Procedural requirements introduced by IBBI Circulars regarding approaching the Special Court under PMLA for restitution of attached assets) cannot be applied retrospectively to applications that were registered and reserved for orders prior to the issuance of such circulars

The **Kolkata Bench of the National Company Law Tribunal (NCLT)** in the case of **Santanu T. Ray vs Axis Bank [I.A. (IBC) 1521(KB) of 2025] dated March 27, 2026**, has held that statutory mandate under Section 25(2)(a) of the Insolvency and Bankruptcy Code, 2016 (IBC), coupled with the overriding effect under Section 238, obligates the Resolution Professional to take immediate control and custody of the assets of the Corporate Debtor, invalidating any lien created by statutory authorities (such as the Income Tax Department and Enforcement Directorate) during the subsistence of the moratorium under Section 14 of the IBC.

The NCLT clarified that the financial institutions are statutorily obligated under Section 17(1)(d) to act on the instructions of the Resolution Professional and cannot refuse to remove a lien or handover custody of an asset based on attachments made in violation of the IBC.

Procedural requirements introduced by IBBI Circulars (specifically Circular No. IBBI/CIRP/87/2025 dated Nov 04, 2025 regarding approaching the Special Court under PMLA for restitution of attached assets) cannot be applied retrospectively to applications that were registered and reserved for orders prior to the issuance of such circulars, added the Tribunal.

The Tribunal observed that the term deposit in question constitutes an asset of the Corporate Debtor and that the lien created by statutory authorities during the CIRP period directly falls foul of the moratorium imposed under Section 14 of the Code. A conjoint reading of Section 25(2)(a) and Section 17(1)(d) of the Insolvency and Bankruptcy Code, 2016 makes it clear that the Resolution Professional is duty bound to take control and custody of all assets of the Corporate Debtor, and the banks are equally obligated to facilitate such control and act on the instructions of the Resolution Professional.

Further, the Tribunal noted that the Income Tax Department had already filed its claim before the Resolution Professional, which had been duly admitted. Therefore, any attempt to secure its dues by creating a lien over the assets of the Corporate Debtor dehors the IBC framework is not permissible.

Relying on the Supreme Court decision in Pr. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd, the Tribunal observed that Section 238 of the Code has an overriding effect, and any action taken by any authority, including statutory authorities, which is inconsistent with the provisions of the Code, cannot be sustained.

The Tribunal took note of Circular No. IBBI/CIRP/87/2025 dated Nov 04, 2025 issued by the Insolvency and Bankruptcy Board of India (IBBI), which advises that where assets are attached by the Enforcement Directorate under the PMLA, the Insolvency Professional may approach the Special Court under Section 8(7) or 8(8) of the PMLA for restitution.

However, the Tribunal observed that the present Interlocutory Application was registered on Sep 24, 2025 and was reserved for orders on Nov 03, 2025, prior to the issuance of the said Circular. Consequently, the procedural requirement as envisaged under the aforesaid Circular cannot be applied retrospectively so as to defeat or delay the relief sought in the present application, particularly when the issue pertains to custody and control of the assets of the Corporate Debtor during the subsistence of CIRP.