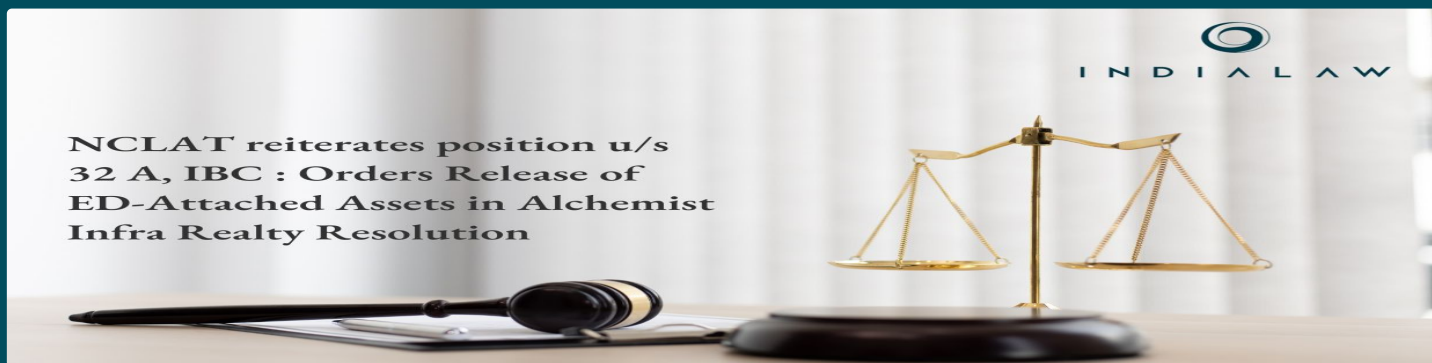




CIVIL

NCLAT reiterates position u/s 32 A, IBC : Orders Release of ED-Attached Assets in Alchemist Infra Realty Resolution

AUTHOR Rahul Sundaram

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In a notable judgment, the National Company Law Appellate Tribunal (NCLAT) has ruled in favour of Vantage Point Asset Pte. Ltd., a successful resolution applicant, by directing the release of assets attached by the Enforcement Directorate (ED) in the case of Alchemist Infra Realty Ltd. The decision marks a significant interpretation of Section 32-A of the Insolvency and Bankruptcy Code (IBC), emphasizing its intent to provide immunity for the corporate debtor's assets post-resolution approval, enabling a clean break with past liabilities.

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Background of the Case

Alchemist Infra Realty Ltd., a real estate company, entered into the Corporate Insolvency Resolution Process (CIRP) in October 2021 after financial distress. Vantage Point Asset Pte. Ltd. subsequently submitted a resolution plan, which received unanimous approval from the Committee of Creditors (CoC) in October 2023. The plan outlined measures to revive Alchemist Infra Realty Ltd. through asset monetization, requiring the release of government charges and attachments, including those imposed by the ED and other authorities under the Prevention of Money Laundering Act (PMLA).

NCLT's Decision

While the National Company Law Tribunal (NCLT) approved the resolution plan, it declined Vantage Point's request to release the attached assets. The NCLT limited its approval to the plan itself and advised the successful resolution applicant (SRA) to seek remedies regarding asset attachments through appropriate legal channels. It restricted the scope of immunity and relief under Sections 31(1) and 32-A of the IBC, concluding that Section 32-A protections did not automatically cover attachments under PMLA.

Grounds of Appeal by Vantage Point Asset Pte. Ltd.

Vantage Point Asset PTE. Ltd. subsequently appealed the NCLT's decision, challenging its refusal to release the attached assets. The appellant argued that Section 32-A of the IBC explicitly provides immunity from liabilities and enforcement actions for offences committed before the initiation of the CIRP, protecting both the resolution applicant and the assets of the corporate debtor. The appellant emphasized that the purpose of Section 32-A is to allow successful resolution applicants to revive distressed companies without the burden of past liabilities.

In support of their arguments, Vantage Point Asset Pte. Ltd. cited the *Shiv Charan* judgment from the Bombay High Court. In that case, the court held that the NCLT had the authority to lift asset attachments on properties included in an approved resolution plan under Section 32-A, recognizing the provision's intended scope to insulate the corporate debtor from historical liabilities.

NCLAT's Analysis and Key Findings

The NCLAT carefully examined relevant judgments from the Bombay High Court, Delhi High Court, and the Supreme Court. These included:

- **Delhi High Court's Rajiv Chakraborty Case:** This case supported the ED's power to maintain attachments under PMLA until CIRP completion. However, it acknowledged that Section 32-A could bar such attachments post-CIRP approval.
- **Supreme Court's Manish Kumar v. Union of India:** This landmark case upheld Section 32-A, noting its legislative intent to grant immunity to the corporate debtor and its assets once the CIRP is completed, shielding them from prior liabilities to attract resolution applicants.

NCLAT concluded that Section 32-A is designed to protect both the corporate debtor and its assets from enforcement actions related to past offences once a resolution plan is approved. The provision ensures that new management can begin on a “clean slate” post-CIRP, without being encumbered by historical issues that might impair the corporate debtor’s revival.

NCLAT’s Final Decision

The NCLAT allowed Vantage Point Asset Pte. Ltd.’s appeal, setting aside the NCLT’s restrictive interpretation. The appellate tribunal ruled that the assets attached by the ED should be released, as the SRA was entitled to the full protections under Section 32-A. The [NCLAT](#) recognized that the SRA’s ability to implement the resolution plan and monetize assets was central to the insolvency process’s goal of reviving distressed companies and maximizing creditor returns. By lifting the attachment, the tribunal reinforced the IBC’s intent to provide a fresh start for companies under new management.

Conclusion

The NCLAT’s decision in *Vantage Point Asset Pte. Ltd. v. Gaurav Misra* underscores the judiciary’s commitment to the core principles of the Insolvency and Bankruptcy Code. By extending the protective scope of Section 32-A to include immunity from prior attachments, the judgment reinforces the IBC’s intent to attract credible resolution applicants and ensure effective company revival. This ruling sets an important precedent, highlighting that the CIRP process aims to provide companies a genuine fresh start post-resolution, free from past liabilities that could hinder their ability to operate and grow. This clarity benefits resolution applicants and aligns with India’s broader goal of creating a more supportive environment for business restructuring and economic recovery.