* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13.10.2026
Pronounced on: 06.11.2026
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\# **CNR No. DLHC011085312025**
\+ MISC. APPEAL(PMLA) 4/2026
DASH EXPORTS PRIVATE LIMITED .....Appellant
Through: Mr.Sanjay Jain, Sr. Adv. with Mr.Abhijit Mittal, Mr.Anukalp Jain, Ms.Harshita Sukhija, Ms.Rishika Agrawal, Ms.Ankita Bhattacharjee and Ms.Niharika Sinha, Advs.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent
Through: Mr.Rajat Nair, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeal has been filed under Section 42 of the Prevention of Money Laundering Act, 2002 (hereinafter referred as, 'PMLA'), challenging the order dated 12.08.2025 passed by the learned Appellate Tribunal under SAFEMA (hereinafter referred to as 'the Tribunal') in Appeal No. 5922/DLI/2023, praying for the following reliefs:

> *"(a) Set aside and quash the Impugned Judgment dated 12.08.2025 passed by the Ld.*

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Appellate Tribunal under the Prevention of Money Laundering Act, 2002, in Appeal No. 5922/DLI/2023;
(b) Direct the Respondent to forthwith release the Subject Property from attachment and to restore all consequential rights, title, and interests of the Appellant free from any encumbrance arising out of the said attachment proceedings;"

2. The present appeal raises an important question of law with regard to the effect of approval of a resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as, 'IBC') on the property provisionally attached under Section 5 of the PMLA.

BRIEF BACKGROUND OF THE FACTS:

3. To give a brief background of the facts in which the present appeal arises, the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') was initiated for Dash Exports Private Limited, the appellant herein, by the learned National Company Law Tribunal, New Delhi (hereinafter referred to as, 'NCLT'), *vide* Order dated 26.02.2020.

4. Asteroid Shelter Homes Private Limited (hereinafter referred to as 'Asteroid') submitted a resolution plan which was approved by the Committee of Creditors (hereinafter referred to as 'CoC') of the appellant by 99.22% votes in favour, on 27.11.2020.

5. Accordingly, an application was filed by Asteroid before the learned NCLT under Section 31 of the IBC for seeking approval of the

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resolution plan.

6. The learned NCLT reserved the order on such application on 26.03.2021; however, before the order could be pronounced on 25.08.2021, the respondent, by Provisional Attachment Order No. 05/2021 dated 25.08.2021, provisionally attached the property at 228-P, Village Habibpur, Pargana District, Tehsil & District Gautam Buddh Nagar, UP belonging to the appellant.

7. The learned NCLT, by its order dated 29.09.2021, after recording its satisfaction that Asteroid had complied with Section 30(2) of the IBC and also did not stand disqualified under Section 29A of the IBC, approved the resolution plan under Section 31 of the IBC. We quote from the Order as under:

> *"13. In view of the above discussion that the resolution plan, as approved by the CoC, is in accordance with the sub-section 2 of Section 30 read with Section 31 of the Code and as the Resolution Applicant is not disqualified under Section 29A of the Code; we hereby approve the Resolution Plan under sub-section (1) of Section 31 of the Code."*

8. The Adjudicating Authority confirmed the Provisional Attachment Order by its order dated 26.05.2022 passed in Original Complaint (OC) No. 1526/2021 in PAO No. 05/2021 dated 25.08.2021 in ECIR/DLZO-1/12/2021.

9. Aggrieved by the said order, the appellant filed a Writ Petition, being W.P.(C) 10771/2022, titled ***Dash Exports Private Limited & Anr. v. Union of India & Ors.***, challenging the same. The said Writ Petition was disposed of by this Court *vide* its Judgment dated

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13.04.2023, observing and directing as under:

> *"9. As can be seen from the above order, the stand of the Bank was that it acquired knowledge of the Provisional Attachment Order ('PAO') dated 25th August, 2021 only on 14th October, 2021. Further, the CIRP had been initiated on 26th February, 2020, when the moratorium order was passed and finally, the resolution plan was approved by the creditors on 27th November, 2020. The resolution plan was also approved by the NCLT on 29th September, 2021.*
>
> *10. The Court is informed that no appeals have been filed challenging the final approval of the resolution plan dated 29th September, 2021. In effect, the Petitioner No.2 has stepped into the management of the Petitioner No.1 company. The Petitioners had deposited a sum of Rs.28 crores, which was kept at the disposal of the 'Committee of Creditors' and has also been distributed amongst the various creditors and lenders.*
>
> *11. The issue, that has obviously arisen today, is that despite the payment of Rs.28 crores, the title deeds of the land continued to remain with the Bank in view of the fact that the attachment by the ED took place subsequent to the commencement of CIRP. Ideally, the Bank ought to have informed the Petitioner no.2 of the PAO, when it acquired knowledge in October 2021, as the amounts were deposited by the Petitioner no.2 only in March 2022, which for inexplicable reasons, it did not.*
>
> *12. In order to resolve this stalemate, a suggestion was put forth as recorded in paragraph 9 of the order dated 24th March 2023 extracted above. Today, Mr. Zoheb Hossain, ld. Counsel for the ED submits that the ED is agreeable, in the unique facts and circumstances of this case, for the deposit of*

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Rs.3.01 crores, which is the value which has been ascribed to the property by the ED. He has placed an email received from the concerned official of the ED, before the Court. In order to avoid any further complications and conflict of interest between the various stakeholders, it is deemed appropriate to pass directions securing the interest of the Petitioners, the bank as also the ED.

13. Considering the ED's instructions that have been communicated to the Court, and the Petitioners' willingness to deposit a sum of Rs. 3.01 crores, in the peculiar facts and circumstances of the present case, the following directions are issued:

(1) The Petitioners shall be permitted to challenge the PAO order dated 25th August 2021 and the confirmation order dated 26th May 2022 before the PMLA Appellate Tribunal, within four weeks.

(2) The Petitioner No.2 shall within four weeks, deposit a sum of Rs.3.01 crores by means of an FDR in favour of the ED, which shall be on an auto renewal mode and subject to orders, which would now be passed by the PMLA Appellate Tribunal.

(3) Subject to the above deposit being made and the confirmation of the said deposit being given to the SBI Bank, all the title deeds, which are lying deposited with the Bank, shall be released to the Petitioners within one week.

(4) The appeal, if filed within 4 weeks before the PMLA Tribunal, shall not be dismissed on the ground of limitation considering the fact that the present writ petition has been pending before this Court.

14. The legal issues raised in this petition have not been adjudicated upon by this Court. Mr. Zoheb Hossain, ld. Counsel shall inform the Petitioners of the name of the official with whom the Petitioners shall coordinate for the

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submission of the FDR of Rs.3.01 crores."

10. In terms of the liberty granted by the above judgment, the appellant filed an appeal under Section 26 of the PMLA before the learned Tribunal, being FPA-PMLA-5922/DLI/2023, on which the impugned order has been passed by the learned Tribunal.

11. Before the learned Tribunal and even before us, it is the case of the appellant that with the approval of the resolution plan by the learned NCLT and in terms of Section 32A(2) of the IBC, the property of the appellant would become free of the provisional attachment, as in terms of the resolution plan, there is change in the control of the appellant (corporate debtor) to Asteroid, which is neither alleged to be a promoter or in the management or control of the corporate debtor or a related party of the appellant, nor against which any allegation of abetment or conspiracy of having committed the offence or a final report or a complaint has been filed.

12. The learned Tribunal, by its impugned order, however, has dismissed the appeal filed by the appellant by, *inter alia*, observing that Section 32A of the IBC would come into effect subject to the satisfaction of many conditions, including that such attachment of property has been passed post the approval of the resolution plan. The learned Tribunal was of the opinion that the approval of the resolution plan does not affect a provisional attachment order passed prior to such approval. The learned Tribunal further held that unless there is a finding from the Special Court that the person taking control of the corporate debtor has not abetted or conspired in the commission of

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offence and that the corporate debtor is discharged, the Provisional Attachment Order shall continue to operate.

13. Aggrieved by the impugned order, the appellant has filed the present appeal.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:

14. The learned counsel for the petitioner, placing reliance on the judgment of the Supreme Court in ***Manish Kumar v. Union of India & Anr.***, 2021 (5) SCC 1, as also on the judgment of the High Court of Bombay in ***Shiv Charan & Ors. v. Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue, Ministry of Finance, New Delhi & Anr.***, 2024 SCC OnLine Bom 701, and the Order dated 16.07.2026 passed by the Supreme Court in Civil Appeal Nos. 9692-9693/2024, titled ***Deputy Director, Directorate of Enforcement vs. Shiv Charan & Ors***., submits that the above finding of the learned Tribunal is erroneous and contrary to Section 32A (2) of the IBC and cannot be sustained.

15. He submits that once the resolution plan has been approved and the person taking over the control of the corporate debtor satisfies the condition of Section 29A of the IBC and is not accused of having abetted or conspired in the commission of the offence by the corporate debtor, any action taken against the property of the corporate debtor in relation to the offence committed prior to the commencement of the CIRP shall abate.

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16. He further submits that pursuant to the approval of the resolution plan of Asteroid by the learned NCLT, Asteroid has been declared the Successful Resolution Applicant and is unrelated to the erstwhile management of the appellant. Consequently, in terms of Section 32A of the IBC, Asteroid would not be liable to be prosecuted for any offence committed by the corporate debtor prior to the commencement of the CIRP.

17. He submits that the respondent has neither alleged that Asteroid, being the new management of the appellant, is related to the erstwhile management in any manner, nor attributed any role to Asteroid as an abettor in the prosecution complaint filed before the learned Special Judge.

18. He submits that Asteroid had acquired the assets of the corporate debtor, that is, the appellant herein, and had paid Rs. 28 Crores as consideration towards the approved resolution plan. He submits that the State Bank of India, being the lead creditor with whom the title deeds of the property attached herein were placed as collateral, had issued a no dues confirmation for the said property to Asteroid.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT:

19. On the other hand, the learned counsel for the respondent submits that the protection contemplated under Section 32A of the IBC gets attracted only when the attachment order is passed post

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the approval of the resolution plan. He submits that Section 32A of the IBC does not provide that an attachment order lawfully passed under the PMLA would stand nullified retrospectively.

20. He submits that PMLA and IBC operate in distinct fields, having distinct objects, and the property of the corporate debtor which stands attached as proceeds of crime, cannot be treated at par with an unencumbered asset of the corporate debtor available for insolvency resolution.

21. In support of his submission, he places reliance on the judgments in ***Deputy Director, Directorate of Enforcement v. Axis Bank & Ors.***, 2019 SCC OnLine Del 7854; ***Varrsana Ispat Ltd. v. Deputy Director, Directorate of Enforcement***, 2019 SCC OnLine NCLAT 236; ***P. Mohanraj & Ors. v. Shah Brothers Ispat (P) Ltd.***, (2021) 6 SCC 258 and ***S. Rajendran & Ors. v. Deputy Commissioner of Income Tax (Benami Prohibition)***, (2026) 5 SCC 563.

22. He submits that PMLA and IBC being distinct, the power of attachment under PMLA does not fall within the ken of Section 14(1)(a) of the IBC, and the NCLT being a creature of statute, exercising specifically conferred jurisdiction, cannot be elevated to the status of a superior Court exercising judicial review over governmental or statutory action falling within the realm of the public law. In support, he places reliance on the judgments of ***Rajiv Chakraborty, Resolution Professional of EIEL v. Directorate of Enforcement***, 2022 SCC OnLine Del 3703 and ***Embassy Property Developments (P) Ltd. v. State of Karnataka &Ors.***, (2020) 13 SCC

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23. He submits that Section 32A of the IBC is conditional and is triggered only upon approval of a resolution plan or completion of a liquidation sale to an unconnected third party. In the absence of any statutory trigger, the immunity contained therein does not arise. In support, he places reliance on the judgments of the Supreme Court in ***Manish Kumar*** (supra); ***S. Rajendran*** (supra); ***Rajiv Chakraborty*** (supra) and ***Nitin Jain, Liquidator of PSL Limited v. Enforcement Directorate***, 2021 SCC OnLine Del 5281.

24. He submits that, therefore, the present appeal deserves to be dismissed.

ANALYSIS AND FINDINGS:

25. We have considered the submissions made by the learned counsels for the parties.

26. As noted hereinabove, the issue to be determined by this Court is of the effect of the approval of the resolution plan under Section 31 of the IBC on the provisional attachment order passed against the property of a corporate debtor before the approval of such resolution plan. The answer to this question is on the interpretation of Section 32A of the IBC, which we quote hereinbelow:-

> *"**Section 32A: Liability for prior offences, etc.***
> *(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*

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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 been 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 incharge 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

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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

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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.]"

27. In ***Manish Kumar*** (supra), the Supreme Court considered in detail the object of introduction of Section 32A in the IBC by way of the Amendment Act 1 of 2020 with effect from 28.12.2019, and held as under:-

*"**Is Section 32A unconstitutional?***

313. Section 32A is challenged by allottees in Writ Petition No.75 of 2020. The petitioners in Writ Petition No.27 of 2020 and Writ Petition No. 579 of 2020, who are creditors (money lenders) also challenge Section 32A.

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 jeopardizes 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.

315. Section 32A is arbitrary, ultra vires and violative of Article 300A and Articles 14, 19 and 21.

316. The stand of the Union, on the other hand, is as follows:

316.1.Section 32A 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

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corporate debtor. This is subject to the successful resolution applicant being not involved in the commission of the offence. Statutory basis has now given under Section 32A to the law laid down by this Court in the decision of Essar Steel India Ltd. Committee of Creditors. 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 of 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 69 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 32A 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."

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316.3.Reliance is also placed on the report of the Insolvency Law Committee. Relevant extracts which have been relied on are as follows:

*"**PREFACE***

v. Liability of corporate debtor for offences committed prior to initiation of CIRP- in order to address the issue of liability that fall upon the resolution applicant for offences committed prior to commencement of CIRP, it has been recommended that a new section should be inserted which provides that when 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. 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 70 otherwise.

The newly inserted section as mentioned above shall also include protection of property from enforcement action when taken by successful resolution applicant. Also, it was recommended that cooperation and assistance to authorities investigating the offences committed prior to commencement of CIRP shall be continued by any person who is required to provide such assistance under the applicable law.

Chapter 1: RECOMMENDATIONS REGARDING THE CORPORATE INSOLVENCY RESOLUTION PROCESS

* * *

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*17. **LIABILITY OF CORPORATE DEBTOR FOR OFFENCES COMMITTED PRIOR TO INITIATION OF CIRP****

17.1. Section 17 of the Code provides that on commencement of the CIRP, the powers of management of the corporate debtor vest with the interim resolution professional. Further, the powers of the Board of Directors or partners of the corporate debtor stand suspended, and are to be exercised by the interim resolution professional. Thereafter, Section 29A, read with Section 35(1)(f), places restrictions on related parties of the corporate debtor from proposing a resolution plan and purchasing the property of the corporate debtor in the CIRP and liquidation process, respectively. Thus, in most cases, the provisions of the Code effectuate a change in control of the corporate debtor that results in a clean break of the corporate debtor from its erstwhile management. However, the legal form of the corporate debtor continues in the CIRP, and may be preserved in the resolution plan. Additionally, while the property of the corporate debtor may also change hands upon resolution or liquidation, such property also continues to exist, either as property of the corporate debtor, or in the hands of the purchaser.

17.2. However, even after commencement of CIRP or after its successful resolution or liquidation, the corporate debtor, along with its property, would be susceptible to investigations or proceedings related to criminal offences committed by it prior to the commencement of a CIRP, leading to the imposition of certain liabilities and restrictions on the corporate debtor and its 71 properties even after they were lawfully acquired by a resolution applicant or a successful bidder, respectively.

Liability where a Resolution Plan has been approved

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17.3. It was brought to the Committee that this had created apprehension amongst potential resolution applicants, who did not want to take on the liability for any offences committed prior to commencement of CIRP. In one case, JSW Steel had specifically sought certain reliefs and concessions, within an annexure to the resolution plan it had submitted for approval of the Adjudicating Authority. Without relief from imposition of the such liability, the Committee noted that in the long run, potential resolution applicants could be disincentivised from proposing a resolution plan. The Committee was also concerned that resolution plans could be priced lower on an average, even where the corporate debtor did not commit any offence and was not subject to investigation, due to adverse selection by resolution applicants who might be apprehensive that they might be held liable for offences that they have not been able to detect due to information asymmetry. Thus, the threat of liability falling on bona fide persons who acquire the legal entity, could substantially lower the chances of its successful takeover by potential resolution applicants.

17.4. This could have substantially hampered the Code's goal of value maximisation, and lowered recoveries to creditors, including financial institutions who take recourse to the Code for resolution of the NPAs on their balance sheet. At the same time, the Committee was also conscious that authorities are duty bound to penalize the commission of any offence, especially in cases involving substantial public interest. Thus, two competing concerns need to be balanced.

17.5 The Committee noted that the proceedings under the Code, which are designed to ensure maximization of value, generally require transfer of the corporate

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debtor to bona fide persons. In fact, Section 29A casts a wide net that disallows any undesirable person, related party or defaulting entity from acquiring a corporate debtor. Further, the Code provides for an open process, in which transfers either require approval of the Adjudicating Authority, or can be challenged before it. Thus, the CIRP typically culminates in a change of control to 72 resolution applicants who are unrelated to the old management of the corporate debtor and step in to resolve the insolvency of the corporate debtor following the approval of a resolution plan by the Adjudicating Authority.

17.6. Given this, the Committee felt that a distinction must be drawn between the corporate debtor which may have committed offences under the control of its previous management, prior to the CIRP, and the corporate debtor that is resolved, and taken over by an unconnected resolution applicant. While the corporate debtor's actions prior to the commencement of the CIRP must be investigated and penalised, the liability must be affixed only upon those who were responsible for the corporate debtor's actions in this period. However, the new management of the corporate debtor, which has nothing to do with such past offences, should not be penalised for the actions of the erstwhile management of the corporate debtor, unless they themselves were involved in the commission of the offence, or were related parties, promoters or other persons in management and control of the corporate debtor at the time of or any time following the commission of the offence, and could acquire the corporate debtor, notwithstanding the prohibition under Section 29A.

17.7. Thus, the Committee agreed that a new Section should be inserted to provide that where the corporate debtor is successfully

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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

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under the Code, should be protected from such enforcement action, and the new Section discussed in paragraph 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.

17.11. By way of abundant caution, the Committee also recognised and agreed that in all such cases where the resolution plan is approved, or where the assets of the corporate debtor are sold under liquidation, such approved resolution plan or liquidation sale of the assets of the corporate debtor's assets would have to result in a change in control of the corporate debtor to a person who was not a related party of the corporate debtor at the time of commission of the offence, and was not involved in the commission of such criminal offence along with the corporate debtor.

Cooperation in Investigation

17.12.While the Committee felt that the corporate debtor and bona fide purchasers of the corporate debtor or its property should not be held liable for offences committed prior to the commencement of insolvency, the Committee agreed that the corporate debtor and any person who may be required to provide assistance under the applicable law should continue to provide assistance and cooperation to the authorities investigating an offence committed prior to the commencement of the CIRP. Consequently, the Committee recommended the new Section should provide for such continued cooperation and assistance."

(emphasis supplied)

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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 portion 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 15th January, 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 75 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 are 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 understand 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

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debtor to a person who was not a promotor or in the management control of the corporate debtor or related party of such person, or to a person against whom there are material evidence and pending complaint or report by the investigating authority filed in relation to the criminal offence. The Committee agree 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 believe that this ring- fencing is essential to achieve revival or resolution without imposing additional liabilities on the Resolution Applicant, arising from malafide acts of the previous promoter or management."

316.5.Apart from the fact that it is intended to give a clean break to the successful resolution applicant, it is pointed out that it is hedged in with ample safeguards to avoid any exploitation. The same are as follows:

"106. Section 32A was inserted to give a clean break to successful resolution applicants from the erstwhile management by shielding them and immunizing them from prosecution and liabilities for offences that may have been committed prior to the commencement of the CIRP. Further, ample safeguards have been incorporated in the said provision to prevent any exploitation, namely:

i. The immunity is attracted only when a resolution plan is approved by the Adjudicating Authority under section 31 and the resolution plan results in the change in management or control of the corporate debtor.

ii. The immunity is granted only to the corporate debtor and its property, where such property is covered under the resolution plan approved by the Adjudicating Authority under section 31, from any liability or prosecution with regard to offences committed

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prior to the commencement of the corporate insolvency resolution process.

iii. Any person who was a promoter or in the management or control of the corporate debtor or a related party or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business and who was directly or indirectly involved in the commission of such offence 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.

iv. Section 32A does not bar an action against the property of any person other than the corporate debtor against whom such an action may be taken under such law as may be applicable.

v. Notwithstanding the immunity given under Section 32A, 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."

317. Section 32A 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;

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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 32A 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.

318. The first proviso in sub-Section (1) declares that if there is approval of a Resolution Plan under Section 31 and a

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prosecution has been instituted during the CIRP against the corporate debtor, the corporate debtor will stand discharged. This is, however, subject to the condition that the requirements in sub-Section (1), which have been elaborated by us, have been fulfilled. In other words, if under the approved resolution plan, there is a change in the management and control of the corporate debtor, to a person, who is not a promoter, or in the management and control of the corporate debtor, or a related party of the corporate debtor, or the person who acquires control or management of the corporate debtor, has neither abetted nor conspired in the commission of the offence, then, the prosecution, if it is instituted after the commencement of the CIRP and during its pendency, will stand discharged against the corporate debtor. Under the second proviso to sub- Section (1), however, the designated partner in respect of the liability partnership or the Officer in default, as defined under Section 2(60) of the Companies Act, 2013, or every person, who was, in any manner, in- charge or responsible to the corporate debtor for the conduct of its business, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor. This is despite the extinguishment of the criminal liability of the corporate debtor under sub-Section (1). Still further, every person, who was associated with the corporate debtor in any manner, and, who was directly or indirectly involved in the commission of such offence, in terms of the Report submitted and Report filed by the Investigating Authority, will continue to be liable to be prosecuted and punished for the offence committed by the corporate debtor.

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

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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 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 32A, 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:

32.01. There must be Resolution Plan, which is approved by the Adjudication 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

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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;

321. The Explanation to sub-Section (2) 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 the Explanation (ii).

322. Under the second limb of the Explanation, 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 fulfil the requirement under Section 32A, action can be taken against the property of such other person.

323. Thus, reading sub-Section (1) and sub-Section(2) together, two results emerge –

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

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323.2.The property of the corporate debtor is protected from any legal action again 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.

324. The last segment of Section 32A makes it obligatory on the part of the corporate debtor or any person, to whom immunity is provided under Section 32A, to provide all assistance to the Investigating Officer qua any offence committed prior to the commencement of the CIRP.

325. The contentions of the petitioners appear to be that this provision is constitutionally anathema as it confers an undeserved immunity for the property which would be acquired with the proceeds of a crime. The provisions of the Prevention of Money-Laundering Act, 2002 (for short, the PMLA) are pressed before us. It is contended that the prohibition against proceeding against the property, affects the interest of stakeholders like the petitioners who may be allottees or other creditors. In short, it appears to be their contention that the provisions cannot stand the scrutiny of the Court when tested on the anvil of Article 14 of the Constitution of India. The provision is projected as being manifestly arbitrary. To screen valuable properties from being proceeded against, result in the gravest prejudice to the home buyers and other

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creditors. The stand of the Union of India is clear. The provision is born out of experience. The Code was enacted in the year 2016. In the course of its working, the experience it has produced, is that, resolution applicants are reticent in putting up a Resolution Plan, and even if it is forthcoming, it is not fair to the interest of the corporate debtor and the other stake holders.

326. We are of the clear view that no case whatsoever is made out to seek invalidation of Section 32A. The boundaries of this Court's jurisdiction are clear. The wisdom of the legislation is not open to judicial review. Having regard to the object of the Code, the experience of the working of the code, the interests of all stakeholders including most importantly the imperative need to attract resolution applicants who would not shy away from offering reasonable and fair value as part of the resolution plan if the legislature thought that immunity be granted to the corporate debtor as also its property, it hardly furnishes a ground for this this Court to interfere. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable. The extinguishment of the criminal liability of the corporate debtor is apparently important to the new management to make a clean break with the past and start on a clean slate. We must also not overlook the principle that the impugned provision is part of an economic measure. The reverence courts justifiably hold such laws in cannot but be applicable in the instant case as well. The provision deals with reference to offences committed prior to the commencement of the CIRP. With the admission of the application the management of the corporate debtor passes into the hands of the Interim Resolution Professional and thereafter into the hands of the Resolution Professional subject undoubtedly to the

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control by the Committee of Creditors. As far as protection afforded to the property is concerned there is clearly a rationale behind it. Having regard to the object of the statute we hardly see any manifest arbitrariness in the provision.

327. It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. The new management cannot be the subject matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto. These ingredients are also insisted upon for claiming exemption of the bar from actions against the property. Significantly every person who was associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor.

328. The corporate debtor and its property in the context of the scheme of the code constitute a distinct subject matter justifying the special treatment accorded to them. Creation of a criminal offence as also abolishing criminal liability must ordinarily be left to the judgement of the legislature. Erecting a bar against action against the property of the corporate debtor when viewed in the larger context of the objectives sought to be achieved at the forefront of which is maximisation of the value of the assets which again is to be achieved at the earliest point of time cannot

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> *become the subject of judicial veto on the ground of violation of Article 14.*
>
> *329. We would be remiss if we did not remind ourselves that attaining public welfare very often needs delicate balancing of conflicting interests. As to what priority must be accorded to which interest must remain a legislative value judgement and if seemingly the legislature in its pursuit of the greater good appears to jettison the interests of some it cannot unless it strikingly ill squares with some constitutional mandate suffer invalidation.*
>
> *330. There is no basis at all to impugn the Section on the ground that it violates Articles 19, 21 or 300A."*

28. We have quoted from the judgment in ***Manish Kumar*** (supra) extensively hereinabove only because we are of the opinion that the above judgment authoritatively decides the question of law raised in the present appeal in favour of the appellant.

29. The Supreme Court while deciding on the challenge to the constitutional validity of Section 32A of the IBC, has held that where the person acquiring the control of a corporate debtor pursuant to a resolution plan approved under Section 31, satisfies the conditions contained in Section 32A of the IBC, such person must get the property of a corporate debtor on a clean slate.

30. The above ratio was reiterated by this Court in its judgment in ***Nitin Jain*** (supra), wherein this Court held as under:

> *"49. The learned Judges of the Supreme Court in Manish Kumar reiterated the principal objective of maximization of value under the*

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IBC and the corresponding requirement of ensuring that the resolution applicant is freed of the ghost of past offenses committed by the corporate debtor.

50. Undisputedly and as has been explained in the decisions of the Supreme Court noticed above, maximization of value would be clearly impacted if a resolution applicant were asked to submit an offer in the face of various imponderables or unspecified liabilities. The amendment to sub-Section (1) of Section 31 and the introduction of Section 32A undoubtedly seek to allay such apprehensions and extend an assurance of the resolution applicant being entitled to take over the corporate debtor on a fresh slate. Section 32A assures the resolution applicant that it shall not be held liable for any offense that may have been committed by the corporate debtor prior to the initiation of the CIRP. It similarly extends that warranty in respect of the properties of the corporate debtor once a resolution plan stands approved or in case of a sale of liquidation assets.

51. The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered.

52. The Legislature in its wisdom has recognised a pressing and imperative need to insulate the implementation of measures for restructuring, revival or liquidation of a corporate debtor from the vagaries of litigation or prosecution once the process of

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> *resolution or liquidation reaches the stage of the adjudicating authority approving the course of action to be finally adopted in relation to the corporate debtor. The Supreme Court in Manish Kumar also took note of the sufficient safeguards and the prerequisite conditions that stand attached to the cessation of liabilities to ultimately come to the conclusion that the Legislature had undertaken a well-considered balancing exercise to ensure that larger public interest was subserved."*

31. This Court in ***Rajiv Chakraborty*** (supra) reiterated the above harmonious reading of the provisions of the IBC and the PMLA and the effect of Section 32A of the IBC, observing as under:

> *"109. More importantly and while dealing with the question which arises for determination in this case, the court would have to bear in mind the undisputed fact that while the PMLA was originally promulgated on 1-7-2005, the IBC came to be enforced with effect from 28-5-2016 and on subsequent dates when its various provisions were separately enforced. Section 238IBC came to be energised in terms of the Notification dated 30-11-2016 and was ordained to come into effect from 1-12-2016. Section 32-AIBC on the other was introduced by amending Act 1 of 2020 with retrospective effect from 28-12-2019.*
>
> *110. The introduction of Section 32-A constitutes an event of vital import since it embodies a provision which effectively shut out criminal proceedings including those under the PMLA upon the CIRP reaching the defining moment specified therein. However, when the legislature introduced the said provision, it was conscious and aware of the fact that the provisions of the PMLA could be enforced against the properties of a corporate*

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debtor notwithstanding the pendency of the CIRP. Thus the court notes in light of the extent to which Section 14 could be recognised to legally operate under the statutory scheme and as has been explained hereinabove. Notwithstanding the above, the legislature chose to structure that provision in a manner that the authorities under the PMLA would cease to have the power to attach or confiscate only when a resolution plan had been approved or where a measure towards liquidation had been adopted. The statutory injunct against the invocation or utilisation of the powers available under the PMLA was thus ordained to come into effect only once the trigger events envisaged under Section 32-A came into effect. The legislature thus in its wisdom chose to place an embargo upon the continuance of criminal proceedings including action of attachment under the PMLA only once a resolution plan were approved or a measure in aid of liquidation had been adopted.

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114. On a consideration of the aforesaid, the court comes to the conclusion that Section 32-A would constitute the pivot by virtue of being the later act and thus govern the extent to which the non obstante clause enshrined in the IBC would operate and exclude the operation of the PMLA. As has been observed hereinabove, while both IBC and the PMLA are special statutes in the generic sense, they both seek to subserve independent and separate legislative objectives. The subject-matter and focus of the two legislations is clearly distinct. When faced with a situation where both the special legislations incorporate non obstante clauses, it becomes the duty of the court to discern the true intent and scope of the two legislations. Even though the IBC and Section 238 thereof constitute the later enactment when viewed against the PMLA which came to be enforced in 2005, the court

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> *is of the considered opinion that the extent to which the latter was intended to capitulate to the IBC is an issue which must be answered on the basis of Section 32-A. The introduction of that provision in 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.*
>
> *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)IBC. Through Section 32-A, 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 32-A. The aforesaid issue stands answered accordingly."*

32. The artificial distinction sought to be drawn by the respondent and accepted by the learned Tribunal, namely, that Section 32A(2) of the IBC applies only to attachment orders passed after the approval of the resolution plan, finds no support either in the plain language of Section 32A of the IBC or in the judgment of the Supreme Court in ***Manish Kumar*** (supra).

33. As rightly contended by the learned counsels for the parties, the trigger for invocation of Section 32A of the IBC is the approval of the resolution plan. Once the same is approved and the management and control of the corporate debtor passes to a third party, which third

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party satisfies the conditions stipulated in Section 32A of the IBC, such third party must get the benefit of the properties of the corporate debtor free from all encumbrances, including the attachment order under the PMLA. To hold otherwise would be to negate the object of introduction of Section 32A in the IBC.

34. In reaching the above conclusion, we are also guided and supported by the judgment of the Bombay High Court in ***Shiv Charan*** (supra), which was considering the following issue:

> *"2. The implications of Section 32A of the Insolvency and Bankruptcy Code, 2016 (for short, the "IBC, 2016") for corporate debtors and their assets, upon approval of resolutions, and indeed for enforcement agencies that have attached assets of such corporate debtors, fall for consideration in the captioned Writ Petitions....."*

35. The High Court of Bombay held as under:

> *"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*

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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

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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.

19. Section 32A(2) also affords similar immunity without a successful resolution having been approved - where a successful sale of assets of the corporate debtor is effected to an unconnected purchaser in liquidation proceedings. In short, action against the property is prohibited so that the purchaser of the property in liquidation proceedings of the corporate debtor can enjoy it freely, and therefore pay the best value when bidding for it. Since that facet of the matter is not relevant to the facts at hand, we are not analysing it further.

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 cease. Section 32A(3) enjoins the corporate debtor to continue to cooperate with the enforcement

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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.

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37. In our opinion, when a resolution plan with the ingredients that qualify for immunity under Section 32A comes to be approved, quasi- judicial 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

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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 judgement.

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Summary of Conclusions:

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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

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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 March 01, 2024 Aarti Palkar/Shraddha WPL-9943-2023 & WP-29111-2023.docx 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

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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 March 01, 2024 Aarti Palkar/Shraddha WPL-9943-2023 & WP-29111-2023.docx 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

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explained by us above;

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."

36. While considering the challenge to the above judgement, in Civil Appeal Nos.9692-9693/2024, as the parties therein were able to arrive at a settlement, the Supreme Court left the question of law open however, on an independent reading of the provision of Section 32A of the IBC with the Judgment of the Supreme Court in ***Manish Kumar*** (supra), we are of the opinion that once the resolution plan has been approved under Section 31 of the IBC, the attachment order passed under Section 5 of the PMLA can no longer subsist against the property of the corporate debtor, provided the person taking control of the corporate debtor satisfies the conditions mentioned in Section 32A of the IBC.

37. The above interpretation to Section 32A of the IBC does not place the IBC in conflict with the provisions of the PMLA nor does it make the provisions of Section 32A of the IBC to operate retrospectively to annul the attachment order passed prior to the

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approval of the resolution plan, but applies prospectively to release the property from such attachment.

38. Coming back to the facts of the present case, it is not the case of the respondent that the appellant is disqualified from the protection of Section 32A of the IBC inasmuch as the property was not covered by the resolution plan approved under Section 31 of the IBC by the NCLT or that the same did not result in the change in control of the corporate debtor or that the person taking such control of the corporate debtor under such resolution plan, that is, Asteroid was a promoter or in management or control of the corporate debtor or a related party of such a person or is a person with regard to whom the relevant investigating authority has, on 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.

39. The observation of the learned Tribunal in its impugned order that the relief under Section 32A of the IBC cannot be given to the appellant until the Special Court gives a finding to the effect that the appellant is not covered by the exceptions stipulated in Section 32A of the IBC, cannot be sustained for the reason that the occasion for the Special Court to give such finding shall arise only if it was a case of the respondent that the appellant/Asteroid falls in any of the exceptions to Section 32A of the IBC. In the absence of any such case being even set up by the respondent, the Special Court is not to give an academic finding or a finding in vacuum. On the other hand, it has

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to be presumed that the respondent has conceded that the appellant otherwise satisfies all the conditions mentioned in Section 32A of the IBC for the relief contained therein.

40. The only plea taken by the respondent was that Section 32A of the IBC does not apply to an attachment order passed under the PMLA before the approval of the resolution plan, which we have already negated hereinabove. Once this plea is rejected by us and no other defence is taken by the respondent, in our view, the learned Tribunal has erred in dismissing the appeal filed by the appellant and denying it the relief prayed for.

41. Accordingly, we set aside the Impugned Order passed by the learned Tribunal.

42. As noted hereinabove, the appellant deposited a fixed deposit of Rs.3.01 crores in terms of the judgment dated 13.04.2023 passed by this Court in W.P.(C) 10771/2022 as an equivalent value of the property attached by the Provisional Attachment Order. In view of Section 32A(2) of the IBC, with the approval of the resolution plan, the Provisional Attachment Order shall no longer subsist against the corporate debtor, that is, the appellant, as there is no allegation that the person taking control of the corporate debtor, that is, Asteroid, does not satisfy the conditions mentioned in the said provision.

43. We, therefore, direct that the FDR of Rs.3.01 crores, deposited by Asteroid on behalf of the appellant in favour of the respondent, be released to the appellant within a period of two weeks of this judgment.

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44. The appeal is allowed in the above terms.

45. There shall be no orders as to costs.

NAVIN CHAWLA, J.

ARUN BHARDWAJ, J.

NOVEMBER 06, 2026/sg/as

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