

White-Collar Crime & Corporate Investigations Monthly Newsletter

PREVENTION OF MONEY LAUNDERING ACT

PROVISIONAL ATTACHMENT INOPERATIVE ONCE RESOLUTION PLAN IS APPROVED

The **National Company Law Appellate Tribunal (NCLAT), Delhi** held that assets of a corporate debtor that have been provisionally attached under the Prevention of Money Laundering Act, 2002 (PMLA) can be included in the corporate debtor's resolution plan, as such provisional attachment does not impact ownership or possession of such assets. Once a resolution plan is approved, the provisional attachment order ceases to operate – subject to compliance with the conditions under S. 32A of the Insolvency and Bankruptcy Code, 2016 (IBC), including that the new management be unrelated to the previous promoters. In this case, since no further action was taken under S. 8 of the PMLA (which entails confiscation of the property), the corporate debtor was entitled to the benefit under S. 32A – which provides that liability of the corporate debtor for offences committed prior to CIRP, ceases, once its resolution plan is

approved and control is passed to a new, unrelated management.

[Vantage Point Asset Management Pte. Ltd. vs. Gaurav Misra & Anr.](#)

PMLA APPELLATE TRIBUNAL HAS NO POWER TO REMAND MATTERS TO ADJUDICATING AUTHORITY

In an appeal under S. 42 of the PMLA, challenging an order of the PMLA Appellate Tribunal that had set aside the Adjudicating Authority's order and remanded the matter for fresh adjudication, the **Karnataka High Court** held that the PMLA Appellate Tribunal has no power to remand matters to the Adjudicating Authority, as the PMLA does not confer any such authority. The High Court further observed that the PMLA Appellate Tribunal is a creation of the statute and lacks inherent powers akin to a regular court.

[The Joint Director vs. M/S Devas Multimedia Pvt Ltd](#)

BHARATIYA NAGARIK SURAKSHA SANHITA

POLICE CANNOT MECHANICALLY INVOKE ADDITIONAL SECTIONS TO EXTEND REMAND PERIOD

The **Bombay High Court**, while granting default bail to the accused on account of non-filing of the chargesheet within the statutory period of 60 days applicable to the offences initially charged, held that the mere invocation of additional sections by the police does not automatically extend the further custody of the accused. The Court held that when an investigating officer uncovers additional material disclosing new or additional offences, he is duty bound to file a fresh

remand application before the court, seeking extension of judicial custody and additional time for filing the chargesheet. Such an application must also be served upon the accused, to resist such extension. The Court further emphasized that a Magistrate must pass a reasoned and speaking order under S. 187(3) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) after affording an opportunity of hearing to the accused.

[Ranganth Tulshiram Galande and Anr. vs. The State of Maharashtra](#)

NEGOTIABLE INSTRUMENTS ACT

COMPANY'S INSOLVENCY NO SHIELD FOR DIRECTORS FROM LIABILITY UNDER THE NI ACT

The **Orissa High Court** held that directors cannot escape prosecution for dishonour of cheque under S. 138 of the Negotiable Instruments Act, 1881 (NI Act) merely because

the company is undergoing insolvency or has been dissolved under the IBC. The petitioner director of the borrower company contended that, since the company had been declared insolvent and a Resolution Professional had been appointed under Section 7 of the IBC, the complainant should have approached the Resolution Professional. The High Court

rejected this contention and dismissed the petition. While emphasizing the penal nature of S. 138 proceedings, the High Court held that insolvency proceedings are not recovery actions and do not bar criminal liability.

[Syed Najam Ahmed vs. State of Odisha and Anr.](#)

S. 138 NI ACT CAN BE INVOKED FOR DISHONOUR OF CHEQUE ISSUED FOR TIME-BARRED DEBT

The **Rajasthan High Court** held that dishonour of a cheque issued towards time barred debt attracts liability under S. 138 of the NI Act. In this case, the complainant had advanced money to the accused in 2009, and received signed undated

cheques, which were later presented but were dishonoured. The accused *inter alia* contended that the debt was time-barred and therefore unenforceable. The High Court reiterated that, once the signature and execution of the cheque is admitted, a statutory presumption arises under S. 118 and S. 139 of the NI Act that the cheque was issued towards discharge of a debt or a liability. While S. 138 applies only to legally enforceable debt, S. 25(3) of the Indian Contract Act, 1872 provides that even time-barred debts can form valid consideration if there is a written promise signed by the debtor, and a cheque constitutes such a promise.

[Ratiram Yadav vs. Gopal Sharma](#)

MISCELLANEOUS

SUPREME COURT REITERATES THAT CBI ENQUIRIES ARE AN EXCEPTIONAL MEASURE

In a case where the Allahabad High Court *suo moto* directed CBI enquiry into the alleged irregularities in recruitment to posts under the Secretariat of the Legislative Council, Uttar Pradesh, the **Supreme Court** observed that the High Court's direction was based on doubt and without any *prima facie* material to justify a CBI probe and held that, in recruitment matters, such directions are inappropriate unless the facts are so extraordinary as to shake judicial conscience. The Supreme Court reiterated that directions for a CBI enquiry

should be issued sparingly and only in compelling circumstances such as involvement of high-ranking State officials or politically influential persons or conduct of the local police that undermines confidence in a fair investigation. In the absence of such circumstances, constitutional courts must exercise restraint and avoid burdening the CBI with matters that do not meet this exceptional-case threshold.

[Legislative Council U.P. Lucknow & Ors. vs. Sushil Kumar & Ors.](#)

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White-Collar Crime and Corporate Investigations Practice

We have a skilled team specialized in criminal law, corporate/ transactional law, Intellectual Property and technology law, with considerable experience in criminal defence and regulatory enforcement.

Our knowledge of the enforcement landscape and understanding of the approach employed by regulators and investigating agencies enables us to anticipate the litigation trajectory and take steps to avoid/mitigate liability where possible.

The WCC team also works closely with the larger litigation practice to combat the substantial civil litigation risks that often accompany criminal and regulatory issues.

Competencies

Our subject matter competencies include the following:

- Fraud and Business Crime
- Money Laundering and FEMA
- Anti-Bribery, Anti-Corruption, and Investigations
- Securities Fraud
- Data Protection and Cyber Security
- Licensing Control
- Sanctions

Agencies/Authorities

We have represented clients before the following agencies:

- Directorate of Enforcement (ED)
- Central Bureau of Investigations (CBI)
- Serious Fraud Investigation Office (SFIO)
- Crime Branch/ Economic Offence Wing (EOW)
- Police Cyber Units
- Adjudicating Authorities and Appellate Tribunals under PMLA
- State Adjudicating Authorities (appointed under the Information Technology Act, 2000)
- Securities and Exchange Board of India (SEBI)
- Reserve Bank of India (RBI)
- Directorate of Revenue Intelligence (DRI)

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