

An auction sale conducted as per the order passed by the Chief Metropolitan Magistrate, much before the initiation of the CIRP, cannot be set aside by the NCLT

The NCLAT, New Delhi, in the case of **Unity Small Finance Bank Ltd. vs Suraksha Asset Reconstruction Ltd. [Comp. App. (AT) (Ins) No. 1480 of 2023]** dated July 24, 2025, has held that an auction sale conducted in pursuance of the order passed by the Chief Metropolitan Magistrate (CMM), much before the initiation of the Corporate Insolvency Resolution Process (CIRP), is not violative of Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC), and hence cannot be set aside by the NCLT while exercising its jurisdiction under the IBC.

Referring to a decision in the case of *Embassy Property Developments Private Limited vs. State of Karnataka & Ors* [AIR (Online) 2019 SC 1652], the Tribunal reiterated that “in the light of the statutory scheme as culled out from the various provisions of the IBC, it is clear that wherever the Corporate Debtor has to exercise a right that falls outside the purview of the IBC, especially in the realm of the public law, they cannot take a bypass and go before NCLT for the enforcement of such a right”. Thus, the Tribunal held that the Adjudicating Authority was not empowered to set aside the auction sale conducted before the initiation of the CIRP.

The Tribunal relied on the Supreme Court's judgment in *Kalyani Transco* [Civil Appeal No. 1808 of 2020], where it was held that “the NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and NCLAT are well circumscribed under Section 31 and Section 60, so far as the NCLT is concerned, and under Section 61 of the IBC, so far as the NCLAT is concerned. Neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law”.

Briefly, the appeal, which has been allowed by the NCLAT, has been filed challenging an order passed by the NCLT by which the application filed by Suraksha Asset Reconstruction Ltd. seeking to set aside the auction sale conducted as per the order of the CMM was allowed, the assets were ordered to be handed over to Resolution Professional after the initiation of the CIRP.