

# TBA BULLETIN

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The TBA Bulletin is a weekly summary of the most important legal news from India and around the world.

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## IBC

- Delhi HC: Once the IBC liquidation procedure begins, PMLA's ability to attach assets will come to an end

## HEALTHTECH

- The draft Medical Devices (Amendment) Rules, 2021 introduces medical devices unique device identity process

## PMLA

- Amazon filed a petition with the Delhi HC, alleging that ED was pursuing an inquiry "outside its scope and power"

## IBC

### NATIONAL

#### **The Delhi HC limits the ED's ability to seize assets**

- In the PSL Ltd.'s case, the liquidator has challenged the ED's move. A liquidator Mr. Nitin Jain was appointed by the NCLT under The Insolvency and Bankruptcy Code (IBC) to handle the affairs and estate of the company. Following that, he was served with a summons by the ED, which was probing the company's operations under the Prevention of Money Laundering Act, 2002 (PMLA).
- The liquidator's reason is that the ED's jurisdiction under the PMLA is obligated to end by law once the adjudicating body approves a resolution plan or the liquidation process begins.
- The ED contended that the PMLA's attachment and confiscation powers cannot be considered subordinate to the IBC. Section 32A of IBC applies to cases where the corporate debtor is in the process of being resolved, but not when the debtor is in the process of being liquidated.
- The HC said that authorities under, both, the PMLA and the IBC must be allowed the discretion to carry out their respective responsibilities and obligations. For disagreements, courts must determine the legislative framework and engage in a reconciliation process.
- The HC held that the extent of the ED's powers during a resolution or liquidation process would be determined only by the legislature's inclusion of a

specific provision for the termination of obligations and prosecution.

- The court clarified that the stay of prosecution only applies to the corporate debtor. Individuals in control of its affairs are not eligible for this exemption.
- Following these findings, the HC ordered the liquidator to carry with PSL's liquidation procedure in compliance with the IBC, while prohibiting the ED from taking any further action against the company's assets.

**Source:** [Link](#)

### **HEALTHTECH** **NATIONAL**

#### **Medical device's unique device identity brought in the Medical Devices Rules, 2021**

- The Ministry of Health and Family Welfare, in a notice dated December 23, 2021, announced the proposed Medical Devices (Amendment) Rules, 2021, which would change the Medical Device Rules, 2017.
- The proposed amendment substitutes the following rule for rule 46 of the Medical Devices Rules, 2017.
- "R 46. Unique device identification of the medical device — A medical device, approved for manufacture for sale, distribution, or import, shall bear unique device identification

in the manner as may be determined, with effect from the date as may be specified by Central Government."

- It has been announced that the abovementioned draft regulations will be considered on or after the five-day period after the day on which copies of the Indian Gazette containing these draft rules are made accessible to the public.

**Source:** [Link](#)

### **PMLA** **NATIONAL**

#### **Amazon sues the ED, referring to the investigation as a "fishing and roving exercise"**

- The ED has been barred from collecting information on the 2019 deal between Amazon.com NV Investment Holdings LLC and the Future Group, after the filings made by Amazon Group entities Amazon Wholesale (India) Pvt. and Amazon Seller Services Pvt. before the Delhi HC to overturn the ED's investigation.
- The appeal stated that the ED's Delhi office requested details regarding the Future Group purchase in February of this year, which included the following:
- Amazon.com NV's stake in Future Coupons Pvt. Ltd.

- A copy of the contracts signed with Future Group enterprises.
- The basis for arriving at the price for FCPL shares which is based on the investment made in Future Group.
- Copy of correspondence with Future Group promoters, including copies of e-mails.
- The petitioners pleaded to the HC that they have no business relations with Kishore Biyani's Future Group. The Future Group was dealt with by Amazon.com NV Investment Holdings LLC, their foreign affiliate.
- In their petition, the companies ask the HC to order the agency to withdraw the directive issued by the agency's head investigation office, as well as to prevent it from investigating matters that are protected by legal privilege or fall outside the scope of the Foreign Exchange Management Act, 1999.
- Amazon's case was scheduled for hearing before Justice Rekha Palli's bench, which was not heard with next hearing date not determined.

**Source:** [Link](#)

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*Sources: SCCOnline and BloombergQuint.*