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NCLT Jurisdiction to Direct the ED to Release the Attached Properties

The Hon'ble Bombay High Court observed that Section 32A(2) of the Insolvency and Bankruptcy Code (IBC), 2016, protects the property of the corporate debtor from any attachment and restraint in proceedings related to offenses committed before the commencement of the Corporate Insolvency Resolution Process (CIRP). Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan, the corporate debtor's property is immune from further prosecution of proceedings. Section 32A(2) clarifies that immunity extends to actions against the property, including attachment, seizure, retention, or confiscation under applicable law.

This provision encompasses attachments made under the Prevention of Money Laundering Act (PMLA), 2002. The Hon'ble High Court, in its summary of conclusions, held that the National Company Law Tribunal (NCLT), acting as the Adjudicating Authority under the IBC, 2016, has correctly interpreted Section 32A, applying it to declare that the attachment of properties by the Enforcement Directorate (ED) must end. The application of Section 32A may impact existing and intended attachments and prosecutions by enforcement agencies under laws such as the PMLA, 2002. However, as both Section 32A and Section 60(5) of the IBC are non-obstante provisions, they prevail, ensuring no conflict between legislations.

Minority Shareholders File Suit Against ICICI Securities Over Delisting Plan

Over 100 minority shareholders of ICICI Securities have filed a class action suit with the National Company Law Tribunal (NCLT) against the delisting plans of ICICI Securities. The suit is led by Manu Rishi Gupta, the founder of MRG Capital, a Bengaluru-based investment fund. The shareholders oppose the share swap ratio proposed for the delisting, which offers ICICI Securities shareholders 67 shares of ICICI Bank for every 100 shares they currently hold.





NCLAT Asks Interim Resolution Professional (IRP) of Sparta Technologies to Maintain it as a Going Concern; Not to Take Steps for Insolvency

The National Company Law Appellate Tribunal (NCLAT) has directed the interim resolution professional (IRP) of Sparta Technologies which operates the fantasy sports platform Dream 11, to refrain from taking any steps towards insolvency and to maintain the company as a going concern. The appellate tribunal clarified that it has already stayed the Corporate Insolvency Resolution Process (CIRP) of the company. The NCLAT emphasized that while the IRP should not proceed with the CIRP, they should ensure the continued operation of the company. This decision follows the NCLAT's February 14 stay on the NCLT Mumbai bench's order to initiate CIRP against Sparta Technologies, prompted by an urgent petition from Dream 11 co-founder and COO Bhavit Sheth.

Company Penalized for Non-Compliance with Securities Regulations

The Company filed a suo-moto adjudication application, admitting to the non-compliance of section 29(1A) r.w. rule 9A(2) of the Companies (Prospectus and Allotments of Securities) Rules, 2014.

The company had allotted securities in the form of equity and convertible securities for raising funds for general corporate purposes and for the expansion of its operations before getting the shares of the promoter, director, and key managerial personnel (KMP) dematerialized. Instead, the securities were transferred in physical form.

As an unlisted public company, it issued shares in physical form as per section 56(d) of the Companies Act, 2013, which is a violation of section 29(1A) of the Companies Act, 2013. This section mandates that the securities of an unlisted company must be transferred in dematerialized form.

Additionally, the company violated Sub Rule 2 of Rule 9A of the Companies (Prospectus and Allotments of Securities) Rules, 2014, which requires that before making any offer for issuing securities, the entire holding of securities of its promoters, directors, and key managerial personnel must be dematerialized in accordance with the Depositories Act, 1996.



Notifications & Updates

Order:

After considering the facts, circumstances, and submissions made in the application and by the authorized representative during the hearing, the adjudicating officer imposed penalties for non-compliance with section 29(1A) of the Act. The penalties are as follows:

Rs. 90,000 on the company

Rs. 90,000 each on the directors in default

Rs. 50,000 and Rs. 40,000 on two erstwhile company secretaries respectively

Company Penalized for Fundraising Irregularities and Non-Compliance with Companies Act; Directors Held Accountable

It was observed that the Company has been acting as a fundraising platform for startups, selling shares of unlisted companies to investors through its website, and raising funds for itself via the same platform. The Company claimed that the shares were allotted to only one allottee, Planify Enterprises Private Limited, which then transferred shares to 76 investors. However, further analysis revealed more complex transactions and discrepancies in the valuation reports.

The Company attempted to justify its actions but failed to provide sufficient proof. It was found to have violated the provisions of Section 42(2), 42(7), and 42(8) of the Companies Act, 2013, read with Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

The violations included exceeding the permissible limit of 200 persons for private placement offers, publicizing the offering through advertisements, and failing to file requisite returns with the Registrar of Companies. This case also highlighted the accountability of independent and non-executive directors under Section 149(12) of the Companies Act, 2013, making them liable for board processes undertaken with their consent.

Order:

Having considered the facts and circumstances of the case, the Adjudicating Officer concluded that a penalty should be imposed for non-compliance under Section 42(10) of the Act, read with Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014, for violating Section 42(7) of the Companies Act, 2013. Accordingly, the Adjudicating Officer imposed the following penalties:

Rs. 2,00,00,000 (Rupees 2 crores) on the Company

Rs. 2,00,00,000 (Rupees 2 crores) on one director

Rs. 1,00,00,000 (Rupees 1 crore) each on three other directors in default.



Company Penalized for Non-Compliance with Registered Office Requirements under Section 12 under Companies Act.

The Office of the Registrar of Companies, Bihar-cum-Official Liquidator, High Court, Patna, issued a notice under Section 206(4) of the Companies Act, 2013 on July 28, 2023, to the company and its directors. The notice was returned undelivered with the postal remark "Incomplete Address." The adjudicating authority observed that the company was not maintaining its registered office as required under Section 12(1) of the Companies Act, 2013. The registered office of the company, as notified with the Registrar, was not capable of receiving and acknowledging all communications and notices. Thus, it appeared that the provisions of Section 12 of the Companies Act, 2013 had been contravened by the company and its officers/managing director, making them liable for penalties under Section 12(8) of the Companies Act, 2013.

Accordingly, a show-cause notice for the violation of Section 12 of the Companies Act, 2013, dated January 31, 2024, was issued to the company and its directors, but no reply was received. However, it was observed that the show-cause notice was delivered to the company on February 9, 2024. The office also issued a "Notice of Hearing" dated March 11, 2024, to the company and its directors to appear personally or through an authorized representative. On the hearing date, neither the authorized representative of the company nor the Managing Director/officers were present for the hearing under Section 12 of the Companies Act, 2013.

Order: Having considered the facts and circumstances of the case, the adjudicating officer imposed the following penalties for non-compliance with Section 12(1) and Section 12(4) of the Companies Act, 2013, under Section 12(8) of the Act:

Rs. 100,000 (One Lakh) on the company

Rs. 100,000 (One Lakh) each on the three directors/officers in default



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