

Learning Curve-1028

March 06, 2024

The AA has jurisdiction to direct ED to release attached properties under PMLA.

CASE TITLE	Mr. Shiv Charan & Ors. Vs. Adjudicating Authority & Anr. and Directorate of Enforcement Vs. Mr. Shiv Charan & Ors.
CASE CITATION	Writ Petition (L) No.9943 of 2023 and Writ Petition (L) No.29111 of 2023
DATE OF ORDER	March 01, 2024
COURT/ TRIBUNAL	High Court, Bombay

BRIEF FACTS:

The attachment levied u/s 5 and 8 of the PMLA, 2002 continued even after the commencement of the CIRP and approval of resolution plan. The Resolution Applicants seek a writ directing the Respondents to release the Attached Properties, pursuant to the Approval Order. The AA ruled that once the moratorium commenced the attachment must abate and further relying on Sec 32A ruled that the attached properties must be released. Writ Petition is filed by the ED challenging the authority and legal capacity of the AA to pass orders invoking Sec 32A of the IBC, 2016.

DECISION:

The Hon'ble High Court of Bombay held that,

“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....

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.”