information about the corporate debtor including its operations, financial statements, to the prospective resolution applicant and shall contain the following details of the corporate debtor.

(a) assets and liabilities including contingent liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.”

20. Section 18 of the IBC provides for duties of Interim Resolution Professional. Section 18(1)(f) is as follows:

“18. Duties of interim resolution professional.–

The interim resolution professional shall perform the following duties, namely:—

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.”

21. Information memorandum thus was required to mention details of all assets which belong to the corporate debtor. In the present case, there is no case of the respondent that asset do not belong to the corporate debtor, nor it claim that appellant has been divested with its ownership on account of provisional attachment under PMLA.

22. Learned counsel appearing for the RP has placed reliance on the judgment of the Appellate Tribunal SAFEMA, New Delhi in ***‘Alive Hospitality & Foods (P) Limited’ Vs. ‘Deputy Director, Directorate of Enforcement, Ahmedabad’*** reported in [(2025) 170 taxmann.com 814], which was case which arose out of provisional attachment made under PMLA Act, 2002. Appellate Tribunal in the above case, noticing the scheme of the PMLA under Section 5 and Section 8, it was held that mere attachment of property does not alter the possession with regard to an ownership or even possession use of the property which are subject matter of concern. In paragraph 39 following was laid down:

“39. It is next contended that the notice issued by the Adjudicating Authority under Section 8(1) was not valid because the same is dependent on the requirement of the property being [proceeds of crime. Several of the other arguments advanced by the appellant also spring from the same underlying contention, namely, that there were no proceeds of crime in the present case. In light of the discussions in the preceding paras, these contentions of the appellants are hereby rejected. As already held, there was more than sufficient evidence to come to the conclusion at this stage of the proceedings that the subject property constituted, proceeds of crime’ so as to place it under attachment until the outcome of criminal proceedings under the Act. It may be mentioned in this context that the legal position is well-settled that attachment of property is a balancing arrangement to secure the interests of the person, as also ensure that the proceeds of crime reman available to be dealt with in the manner provided by the Act. Mere attachment of property does not alter the position with regard to the ownership to even possession/use of the properties which are the subject matter of such attachment. The Hon’ble Supreme Court has held in the aforesaid case of Vijay Mandanlal Choudhary, and further clarified in the case of Union of India v. Ganpati Dealcom Pvt. Ltd. [2022] 141 taxmann.com 389/289 Taxman 177/447 ITR 108 (SC)/[Civil Appeal No. 5783 of 2022 (order dated 23.08.22)] that possession of properties attached under the PMLA, 2002 can only be taken under exceptional circumstances, such as

crimes involving terrorist activities, drug cartels or organized criminal activities. Therefore, at this stage, when the criminal trial of the appellants herein is still pending before a court of competent jurisdiction, even the balance of interests lies in favour of continued attachment of the subject properties. The same by itself neither disturbs the ownership title of the appellants, nor deprives them of possession/ enjoyment of the same.”

23. In view of the above discussion, we answer Question No. (1) in following manner:

Due to provisional attachment of the assets of the corporate debtor vide order dated 24.01.2019, the assets could very well be included in the assets of the corporate debtor in the information memorandum and could be part of the resolution plan.

Question No. (2)

24. The submission which has been made by learned counsel for the Enforcement Directorate is that on account of order passed by Delhi High Court dated 13.02.2019 in LPA No.104/2019, assets could not be included in the information memorandum nor could have been part of the resolution process. The Writ Petition was filed by the corporate debtor against the Directorate of Enforcement in the Delhi High Court. Corporate debtor in the Writ Petition had sought an order directing the Directorate of Enforcement not to attach the assets of the corporate debtor. Delhi High Court passed an order on 22.01.2019, which permitted the Directorate of Enforcement to pass a Provisional Attachment Order, aggrieved by the order 22.01.2019 in **[LPA No.104/2019]** in the matter of **‘Alchemist Infra Realty Ltd. & Anr.’ Vs.**

‘Directorate of Enforcement & Ors.’ was filed in the Delhi High Court.

In LPA, following order was passed by Division Bench on 13.02.2019:

“CM APPL. 6889/2019 (Exemption)”

Allowed, subject to all just exceptions.

Application stands disposed of.

LPA 104/2019 & CM No. 6888/2019 (Stay)

Issue notice. Notice is accepted by Mr. Amit Mahajan, CGSC on behalf of Union of India; Mr. Amol Sharma, Advocate on behalf of respondent No.3 and Mr. Ashish Aggarwal, Advocate on behalf of respondent No.4.

On petitioner taking steps, issue notice to respondent No.2, returnable on 04.04.2019.

In the meanwhile, operation of the order passed by the learned single Judge dated 22.01.2019 shall remain stayed. Further proceedings in PMLA Act shall also remain stayed. Petitioner shall not alienate the property in any manner adverse to the revenue during the pendency of the appeal. Status quo with regard to the properties in question which are the subject matter of provisional attachment shall be maintained.”

25. The submission of the counsel for the respondent is that in view of the direction of the Division Bench directing the appellant (corporate debtor) not to alienate the property in any manner adverse to the revenue and further status quo was directed to be maintained with regard to properties assets could not be subject matter of the resolution process. The LPA, which arose out of which order dated 22.01.2019, which was order passed under Writ Petition filed by the corporate debtor, the restraint order was passed on the corporate debtor not to alienate the property. Order of status quo which was directed with regard to the property in question where the status quo to be maintained both by

corporate debtor as well as the Directorate of Enforcement. The order dated 13.02.2019, was passed much before initiation of CIRP, which commenced only on 23.03.2022. The interim direction passed by the High Court was only with respect to the corporate debtor and the Directorate of Enforcement, the said order 13.02.2019 cannot be interpreted to mean that it prohibited the IRP/RP to include the asset in the information memorandum or to deal with the same in the resolution plan. It is not on the record that after the commencement of CIRP, any further directions were sought from the Delhi High Court, either by Directorate of Enforcement or by the RP or any clarification has been sought.

26. We are of the view that the order was passed by Delhi High Court on 13.02.2019, and CIRP commenced after 3 years from the said order, and no further order having been obtained by either of the parties from the Delhi High Court, the order dated 13.02.2019 cannot be held to be restraint on the assets to be included in the information memorandum or in the resolution process.

27. We thus answer Question No. (2) in following manner:

Due to restraint order passed by the Delhi High Court dated 13.02.2019 passed in LPA No.104/2019, the assets of the corporate debtor could have very well be included in the information memorandum and made part of the resolution process.

Question Nos.(3), (4) & (5)

28. What is legislative scheme of Section 32A, which was inserted into IBC by Act 01 of 2020, w.e.f. 28.12.2019, is the question, which has fallen for consideration in this Appeal. Section 32A of the IBC provides as follows:

“32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled: Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in-charge of, or responsible to

the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not –

- (i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.- For the purposes of this sub-section, it is hereby clarified that,-

- (i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;
- (ii) nothing in this sub-section shall be construed to bar an action against the property of any person,

other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person, who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.”

29. Insertion of Section 32A in the IBC was preceded with Insolvency Law Committee (“**ILC**”) Report as well as the Report of the Standing Committee of Lok Sabha. Section 32A as inserted by Act No.01 of 2020, came to be challenged before the Hon’ble Supreme Court by means of Writ Petition under Article 32 of the Constitution of India, which challenge was decided by the Hon’ble Supreme Court on 19.01.2021 reported in **(2021) 5 SCC 1 – Manish Kumar vs. Union of India and Anr.** The Hon’ble Supreme Court in the said judgment in context of challenge to the provision has elaborately noticed the Insolvency Law Committee Report as well as Report of the Standing Committee of the Lok Sabha. The Hon’ble Supreme Court having already considered Section 32A, it is necessary to notice the judgment of the Hon’ble Supreme Court, which has authoritatively pronounced the law on the subject, which is binding on all. It is relevant to notice that the Petitioner challenging the provision of

Section 32A before the Hon'ble Supreme Court has contended that immunity granted to the CD and its assets acquired from the proceeds of crimes and any criminal liability arising from the offences, will jeopardize the interest of the allottees/ creditors. Reliance was also placed on the Prevention of Money Laundering Act, 2002. It is useful to notice paragraph 314 of the judgment, where arguments in above regard have been noticed, which is as follows:

“314. The petitioners contend that immunity granted to the corporate debtors and its assets acquired from the proceeds of crimes and any criminal liability arising from the offences of the erstwhile management for the offences committed prior to initiation of CIRP and approval of the resolution plan by the adjudicating authority further jeopardises the interest of the allottees/creditors. It will cause huge losses which is sought to be prevented under the provisions of the Prevention of Money Laundering Act, 2002.”

30. In paragraph 316, the stand of Union of India while dealing with Section 32A has been noticed. In paragraph 316.1 and 316.2 object and reasons have been extracted, which are as follows:

“316.1. Section 32-A provides immunity to the corporate debtor and its property when there is approval of the resolution plan resulting in the change of management of control of corporate debtor. This is subject to the successful resolution applicant being not involved in the commission of the offence. Statutory basis has now been given under Section 32-A to the law laid down by this Court in the decision of *Essar Steel India Ltd. Committee of Creditors* [*Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta*, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] . This Court took the view therein that successful resolution applicant cannot be faced with undecided claim after its resolution plan has

been accepted. The object is to ensure that a successful resolution applicant starts off on a fresh slate.

316.2. The relevant extracts of the Statement of Objects and Reasons relied upon by the Union of India are as follows:

“Statement of Objects and Reasons

* * *

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, *to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.*

3. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, inter alia, provides for the following, namely—

* * *

(vii) to insert a new Section 32-A so as to provide that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease under certain circumstances.”

31. In paragraph 316.3, the Hon’ble Supreme Court has extracted the relevant part of the Insolvency Law Committee Report. It is useful to notice paragraphs 17.7, 17.8, 17.9 and 17.10 of the Insolvency Law Committee Report, which are extracted in paragraph 316.3, which are to the following effect:

“17.7. Thus, the Committee agreed that a new section should be inserted to provide that where the corporate debtor is successfully resolved, it should not be held liable for any offence committed prior to the commencement of the CIRP, unless the successful resolution applicant was also involved in the commission of the offence, or was a related party, promoter or other person in management and control of the corporate debtor at the time of or any time following the commission of the offence.

17.8. Notwithstanding this, those persons who were responsible to the corporate debtor for the conduct of its business at the time of the commission of such offence, should continue to be liable for such an offence, vicariously or otherwise, regardless of the fact that the corporate debtor's liability has ceased.

Actions against the Property of the corporate debtor

17.9. The Committee also noted that in furtherance of a criminal investigation and prosecution, the property of a company, which continues to exist after the resolution or liquidation of a corporate debtor, may have been liable to be attached, seized or confiscated. For instance, the property of a corporate debtor may have been at risk of attachment, seizure or confiscation where there was any suspicion that such property was derived out of proceeds of crime in an offence of money laundering. It was felt that taking actions against such property, after it is acquired by a resolution applicant, or a bidder in liquidation, could be contrary to the interest of value maximisation of the corporate debtor's assets, by substantially reducing the chances of finding a willing resolution applicant or bidder in liquidation, or lowering the price of bids, as discussed above.

17.10. Thus, the Committee agreed that the property of a corporate debtor, when taken over by a successful resolution

applicant, or when sold to a bona fide bidder in liquidation under the Code, should be protected from such enforcement action, and the new section discussed in Para 17.7 should provide for the same. Here too, the Committee agreed that the protection given to the corporate debtor's assets should in no way prevent the relevant investigating authorities from taking action against the property of persons in the erstwhile management of the corporate debtor, that may have been involved in the commission of such criminal offence.”

32. The Report of the Standing Committee of Lok Sabha dated March 2020 have been extracted in paragraph 316.4 of the judgment, which is as follows:

“**316.4.** The Additional Solicitor General also places reliance on the Sixth Report of the Standing Committee of Lok Sabha made in March 2020. The relevant portions according to the learned ASG are as follows:

“3.8. The stakeholders on the above clause furnished the following suggestion:

‘Though the Bill gives immunity to the corporate debtor (company as a legal entity) from prior offences, the individuals responsible for committing such offences on behalf of the debtor will still be held liable. The question is whether the debtor should be absolved of all kinds of prior offences with such a blanket immunity.’

3.9. The Secretary, Ministry of Corporate Affairs during the sitting held on 15-1-2020 remarked:

‘If the bidder, who is coming and participating under the court supervised competitive process, does not get security and is not indemnified, there may be a problem.’

3.10. Further, the Ministry furnished the following comment on the above suggestion:

‘... this provision would only apply where the CIRP culminates in a change in control to a completely unconnected resolution applicant. As such, a resolution applicant has nothing to do with the commission of any pre-CIRP offence whatsoever, and the corporate debtor is now fundamentally not the same entity as the one that committed the crime.’

3.11. The Committee is in agreement with the intent of this amendment to safeguard the position of the resolution applicant(s) by ring-fencing them from prosecution and liabilities under offences committed by erstwhile promoters, etc. The Committee understands the need for treating the company or the corporate debtor as a cleansed entity for cases which result in change in the management or control of the corporate debtor to a person who was not a promotor or in the management or control of the corporate debtor or related party of such person, or to a person against whom there is material evidence and pending complaint or report by the investigating authority filed in relation to the criminal offence. The Committee agrees that this provision is essential to provide the resolution applicant(s) a fair chance to revive the unit which otherwise would directly go into liquidation, which may not be as beneficial to the economy. The Committee believes that this ring-fencing is essential to achieve revival or resolution without imposing additional liabilities on the resolution applicant, arising from mala fide acts of the previous promoter or management.”

33. The Standing Committee of Lok Sabha in paragraph 3.11 has emphasized and laid down its emphasis in following words “...*The Committee believes that this ring-fencing is essential to achieve revival or resolution without imposing additional liabilities on the resolution applicant, arising from mala fide acts of the previous promoter or management*”. In

paragraph 317, the Hon'ble Supreme Court after noticing the Reports and object and reasons of the Bill has laid down following:

“317. Section 32-A has been divided into three parts consisting of sub-sections (1) to (3). Under sub-section (1), notwithstanding anything contained, either in the Code or in any other law, liability of a corporate debtor, for an offence committed prior to the commencement of the CIRP, shall cease. Further, the corporate debtor shall not be liable to be prosecuted for such an offence. Both these immunities are subject to the following conditions:

317.1. A resolution plan, in regard to the corporate debtor, must be approved by the adjudicating authority under Section 31 of the Code.

317.2. The resolution plan, so approved, must result in the change in the management or control of the corporate debtor.

317.3. The change in the management or control, under the approved resolution plan, must not be in favour of a person, who was a promoter, or in the management and control of the corporate debtor, or in favour of a related party of the corporate debtor.

317.4. The change in the management or control of the corporate debtor must not be in favour of a person, with regard to whom the relevant investigating authority has material which leads it to entertain the reason to believe that he had abetted or conspired for the commission of the offence and has submitted or filed a report before the relevant authority or the Court. This last limb may require a little more demystification. The person, who comes to acquire the management and control of the corporate person, must not be a person who has abetted or conspired for the commission of the offence committed by the corporate debtor prior to the commencement of the CIRP. Therefore, abetting or conspiracy by the person, who acquires management and control of the corporate debtor, under a resolution plan, which is approved under Section 31 of the Code and the filing of the report, would remove the protective umbrella or immunity erected by Section 32-A in regard

to an offence committed by the corporate debtor before the commencement of the CIRP. To make it even more clear, if either of the conditions, namely, abetting or conspiring followed by the report, which have been mentioned as aforesaid, are present, then, the liability of the corporate debtor, for an offence committed prior to the commencement of the CIRP, will remain unaffected.”

34. It is relevant to notice the expression used in paragraph 317 i.e. *“liability of a Corporate Debtor, for an offence committed prior to the commencement of the CIRP, shall cease”*. The Hon’ble Supreme Court after elaborately considering the ILC Report and the Report of the Parliamentary Committee and other relevant material has laid down following in paragraphs 319 and 320:

“319. Thus, the combined reading of the various limbs of sub-section (1) would show that while, on the one hand, the corporate debtor is freed from the liability for any offence committed before the commencement of the CIRP, the statutory immunity from the consequences of the commission of the offence by the corporate debtor is not available and the criminal liability will continue to haunt the persons, who were in charge of the assets of the corporate debtor, or who were responsible for the conduct of its business or those who were associated with the corporate debtor in any manner, and who were directly or indirectly involved in the commission of the offence, and they will continue to be liable.

320. Coming to sub-section (2) of Section 32-A, it declares a bar against taking any action against property of the corporate debtor. This bar also contemplates the connection between the offence committed by the corporate debtor before the commencement of the CIRP and the property of the corporate debtor. This bar is conditional to the property being covered under the resolution plan. The further requirement is that a resolution plan must be approved by the adjudicating authority and, finally, the approved plan, must

result in a change in control of the corporate debtor not to a person, who is already identified and described in sub-section (1). In other words, the requirements for invoking the bar against proceeding against the property of the corporate debtor in relation to an offence committed before the commencement of the CIRP, are as follows:

320.1. There must be resolution plan, which is approved by the adjudicating authority under Section 31 of the Code.

320.2. The approved resolution plan must result in the change in control of the corporate debtor to a person, who was not — (a) a promoter; (b) in the management or control of the corporate debtor; or (c) a related party of the corporate debtor; (d) a person with regard to whom the investigating authority, had, on the basis of the material, reason to believe that he has abetted or conspired for the commission of the offence and has submitted a report or a complaint. If all these aforesaid conditions are fulfilled then the law giver has provided that no action can be taken against the property of the corporate debtor in connection with the offence.”

35. Section 32A, sub-section (1) was also been separately dealt in paragraphs 321, 322 and 323, which are as follows:

“**321.** The Explanation to sub-section (2) of Section 32-A has clarified that the words “*an action against the property of the corporate debtor in relation to an offence*”, would include the attachment, seizure, retention or confiscation of such property under the law applicable to the corporate debtor. Since the word “include” is used under sub-clause (i) of the Explanation, the word “action” against the property of the corporate debtor is intended to have the widest possible amplitude. There is a clear nexus with the object of the Code. The other part of the clarification, under the Explanation, is found in the second sub-clause of Explanation (ii).

322. Under the second limb of the Explanation to Section 32-A(2), the law giver has clearly articulated the point that as far as the property of any person, other than the corporate debtor or any

person who had acquired the property of the corporate debtor through the CIRP or liquidation process under the Code and who otherwise fulfils the requirement under Section 32-A, action can be taken against the property of such other person.

323. Thus, reading sub-section (1) and sub-section (2) of Section 32-A together, two results emerge:

323.1. Subject to the requirements embedded in sub-section (1) of Section 32-A, the liability of the corporate debtor for the offence committed under the CIRP, will cease.

323.2. The property of the corporate debtor is protected from any legal action against subject to the safeguards, which we have indicated.

323.3. The bar against action against the property, is available, not only to the corporate debtor but also to any person who acquires property of the corporate debtor under the CIRP or the liquidation process. The bar against action against the property of the corporate debtor is also available in the case of a person subject to the same limitation as prescribed in sub-section (1) and also in sub-section (2), if he has purchased the property of the corporate debtor in the proceedings for the liquidation of the corporate debtor.”

36. The Hon’ble Supreme Court in paragraph 323.1 has clearly held that subject to the requirements embedded in Section 32A(1), liability of the CD for the offence committed under the CIRP, will cease. Further in paragraph 323.2, it has been held that the property of the CD is protected from any legal action against subject to safeguards, which have been indicated by the Hon’ble Supreme Court.

37. The above judgment of the Hon’ble Supreme Court clearly has noticed the legislative scheme under Section 32A and has clearly laid down the purpose and object of enactment. In view of the authoritative

pronouncement of the Hon'ble Supreme Court in the above judgment on Section 32A, there can be no scope of any debate of true import of Section 32A.

38. The question which has arisen in the present case is as to whether since the provisional attachment order was made on 24.01.2019, much before initiation of CIRP, whether the benefit of Section 32A, cannot be claimed by the SRA on the basis of approval of Resolution Plan dated 24.07.2024. Shri Zohab Hossain, learned Counsel appearing for the ED submitted that the benefit of Section 32A granted protection '*in futuro*', i.e. subsequent to the approval of Resolution Plan and Section 32A, can have no effect on the provisional attachment, which was made on 24.01.2019.

39. Learned counsel for the appellant as well as learned counsel for the Enforcement Directorate has placed reliance on the judgment of the Hon'ble Supreme Court in '**Manish Kumar**' (*supra*). Apart from the judgment of the Hon'ble Supreme Court, learned Counsel for the parties have placed reliance on various other judgments of this Tribunal as well as Hon'ble Supreme Court. We need to explain the contours of Section 32A of IBC. We shall first notice the judgments relied by learned counsel Mr. Zoheb Hussain appearing for the Enforcement Directorate. Relying on the judgment of the Hon'ble Delhi High Court in '**Deputy Director, Directorate of Enforcement of Delhi**' Vs. '**Axis Bank & Ors.**' reported in [2019 SCC OnLine Del 7854], it is submitted that PMLA and IBC operates in distinct field and IBC cannot take precedence as where text, contents and purpose are different. In the above case, Delhi High Court

had occasion to decide appeals filed under Section 42 of Prevention of Money Laundering Act, 2002 against orders passed by Appellate Tribunal constituted under Section 25 of the PMLA Act, 2002. Provisional Attachment Order issued under Section 5 were confirmed by the adjudicating authority giving rise to the appeals. The issue which arose for consideration has been noticed in paragraph 2 of the judgment, which is as follows:

“2. The measure of attachment of property involved in "money laundering", it essentially representing "proceeds of crime" (as defined in law), is provided to ensure that the ultimate objective of "confiscation" of such ill- gotten property be not frustrated, the power and jurisdiction to order confiscation being vested in the Special Court. As would be seen at length in later part of this judgment, the provisions for attachment (followed by adjudication) leading to confiscation are sanctions in addition to the criminal sanction rendering the act of "money-laundering" a penal offence (by virtue of section 4). The order of "confiscation" of property attached under PMLA takes away the right and title of its owner and vests it "absolutely in the Central Government free from all encumbrances" (section 9).”

40. In the above case, Hon’ble Delhi High Court had no occasion to consider legislative scheme under Section 32A vis-a-vis Provisional Attachment Order passed under PMLA Act, 2002. Above judgment thus does not show any light on the issues which has arisen for consideration in these appeals. The judgment of this Tribunal in **‘Varrsana Ispat Limited’ Vs. ‘Deputy Director, Directorate of Enforcement** reported in **[2019 SCC OnLine NCLAT 236]** have been relied by the learned counsel Mr. Zoheb Hussain. It is submitted that in the above case this Tribunal held that proceeding under PMLA are independent and not overridden by the IBC. In the above case, Directorate had attached the properties of

Varrsana Ispat Limited. RP filed an application before the adjudicating authority for releasing the attachment of the certain assets of the corporate debtor. Attachment Order was issued on 10.07.2017, prior to the order of the declaration of moratorium. Application was held not maintainable against which the appeal was filed. This Tribunal had occasion to consider Section 14 of the IBC and certain provisions of the PMLA Act, 2002. It was held by this Tribunal that Section 14 of the IBC are not applicable to the proceedings under PMLA. Following was laid down in paragraph 12, 13 & 14:

“12. From the aforesaid provisions, it is clear that the "Prevention of Money- Laundering Act, 2002" relates to "proceeds of crime" and the offence relates to "money-laundering" resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the "Prevention of Money-Laundering Act, 2002" or provisions therein relates to "proceeds of crime", we hold that section 14 of the "I and B Code" is not applicable to such proceeding.

13. In so far as penalty is concerned, offence of money-laundering is punishable with rigorous imprisonment which is not less than three years and has nothing to do with the "corporate debtor". It will be applicable to the individual which may include the ex-directors and shareholders of the "corporate debtor" and they cannot be given protection from the "Prevention of Money-Laundering Act, 2002" and such individual cannot take any advantage of section 14 of the "I and B Code". This apart, we find that the attachments were made by the Deputy Director of Directorate of Enforcement much prior to initiation of the "corporate insolvency resolution process", therefore, the "resolution professional" cannot derive any advantage out of section 14.

14. As the "Prevention of Money-Laundering Act, 2002" relates to different fields of penal action of "proceeds of crime", it invokes simultaneously with the "I and B Code", having no overriding effect of one Act over the other including the "I and B Code", we find no merit in this appeal. It is accordingly dismissed. No costs."

41. There can be no dispute to the proposition laid down by this Tribunal in the above case that Section 14 of the IBC has no consequence on proceedings under the PMLA Act, 2002. The present is not a case where appellant is claiming any benefit under Section 14 of the IBC rather the issue which has arisen is scope and ambit of Section 32A of the IBC. The judgment of **‘Varrsana Ispat Ltd.’ (supra)** passed by this Tribunal also came to be affirmed by the Hon’ble Supreme Court by order dated 22.07.2019 in Civil Appeal No. 5546/2019.

42. Learned counsel for the R-2 has further placed reliance on the judgment of this Tribunal in **‘Kiran Shah, RP of KSL & Industries Ltd.’ Vs. ‘Enforcement Directorate Kolkata’** in [Comp. App. (AT) (Ins.) No.817/2021] for the proposition that NCLT is not empowered to decide questions of law or fact under the PMLA. The earlier 2 Member Bench judgment of this Tribunal in **‘Directorate of Enforcement’ Vs. ‘Manoj Kumar Aggarwal & Ors.’** reported in [2021 SCC OnLine NCLAT 121] was overruled. In **‘Kiran Shah’** case, where a Provisional Attachment Order was passed under Section 5 of the PMLA Act, 2002 on 08.05.2019. Section 7 application against corporate debtor was admitted on 06.09.2019. The Provisional Attachment Order was affirmed by adjudicating authority on 24.10.2019. RP filed an application before the NCLT for setting aside the Provisional Attachment Order as confirmed by the adjudicating authority (PMLA), which came to be rejected by the adjudicating authority on 31.12.2020 as not maintainable. RP thereafter filed the appeal before this Tribunal which came to be decided by this

Tribunal. This Tribunal took the view that adjudicating authority (NCLT) is not empowered to deal with the matter falling in purview under the authority of the PMLA. This Tribunal affirmed the view of the adjudicating authority that application filed before NCLT for setting aside the Provisional Attachment Order was not maintainable. In paragraph 110 of the judgment following was laid down:

“110. As far as the present case is concerned, the ‘Appellant/Resolution Professional’ even though has filed Company Appeal (AT)(Ins) No. 817 of 2021 being dissatisfied with the order dated 31.12.2020 in IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 [filed by the Applicant/IRP for KSL Industries Ltd./Corporate Debtor under Sections 14,18,25 & 60(5) of Code] seeking to set aside the ‘Attachment of the Property of the ‘Corporate Debtor’ by the Respondent/Enforcement Directorate vide order dated 24.10.2019 passed by the ‘Adjudicating Authority’ PMLA etc., this ‘Tribunal’ makes it candidly clear that filing of Application under Section 60(5) of the I & B Code is not an ‘all pervasive’ one, thereby conferring ‘Jurisdiction’ to an ‘Adjudicating Authority’ (NCLT) to determine ‘any question/issue of priorities’, question of Law or Facts pertaining to the ‘Corporate Debtor’ when in reality in ‘Law’, the ‘Adjudicating Authority’ (NCLT) is not empowered to deal with the matters falling under the purview of another authority under PMLA. Viewed in that perspective, IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 filed by the Applicant/IRP for KSL & Industries Ltd is held by this ‘Tribunal’ as not maintainable in law. Resultantly, the Appeal fails.”

43. It is relevant to notice that in the **‘Kiran Shah’** judgment itself, this Tribunal has noted that the resolution plan was not approved hence Section 32A cannot be pressed into service. In paragraphs 91 & 97 of the judgment following was observed:

“91. It is to be relevantly pointed out that Section 32-A ‘Liability for Prior Offences etc.’ was inserted by Act 1 of 2020 S. 10 (with effect from 28.12.2019) and in reality, this Section only bars attachment after approval of ‘Resolution Plan’ by an

‘Adjudicating Authority’ of course subject to the requirement of certain conditions being satisfied. In the instant case in hand, admittedly, there is no approval of ‘Resolution Plan’ till date and as such, it is held by this ‘Tribunal’, that the Appellant cannot press into service the ingredients of Section 32-A(2) of the I & B Code.

97. In the instant case, there is no ‘Resolution Plan’ as approved by the ‘Tribunal’ and further no Liquidation Proceedings had ended in the sale of Liquidation Assets of the ‘Corporate Debtor’.”

44. Thus, there can be no dispute to the proposition laid down by this Tribunal in the above case that NCLT will have no jurisdiction to set aside order passed by the adjudicating authority in PMLA Act, 2002. Another judgment relied by respondent is judgment of this Tribunal in **[Comp. App. (AT) (Ins.) No.411/2022]** in **‘Ashok Kumar Sarawagi’ Vs. ‘Enforcement Directorate & Anr.’** decided on 09.05.2022. In the above case, also the RP has challenged an Order of Provisional Attachment dated 30.12.2021 before the adjudicating authority. Adjudicating authority relying on judgment of **‘Varrsana Ispat Ltd.’ (supra)** held that NCLT is not empowered to deal with the matters following under PMLA. Appeal was filed against the said judgment which came to be dismissed by this Tribunal. In paragraphs 8, 9 & 10 following was held:

“8. The issue which has been raised before us is covered by Three Member Bench Judgment in Kiran Shah. Submissions which are sought to be raised by the Counsel for the Appellant were noticed and answered by Three Member Bench. We may refer to paragraphs 109 and 110 of the Kiran Shah’ Judgment, which is to the following effect:-

“109. In so far as the decision in Manoj Kumar Aggarwal case is concerned (reported in 2021 SCC OnLine NCLAT 121), this ‘Tribunal’ is of the considered opinion that the said decision runs contra to the ‘Principle of Stare Decisis’.

110. As far as the present case is concerned, the ‘Appellant/Resolution Professional’ even though has filed Company Appeal (AT)(Ins) No. 817 of 2021 being dissatisfied with the order dated 31.12.2020 in IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 [filed by the Applicant/IRP for KSL Industries Ltd./Corporate Debtor under Sections 14,18,25 & 60(5) of Code] seeking to set aside the ‘Attachment of the Property of the ‘Corporate Debtor’ by the Respondent/Enforcement Directorate vide order dated 24.10.2019 passed by the ‘Adjudicating Authority’ PMLA etc., this ‘Tribunal’ makes it candidly clear that filing of Application under Section 60(5) of the I & B Code is not an ‘all pervasive’ one, thereby conferring ‘Jurisdiction’ to an ‘Adjudicating Authority’ (NCLT) to determine ‘any question/issue of priorities’, question of Law or Facts pertaining to the ‘Corporate Debtor’ when in reality in ‘Law’, the ‘Adjudicating Authority’ (NCLT) is not empowered to deal with the matters falling under the purview of another authority under PMLA. Viewed in that perspective, IA 81 of 2020 in CP(IB) No. 397/NCLT/AHM/2018 filed by the Applicant/IRP for KSL & Industries Ltd is held by this ‘Tribunal’ as not maintainable in law. Resultantly, the Appeal fails.”

9. Learned Counsel for the Respondent is also right in submission that against the judgment of this Tribunal dated 02.03.2019 in **“Varrsana Ispat Limited”**, Civil Appeal No. 5546 of 2019 was filed by Varrsana Ispat Ltd. which Civil Appeal was dismissed on 22.07.2019. The judgment of Varrsana has been relied by Three Member Bench in Kiran Shah.

10. We are of the view that the Adjudicating Authority did not commit any error in rejecting the I.A (IB) No. 74/KB/2022 filed by the Resolution Professional challenging the order passed by the PMLA Court, we do not find any merit in the Appeal. The Appeal is dismissed.”

45. There can be no dispute to the proposition laid down by this Tribunal in the above case that NCLT has no jurisdiction to sit in appeal over the Order of Provisional Attachment passed under the PMLA Act, 2002. Learned counsel Mr. Zoheb Hussain has placed reliance on the judgment of Delhi High Court in **‘Rajiv Chakraborty, RP of EIPL’ Vs.**

‘Directorate of Enforcement’ decided on 11.11.2022 reported in **[2022 SCC OnLine DEL 3703]**. Relying on the said judgment, it is submitted that Section 32A operates only once plan is approved. Reliance has been placed in paragraph 115 where following has been laid down by the Delhi High Court:

“115. The Court has independently come to the conclusion that the power to attach under the PMLA would not fall within the ken of Section 14(1)(a) of the IBC. Through Section 32A, the Legislature has authoritatively spoken of the terminal point whereafter the powers under the PMLA would not be exercisable. The events which trigger its application when reached would lead to the erection of an impregnable wall which cannot be breached by invocation of the provisions of the PMLA. The non obstante clause finding place in the IBC thus can neither be interpreted nor countenanced to have an impact far greater than that envisaged in Section 32A. The aforesaid issue stands answered accordingly.”

46. The Delhi High Court in the above case has laid down that legislature through Section 32A has authoritatively spoken of the terminal point whereafter the powers under the PMLA could not have been exercised. The Delhi High Court held that the events which triggers application under Section 32A is approval of the resolution plan which could lead to the erection of the impergnable wall which cannot be breached. Delhi High Court in the above judgment has noticed the scheme under Section 32A and after elaborating considering relevant judgments of this Tribunal as well as the judgment of the Hon’ble Supreme Court in **‘Manish Kumar’ (supra)**. In paragraph 110 of the judgment, following has been laid down:

“110. The court also bears in mind that the provisional attachment of tainted properties does not inevitably lead to the debtor or the persons who hold the tainted property being divested of a right to establish that the properties so attached would not constitute proceeds of crime. It would be apposite

to recollect that Axis Bank had duly dealt with the issue of bona fide third-party interests that may have come to be created over a period of time and the various avenues which stand created under the Prevention of Money-Laundering Act itself for an aggrieved person to seek the release of attached properties.”

47. The law laid down by the Delhi High Court is clear that operation of Section 32A comes into play only after the approval of the resolution plan under IBC. Section 14 of the IBC does not affect the proceedings under the PMLA Act, 2002. Learned counsel for the respondent is right in his submission that in the present case Provisional Attachment Order having been passed on 24.01.2019, the said order in no manner is affected by initiation of CIRP which took place only on in the year 2022. The question which is up for consideration is as to whether appellant is entitled for the benefit of Section 32A and in event Section 32A is applicable in the facts of the present case, what is its consequence on Provisional Attachment Order dated 24.01.2019. In the judgment of Delhi High Court, the question arose as to impact of moratorium that comes into the effect in terms of Section 14 on the powers of Enforcement Directorate. Paragraph 1 of the judgment noticed the question:

“1. This writ petition raises the important question of the impact that a moratorium that comes into effect in terms of section 14 of the Insolvency and Bankruptcy Code, 2006 [IBC.] would have on the powers of the Enforcement Directorate [ED.] to enforce an attachment under the provisions of the Prevention of Money-Laundering Act, 2002 [PMLA.] . The petition raises a challenge to orders of attachment which have been made by the Enforcement Directorate in exercise of powers conferred by the Prevention of Money-Laundering Act. While the writ petition as originally framed had assailed the validity of provisional attachment orders [PAO.] dated July 8, 2020 and August 5, 2020, subsequently and since those orders came to be confirmed by

the Adjudicating Authority, an amendment application was moved questioning the confirmation orders dated January 1, 2021 and January 29, 2021. The petition has been instituted by the resolution professional [RP.] of Era Infra Engineering Ltd. [EIEL.] which was admitted to insolvency proceedings under the provisions of the Insolvency and Bankruptcy Code. The challenge to the orders of attachment is essentially founded on the provisions of section 14 of the aforesaid enactment with the petitioner contending that once the moratorium had come into effect, the Enforcement Directorate stood denuded of jurisdiction to exercise powers under the Prevention of Money-Laundering Act. Before proceeding ahead to notice the submissions which have been addressed, it would be pertinent to notice the following essential facts.”

48. There can be no dispute to the proposition laid down by the Delhi High Court in the above case that powers to attach under PMLA could not fall within ken 10 of Section 14(1)(a) of the IBC and trigger events which is spoken of Section 32A could lead to the erection of the impergnable wall which cannot breached by invocation of provision under PMLA. Learned counsel Mr. Zoheb Hussain has placed much reliance on the 3 Member Bench judgment of this Tribunal in **‘Anil Kohli’ Vs. ‘Directorate of Enforcement’** in Comp. App. (AT) (Ins.) No.389/2018 decided on 03.07.2025. In the above case, appeal was filed by the RP, challenging the refusal of the adjudicating authority, to direct the Directorate of Enforcement to release the provisional attached assets of the corporate debtor. Submission was raised before the adjudicating authority that continued attachment of properties violates under Section 14 of the IBC. In the above case, application under Section 7 was admitted on 22.12.2017 by the NCLT. Investigation against associate company of Lunar Foods was initiated by ED. On 26.12.2017, Directorate of Enforcement issued the Provisional Attachment Order attaching various

immovable assets of Lunar Foods. The RP filed an application to quash the Provisional Attachment Order dated 26.12.2017, after hearing both the parties adjudicating authority rejected the application filed by the RP against which order the appeal was filed. This Tribunal in the above case after noticing the submission of the parties framed three questions for consideration which are noticed in paragraph 47 of the judgment, which are as follows:

“47. We have heard the detailed submissions advanced by the Learned Counsels for both the Appellant and the Respondents. We have gone through voluminous records and written statements of the parties. Based on the same we frame the following 3 issues for determination:

I. Whether the provisional attachment of assets by the Directorate of Enforcement (ED) under the PMLA violates the moratorium imposed under Section 14 of the IBC;

II. Whether the IBC, by virtue of Section 238, overrides the PMLA in case of inconsistency, particularly in the context of resolution processes involving tainted assets; and

III. Whether the NCLT/NCLAT possess jurisdiction to issue directions affecting attachment orders passed under the PMLA and confirmed by the PMLA Adjudicating Authority.”

49. On Issue No. I, this Tribunal held that Order of the Provisional Attachment does not violate moratorium under Section 14. In paragraph 55 of the judgment following was held:

“55. Based on the discussion above we observe the following:

- Section 14 aims to preserve lawful, unencumbered assets for the purpose of resolution.
- However, if the property is alleged to be “proceeds of crime” and is already under adjudication by competent authority under a penal statute, such property cannot be deemed to be part of the freely available resolution estate.

- The PMLA provides its own adjudicatory process and remedy for challenging attachments, which is separate from the IBC.

Therefore, the issuance of the PAO dated 26.12.2017 by ED under the PMLA does not violate the moratorium under Section 14 of the IBC. Accordingly, the Issue (I) is answered in the negative.”

50. On Issue No. II, whether by virtue of 238 of the IBC provisions of PMLA are overridden has been answered, it was held that IBC cannot reset to override the PMLA. In paragraphs 70 & 71 of the judgment following was held:

“70. In the present factual matrix, the IBC cannot be said to override the PMLA merely because the ED’s attachment interferes with the CIRP. The ED does not act as a creditor, but as a public enforcement agency. The attached assets are not to satisfy creditors, but to uphold penal objectives and international obligations under FATF and UN Conventions.

71. In view of the above analysis, we hold the following:

- (i) that the PMLA and IBC operate in distinct spheres;
- (ii) there no irreconcilable inconsistency exists between the two;
- (iii) Section 238 of the IBC cannot override the PMLA in respect of proceedings involving proceeds of crime;
- (iv) That attachment under the PMLA, if validly made and confirmed, cannot be undone merely because CIRP is ongoing.

Accordingly, Issue II is answered in the negative.”

51. In Issue No. III this Tribunal has held that NCLT cannot interfere in decision of statutory of quasi-judicial authority. Reliance was placed on judgment of the Hon’ble Supreme Court in **‘Embassy Property Developments Pvt. Ltd.’ Vs. ‘State of Karnataka & Ors.’** reported in **[2019 SCC OnLine SC 1542]** as well as **‘Kalyani Transco’ Vs. ‘M/s.**

Bhusan Power & Steel Ltd. & Ors.’ in [Civil Appeal No. 1808/2020].

We have already noticed the judgment of this Tribunal that any challenge to the provisional attachment order before NCLT is not maintainable. Judgment of ***‘Kiran Shah’ (supra)*** has been relied. Judgment of ***‘Kalyani’ (supra)***, which has been relied by the 3 Member Bench in ***‘Anil Kohli’*** case is no more available for reliance since Hon’ble Supreme Court, in order passed in review application has recalled the said judgment. With regard to Section 32A also observations have been made in paragraph 67 of the judgment by this Tribunal, where this Tribunal held that Section 32A is inapplicable. In paragraph 67, following was observed:

“**67.** The Appellant has also placed reliance on Section 32A of the IBC (introduced in 2020), which grants immunity to the Corporate Debtor and its property post-resolution. Section 32 A has been extracted below:

“Section 32A (1) states that once a resolution plan is approved and control passes to a new, unrelated management, the Corporate Debtor shall not be liable for offences committed prior to the commencement of CIRP. Section 32A (2) further provides that such property shall not be attached or confiscated.”

However, in the present case, the PAO was issued on 26.12.2017 and confirmed on 11.06.2018. The resolution plan was approved only in 2019. This makes Section 32A inapplicable in the present case, as the property was already under valid legal attachment before the statutory conditions under Section 32A were met.”

52. In the appeal before this Tribunal filed by Mr. Anil Kohli order of the adjudicating authority rejecting an application praying for setting aside the Provisional Attachment Order which was passed on 26.12.2017, after initiation of CIRP on 22.12.2017 was challenged. This Tribunal in line of

the earlier judgment of this Tribunal has taken the view that Section 14 has no application qua the jurisdiction under the PMLA. There can be no two opinions about the above. The questions which were framed in the above appeal has already been noticed in paragraph 47. The question regarding 32A was not an issue before this Tribunal nor judgment can be said to be giving any answer to the questions regarding applicability of Section 32A. We are of the view that when the question regarding applicability of 32A was not an issue and the appeal was filed, challenging the order rejecting the application filed by the adjudicating authority for setting aside the Provisional Attachment Order, it cannot be said that this Tribunal has answered any question with regard to applicability of 32A. It is relevant to further notice that 3 Member Bench of this Tribunal in the above case has not taken note of the law laid down by the Hon'ble Supreme Court in '**Manish Kumar**' case with respect to Section 32A of the IBC. Judgment of this Tribunal in '**Anil Kohli**' (*supra*) thus has to be held to be laying down the law on three questions which have been framed and noticed in paragraph 47 and answered in the judgment. Ratio cannot be extended to any other issue.

53. Learned counsel for the appellant has placed reliance on judgment of this Tribunal in '**JSW Steel Limited**' Vs. '**Mahendra Kumar Khandelwal**' reported in [(2022) 233 Comp. Cases 648]. Section 32A came for consideration before this Tribunal in '**JSW Steel Ltd.**' (*supra*) where this Tribunal laid down following in paragraphs 42,43 & 45:

“42. The Directorate of Enforcement is interpretation that Section 32A of the 'I&B Code' is prospective in nature and the

benefit of such provision cannot be claimed by the Appellant is wrong and misplaced.

43. A plain reading of Section 32A(1) and (2) clearly suggests that the Directorate of Enforcement/ other investigating agencies do not have the powers to attach assets of a 'Corporate Debtor', once the 'Resolution Plan' stands approved and the criminal investigations against the 'Corporate Debtor' stands abated. Section 32A of the 'I&B Code' does not in any manner suggest that the benefit provided thereunder is only for such resolution plans which are yet to be approved. Further, there is no basis to make distinction between a resolution applicant whose plan has been approved post or prior to the promulgation of the Ordinance.

45. The Union of India had unequivocally stated that after the completion of the 'Corporate Insolvency Resolution Process', there cannot be any threat of criminal proceedings against the 'Corporate Debtor', or attachment or confiscation of its assets by any investigating agency, after approval of the 'Resolution Plan'. In any event, by virtue of Section 238 of the 'I&B Code', the 'I&B Code' has an overriding effect over anything inconsistent therewith in any other law. Accordingly, it is clear that subsequent promulgation of the Ordinance is merely a clarification in this respect. Therefore, it is *ex facie* evident that the Ordinance being clarificatory in nature, must be made applicable retrospectively."

54. In paragraph 122, it was further held:

"122. The intent of the 'I&B Code' affected on attachment of the assets of the 'Corporate Debtor' by the Directorate of Enforcement after approval of the 'Resolution Plan'. In this background, the intent and purpose of the insertion of Section 32A is to provide certainty to the 'Resolution Applicant' that the assets of the 'Corporate Debtor' as represented to him and for which he proposes to pay value/ consideration in terms of the 'Resolution Plan', would be available to him in the same manner as at the time of submissions of the 'Resolution Plan'. Mere assertion of the Directorate of Enforcement in its reply, that it needs to further investigate the matter to examine or comment if there has been any abetment or conspiracy by the Appellant establishes that it has no reason to believe on the basis of material in possession of Directorate of Enforcement, as on date, that meets the criteria under Section 32A (1) (b) of the

‘I&B Code’ for denial of immunity to the Appellant and the ‘Corporate Debtor’.”

55. Learned counsel for the appellant has also placed reliance on the judgment of the Hon’ble Bombay High Court in **‘Shiv Charan & Ors.’ Vs. ‘Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue & Anr.’** reported in [2024 SCC OnLine Bom 701]. Bombay High Court had occasion to consider the implication of Section 32A for corporate debtor after approval of the resolution plan. In the above case CIRP against the corporate debtor commenced on 09.12.2021 and the resolution plan came to be approved on 17.02.2023, 2 years prior to the commencement of CIRP, by Provisional Attachment Order dated 14.02.2019 was passed which order was also affirmed by adjudicating authority on 05.08.2019. Writ Petition was filed by the resolution applicant against the adjudicating authority and the Deputy Director Enforcement Directorate seeking quashing of the ESIR and orders attaching the attached property. Hon’ble Bombay High Court proceeded to examine the issue. Core issue has been noticed in paragraph 11 of the judgment which is as follows:

“11. The core issue that falls for our consideration is whether the NCLT had the jurisdiction to direct the ED to release the Attached Properties, invoking Section 32A of the IBC, 2016, since Section 32A provides that all attachments over properties of a corporate debtor would ceased once a resolution plan in respect of the said corporate debtor is approved.”

56. In paragraphs 16, 17, 18, 20 & 21, following was laid down:

“16. A plain reading of the forgoing would show that Section 32A is a non-obstante provision. Its jurisdiction is attracted only when a resolution plan gets approved under Section 31.

Besides, the immunity conferred by Section 32A is available if and only if the approved resolution plan results in a complete change in the character of ownership and control of the corporate debtor. Explicitly, Section 32A (1) stipulates that the liability of the corporate debtor for an offense committed prior to commencement of the CIRP shall cease. The corporate debtor is explicitly protected from being prosecuted any further for such an offense, with effect from the approval of the resolution plan. Section 32A disentitles the corporate debtor from such immunity if the promoters or those in the management or control of the corporate debtor prior to the CIRP, or any related party of such persons, continues in management or control of the corporate debtor under the approved resolution plan. Likewise, the corporate debtor would be disentitled from immunity even if third parties, who were not promoters or persons in management or control of the corporate debtor come into management or control of the corporate debtor under the resolution plan but are persons who the Investigating Authority has reason to believe (based on material) had abetted or conspired for the commission of the offense in question.

17. Should the ingredients of Section 32A(1) be met, it enables an automatic discharge from prosecution, for the corporate debtor alone. The provision takes care to ensure that the immunity is available only to the corporate debtor and not to any other person who was in management or control or was in any manner, in charge of, or responsible to, the corporate debtor for conduct of its business, or was associated with the corporate debtor in any manner, and directly or indirectly involved in the commission of the offense being prosecuted. Such others who are charged for the offense would continue to remain liable to prosecution. Effectively, all other accused remain on the hook and it is the corporate debtor who alone gets the statutorily-stipulated immunity, and that too only when a resolution plan is approved under Section 31, and such resolution plan entails a clean break from those who conducted the affairs in the past at the time when the offense was committed. A complete dissociation of the individuals involved in the management and control at the time of commission of the alleged offense is a fundamental requisite for the immunity to become available.

18. Section 32A(2) goes a step further and also protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the

same ingredients as set out in Section 32A(1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A(2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an “action against the property” of the corporate debtor, from which immunity would be available, “shall include the attachment, seizure, retention or confiscation of such property under such law” as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002.

20. Therefore, as a matter of law, once the resolution plan is approved with the attendant conditions set out in Section 32A being met, further prosecution against the corporate debtor and its properties, would ceased. Section 32A(3) enjoins the corporate debtor to continue to cooperate with the enforcement agencies in the continued prosecution against the individuals in question.

21. Now, applying this position in law to the facts of the case, it is common ground that under the Approval Order, a resolution plan in respect of the Corporate Debtor was approved under Section 31 of the IBC, 2016. It is also common ground that none of the Resolution Applicants is a person in charge of or responsible for the commission of the alleged scheduled offense being prosecuted by the ED. It is not the ED's case that the Resolution Applicants are third parties who have aided and abetted the commission of the alleged offences. In short, it is common ground that all the ingredients of Section 32A of the IBC, 2016 are met. However, what the ED disputes is the power of the NCLT to rule upon the interpretation of Section 32A when the effect of such interpretation would lead to release of attachment of property that had been levied under the provisions of the PMLA, 2002.”

57. After considering the submission and provisions in paragraph 37 & 38, Bombay High Court laid down following:

“37. In our opinion, when a resolution plan with the ingredients that qualify for immunity under Section 32A comes to be approved, quasijudicial authorities including the Adjudicating Authority under the PMLA, 2002 (Respondent No. 1 in WP 9943) must take judicial notice of the development and release their attachment on their own. This is the only means of ensuring that the rule of law as

stipulated in Section 32A of the IBC, 2016 runs its course. The Adjudicating Authority under Section 8 of the PMLA, 2002 is a quasi-judicial officer with a judicial role. The judicial role of an Adjudicating Authority is different from the role of a prosecuting executive. In discharging such role, the Adjudicating Authority, clothed with the character of a judicial officer, must act judiciously and discharge the mandate of Article 141 of the Constitution of India, which makes it clear that the law declared by the Hon'ble Supreme Court would bind all courts in the territory of India. The process of adjudication by the Adjudicating Authority under Section 8 of the PMLA, 2002 is inherently a quasi-judicial activity, akin to the quasi-judicial process of adjudication by the NCLT (in fact, in the IBC, 2016 the NCLT is the **“Adjudicating Authority”**). Once the law is declared by the Hon'ble Supreme Court, officers presiding over judicial proceedings must necessarily take judicial notice of the law as declared, and act in a manner consistent with the law as declared by the Hon'ble Supreme Court. If such Adjudicating Authority does not act in line with the law declared by the Hon'ble Supreme Court, it would present a fit case for writ petitions to be considered by a constitutional court to issue an appropriate writ or direction to remedy the situation.

38. We have no hesitation in holding that there is no scope whatsoever for the attachment effected by the ED over the Attached Properties to continue once the Approval Order came to be passed. We are not opining on whether the attachment could have continued after commencement of the CIRP. We find that the NCLT has simply answered the question of law arising in relation to the resolution of the corporate debtor and that too within the limits of the jurisdiction conferred on it. It is Section 32A of the IBC, 2016, on which the NCLT based its declaration that the Attached Properties must be released, and that is entirely correct. Whether the ED was right in continuing the attachment between the commencement of the CIRP and before the Approval Order, is also something that the April 2023 Order deals with, but in our view that issue has been overtaken, as explained earlier in this judgment.”

58. Summary of conclusions are noticed in paragraphs 53 & 54 of the judgment where following was held:

“53. As a result, we return the following findings and conclusions in disposing of the two writ petitions:—

i. The NCLT was well within its jurisdiction in declaring, both in the Approval Order (dated 17th February, 2023) under Section 31 of the IBC, 2016 and in the April 2023 Order (under Section 60(5) of the IBC, 2016), that the corporate debtor would stand discharged from the offences alleged to have been committed prior to the CIRP and that the Attached Properties as identified in the Approval Order became free of attachment from the time of approval of the resolution plan eligible for benefit of Section 32A. On facts, it is evident that the NCLT was accurate in the valid exercise of its explicit jurisdiction;

ii. The jurisdiction of Section 32A of the IBC, 2016 would be attracted from the point at which a qualifying resolution plan is approved under Section 31 of the IBC, 2016. The protections afforded by Section 32A would become available only when the resolution plan is so approved, and such resolution plan meets the other necessary ingredients to qualify for the immunity, namely, that there is a clean break with a change in ownership of, and control over, the corporate debtor;

iii. IA 383 could be regarded as having become infructuous since the Approval Order had already, and rightly, protected the corporate debtor and the Attached Properties from continued prosecution of the scheduled offenses and the offense of alleged money laundering under the PMLA, 2002. However, the April 2023 Order that disposed of IA 383 was founded on applying the provisions of Section 32A to the facts of the case;

iv. There is one other facet that makes the scheme and import of Section 32A of the IBC, 2016 clear, logical and reasonable. The attachment under Section 5 of the PMLA, 2002 is but a measure in aid of eventual potential confiscation under Section 8(5) of the PMLA, 2002. Confiscation of the property of the corporate debtor can only be effected upon conviction of the corporate debtor for an offence of money laundering. Where Section 32A(1) of the IBC, 2016 confers immunity to the corporate debtor from prosecution, there can be no conviction that can follow. Consequently, it is but logical that the property of the corporate debtor would have protection from any continued attachment by reason of Section 32A(2). Therefore, when there is no potential in law for an eventual confiscation, the attachment, which is only an interim measure in aid of the final measure of confiscation must necessarily abate and come to an end, since it cannot continue in a vacuum.

v. We are not opining on the implications of Section 14 of the IBC, 2016 for continuation of a prior attachment during the course of a CIRP. In the facts at hand, the jurisdiction of Section 14 came to an end, and the jurisdiction of Section 32A commenced, on 17th February, 2023. Therefore, dealing with a conflict between the provisions of the PMLA, 2002 and Section 14 of the IBC, 2016 was rendered irrelevant with effect from 17th February, 2023;

vi. As a consequence of Section 32A of the IBC, 2016, the ED must now necessarily release the attachment on the Attached Properties, without being bogged down by the question of how to interpret the continuation of attachment after the commencement of the CIRP and before the Approval Order, and the implications for the same under Section 14 of the IBC, 2016. We are not opining on this facet of the law as it is wholly unnecessary to dispose of the case at hand. It is trite law that no court should rule on questions of law in a vacuum;

vii. The Approval Order, which interpreted questions of fact and answered the question of law on implications of Section 32A for the corporate debtor, has not been challenged by the ED - neither in an appeal from the Approval Order nor in WP 29111 filed before us. The ED's challenge is to the April 2023 Order that allowed IA 383 on the strength of Section 32A. The April 2023 Order does contain remarks about the interplay between Section 14 and the attachment but that is not the ratio of the April 2023 Order, which explicitly relies on Section 32A of the IBC, 2016 to direct the release of the Attached Properties. Even if purely for the sake of argument, the April 2023 Order were to be set aside, the Approval Order would hold the field and that order correctly requires the ED to release the Attached Properties owing to the operation of Section 32A of the IBC, 2016;

viii. The NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end. It is possible that in a given case, the application of Section 32A of the IBC, 2016 may have an effect on existing and intended attachments and prosecution by enforcement agencies operating under laws such as the PMLA, 2002. However, since both Section 32A and Section 60(5) are non-obstante provisions, they would prevail, with no room for concern, real or imagined, about any conflict between legislations. We, therefore, hold that the interpretation by the NCLT in both, the Approval Order, and

the April 2023 Order, did not at all render nugatory, the provisions of the PMLA, 2002 or its legislative objectives. The NCLT has merely given effect to the provisions of Section 32A of the IBC, 2016 in its terms and that is an accurate decision, as explained by us above; and

ix. Finally, quasi-judicial authorities wielding powers of a civil court in relation to the functioning of a State agency such as the ED, have a role that is distinct and separate from the executive authorities in the same agency. The former are inherently a statutory check and balance on the latter. As quasi-judicial authorities exercising the powers of civil courts and functioning within the territory of India, the law declared by the Hon'ble Supreme Court would bind the quasi-judicial authorities. As required under Article 141 of the Constitution of India, such quasi-judicial authorities must act consistent with the law declared by the Hon'ble Supreme Court rather than disobey the rule of law to give rise to avoidable litigation."

59. The judgment of the Hon'ble Bombay High Court in '**Shiv Charan & Ors.**' (*supra*), supports the submission which has been advanced by the counsel for the appellant in the present appeal. Learned Counsel for the Enforcement Directorate submits that the judgment of Bombay High Court in '**Shiv Charan**' case is under consideration in Civil Appeal No.9692-9693/2024, which appeals are still pending. Various orders passed by the Hon'ble Supreme Court have been placed by the appellant in convenience compilation, which indicates that appeal is still under consideration before the Hon'ble Supreme Court.

60. The judgment of the Bombay High Court in '**Shiv Charan**' case is still under appeal before the Hon'ble Supreme Court and judgment has not yet become final, hence, we need not base our decision on the law laid down by the Hon'ble Bombay High Court in the above case.

61. Section 32A which was inserted by Act No. 01/2020 in the IBC was brought by legislature providing for certain immunity from the liability from prior offences to a new management of the corporate debtor, which has come into existence after approval of the resolution plan, which result in change in the management or control of the corporate debtor. Section 32A only give immunity to the new management of the corporate debtor and conditions which are mentioned in Section 32A(a) and (b) has to be fulfilled, that is the new management who has come into control of the corporate debtor is not a promoter or in the management or control of the corporate debtor or related party of such person or person with regard to whom investigation authority on the basis of material has reason to believe that he has awaited conspire omission of offence. It is clear from the scheme that 32A that the provisions of Section 32A does not absolve the person who was promoter or person who was in the management of corporate debtor and proceeding under the PMLA against the promoter or the persons who were in the management of the corporate debtor and were involved in the commission of the offence fact can be proceeded. The question which has up for consideration in the present case is as to whether the Provisional Attachment Order which was passed on 24.01.2019 still was required to be vacated for implementation of the resolution plan and whether the SRA was required to file an application before the adjudicating authority (PMLA) for release of the attachment. The answer to the said question has to be found out from the legislative scheme under Section 32A. Section 32A does not carve any exception

that resolution plan cannot be approved with regard to assets of the corporate debtor which has been attached under the PMLA Act prior to approval of the resolution plan. There is no exception in scheme of Section 32A that where Provisional Attachment Orders have been passed prior to initiation of CIRP or prior to approval of the resolution plan assets have to be kept out of the resolution. The trigger event when 32A comes into operation is the approval of the resolution plan, which is also laid down by the Delhi High Court in **‘Rajiv Chakraborty’ (supra)**. Under sub-Section (1) of Section 32A the phrase used is the liability of the corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease. The liability of the corporate debtor and further sub-Section (1) provides that corporate debtor shall not be prosecuted for such an offence from the date when resolution plan has been approved by the adjudicating authority. Thus, two consequences have been provided, they are **(i)** liability of corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease; **(ii)** corporate debtor shall not be prosecuted for such offence from the date of resolution plan has been approved. The above consequence can follow, of course when resolution plan condition stipulated in sub-Section (1) are fulfilled. The present is a case where the new management i.e., appellant is not a person who was covered by sub-clause (a) or sub-clause (b) under Section 32A(1). The proviso to sub-Section (1) of 32A further mentions “provided that even prosecution has been instituted during the corporate insolvency

resolution process against such corporate debtor, which shall stand discharged from the date of approval of the resolution plan, subject to requirement of condition having been fulfilled”. The present is a case where no prosecution has commenced since after Provisional Attachment Order, no further steps could be taken under the PMLA Act. The provision of Section 32A itself does contemplate initiation of proceeding under the PMLA prior to CIRP commencement or even during CIRP commencement. Thus, Section 32A carve not garb out any exception for applicability of Section 32A in a case where Provisional Attachment Order has been passed prior to initiation of CIRP. Thus, the submission of the counsel for the Enforcement Directorate is correct that trigger event under 32A happens when resolution plan is approved, and at that time when Provisional Attachment Order was passed under PMLA, the Directorate of Enforcement was fully competent to exercise its power.

62. The question is what is the consequence of approval of resolution plan under 32A on the Provisional Attachment Order which was passed prior to initiation of CIRP that is on 24.01.2019. When we look into the scheme of the Section 32A where it clearly contemplates liability of corporate debtor for an offence to cease and the corporate debtor is not to be prosecuted for an offence after approval of the resolution plan and prosecution, which had already been instituted during the CIRP to stand discharged, the intendment is clear that there shall be no effect on the new management of the corporate debtor, or its property after an approval of the plan. Now coming to sub-Section (2) which provides that no action

shall be taken against the property of the corporate debtor in relation to offence committed prior to the commencement of the insolvency resolution process, where such properties covered under the plan, also clearly protect the property from any action. In the explanation (i) following has been clarified:

“Explanation.—For the purposes of this sub-section, it is hereby clarified that,--

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.”

63. At the stage, we need to look into the scheme of PMLA Act, 2002.

Section 5 deals with the attachment of property, which is as follows:

“5. Attachment of property involved in money-laundering.—

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that--

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall ceased to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.--For the purposes of this sub-section, "person interested", in relation to any immovable property, includes

all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

64. Section 6 of the PMLA Act, 2002, provides for adjudicating authority. Section 8 deals with adjudication. Section 8 sub-Section (3) deals with confirmation of the provisional attachment. Section 8 sub-Section (5) provides that confiscation of the property dissenting order. Section 8, which is relevant for the present case is as follows:

“8. Adjudication.–

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, ceased or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after--

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering;

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record ceased or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the ceased or frozen property] or record shall--

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court];

Explanation.--For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the moneylaundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of moneylaundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.]

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

65. Section 9 deals with property which is subject to confiscation sub-Section (7) of Section 8. The present is the case where no proceedings have taken place under Section 8 of the PMLA Act, 2002 and apart from the provisional attachment, no further steps could be taken up under the PMLA Act, 2002. The resolution plan having been approved and by virtue of Section 32A now PMLA authorities cannot proceed under PMLA Act, 2002, which is a legislative adjunct by 32A. When the Section 32A itself contemplates cessation of liability and injunction not to prosecute for any offence after approval of resolution plan and to discharge the corporate debtor, we fail to see any purpose and object of continuing the Provisional

Attachment affecting the resolution process which has undergone and attained finality under IBC.

66. We thus are of the view that Provisional Attachment Order shall cease to operate after resolution plan is approved, bringing into effect Section 32A. In the present case conditions under Section 32A for extending the benefit to appellant are fulfilled and it is not the case of either of the parties that the SRA does not fulfil the condition contemplated under Section 32A. We thus are of the view that Provisional Attachment Order has to be treated to cease by virtue of legislative scheme under Section 32A and there is no necessity to obtain any order by the SRA from the adjudicating authority under the PMLA. The observation of adjudicating authority in paragraphs 60 & 61 that SRA to approach the authorities under PMLA for release of the provisional attachment were unnecessary and not required.

67. In view of the forgoing discussion, we answer Question No. (3), (4) & (5) in following manner:

Question No. (3)

The appellant is entitled for the benefit of Section 32A of the IBC consequence to approval of resolution plan on 04.07.2024 by the adjudicating authority. The Provisional Attachment Order dated 24.01.2019 shall have no effect on the approval of the resolution plan made on 04.07.2024, nor that can be a reason for not extending benefit of Section 32A to the appellant.

Question No. (4)

Findings and observations of the adjudicating authority as contained in paragraphs 60 & 61 requiring the SRA to resort to appropriate proceeding to seek release of attachment is unnecessary and not in accordance with the statutory scheme as delineated under Section 32A of the IBC.

Question No. (5)

After the approval of the resolution plan on 04.07.2024, the appellant shall be entitled for the benefit of Section 32A and by virtue of the legislative scheme under Section 32A, the provisional attachment order dated 24.01.2019 shall cease.

Question No. (6)

68. In view of the following discussions and our conclusions, we are of the view that appellant is entitled for the relief holding that appellant is entitled for the benefit of Section 32A and further there is no requirement in law by the SRA to file an application before the adjudicating authority of the PMLA for release of the asset.

69. In result, the appeal is disposed of in following manner:

- i. The appellant is entitled for the benefit of Section 32A on approval of resolution plan.
- ii. Due to the legislative scheme under Section 32A there is no requirement of appellant in the facts of the present case to resort to

the proceeding for release of the assets from attachment by Enforcement Directorate. The provisional attachment order dated 24.01.2019 has to be treated to have ceased after the approval of the resolution plan.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

14th October, 2025

Ashwani/Himanshu