

Section 235A of IBC is a provision for punishment of an offence and does not empower the Adjudicating Authority to impose penalty, and hence the NCLT has no jurisdiction to convict a person for an offence under Section 68 of the IBC

The **Guwahati Bench of the National Company Law Tribunal (NCLT)** in the case of **Sandeep Kaithan vs Shalini Bhagat [IA (IBC)/44/GB/2023]** dated **April 30, 2026**, has held that Section 68 of the Insolvency and Bankruptcy Code, 2016 is a penal provision, and offences under Sections 68 and 235A of the Code can be prosecuted only before the competent Special Court in the manner prescribed under Section 236 of the Code; therefore, the NCLT, while exercising summary jurisdiction under Section 60(5), has no jurisdiction to try such offences, record findings of criminal culpability, or impose penal consequences.

The Tribunal reproduced Section 68 of the Code and observed that it is a penal provision dealing with punishment where an officer of the corporate debtor has wilfully concealed, removed, transferred, or otherwise dealt with the property of the corporate debtor with intent to defraud creditors during the relevant period.

The Tribunal also considered Section 235A and Section 236 of the Code, to observe that Sections 68 and 235A are punitive in nature, and before liability can be fastened under those provisions, the adjudicating forum must determine foundational facts such as involvement, nature of the act, wilfulness, fraudulent intent, knowledge and culpability. Such determination requires appreciation of evidence, examination of witnesses, opportunity of defence and adherence to the procedure prescribed for trial of offences, and therefore cannot ordinarily be undertaken in summary proceedings under the insolvency framework.

The Tribunal further observed that though it derives jurisdiction under Section 60(5) of the Code to decide questions arising out of or in relation to CIRP or liquidation proceedings, such jurisdiction cannot be extended to assume the role of a criminal court or Special Court for trial of offences under the Code.

The Tribunal also reiterated that Section 235A is a provision for punishment of an offence and does not empower the Adjudicating Authority to impose penalty, and the NCLT has no jurisdiction to convict a person for an offence under Section 68 in view of the express provision in Section 236(1) and Section 236(2) of the IBC.

Accordingly, the Tribunal observed that offences under Sections 68 and 235A of the Code are required to be prosecuted before the competent Special Court in the manner prescribed under Section 236, and that the Tribunal, while exercising summary jurisdiction under Section 60(5), cannot undertake trial of such offences or impose penal consequences.