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IBC, 2016 VS PMLA, 2002 – WHICH STATUTE PREVAILS OVER WHOM - NCLAT ANSWERS

The Ld. National Company Law Appellate Tribunal, New Delhi (“**NCLAT**”), vide judgment dated July 3, 2025 has answered the following critical questions of law on the interplay of two central legislations namely, the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and the Prevention of Money Laundering Act, 2002 (“**PMLA**”) in the matter of ***Mr. Anil Kohli, Resolution Professional for Dunar Foods Ltd. vs Directorate of Enforcement & Anr:***

1. Whether the provisional attachment of assets by the Directorate of Enforcement (“ED”) under the PMLA violates the moratorium imposed under Section 14 of the IBC:

The NCLAT observed that ED’s action of provisional attachment although was after the insolvency commencement date, the ECIR investigation commenced as far back as 2013. The ED’s proceedings were therefore

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rooted in pre-existing criminal investigation processes and the assets involved were allegedly acquired as proceeds of money laundering taking outside the regular asset pool as contemplated under the IBC. The NCLAT observing the following answered in negative by holding that the issuance of the PAO (*provisional attachment order*) by ED under the PMLA does not violate the moratorium under Section 14 of the IBC:

- Section 14 aims to preserve lawful, unencumbered assets for the purpose of resolution;
- However, if the property is alleged to be “proceeds of crime” and is already under adjudication by competent authority under a penal statute, such property cannot be deemed to be part of the freely available estate;
- The PMLA provides its own adjudicatory process and remedy for challenging attachments, which is separate from the IBC.

2. Whether the IBC, by virtue of Section 238, overrides the PMLA in case of inconsistency, particularly in the context of resolution process involving tainted assets:

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NCLAT held that the laws do not operate in a vacuum. For the non-obstante clause to apply, two conditions must be satisfied:

- (i) There must be clear inconsistency between the two statutes;
- (ii) Both statutes must operate in the same field or deal with the same subject matter.

The NCLAT observed that the objectives of both statutes, though occasionally intersecting, are not inherently inconsistent. While the IBC aims at reviving commercial entities, the PMLA seeks to punish crime and prevent unjust enrichment through illicit means. The NCLAT observed that Courts have consistently held that tainted assets are not protected under commercial laws and where money laundering is involved, courts must be cautious not to allow commercial or procedural mechanisms to defeat the legislative intent of penal enforcement. The NCLAT further observed that in the instant case, the PAO was issued on December 26, 2017 and confirmed on June 11, 2018. The resolution plan was approved only in 2019. This makes Section 32A of IBC inapplicable in the present case, as the property was

SOLVE-ENCY

already under valid legal attachment before the statutory conditions under Section 32A were met.

NCLAT concluded that in the present factual matrix, the IBC cannot be said to override the PMLA merely because the ED's attachment interferes with the CIRP. The ED does not act as a creditor, but as a public enforcement agency. The attached assets are not to satisfy creditors, but to uphold penal objectives and international obligations under FATF (*financial action task force*) and UN Conventions. NCLAT answered the second issue also in negative and held the following:

- That the PMLA and IBC operate in distinct spheres;
- There no irreconcilable inconsistency exists between the two legislations;
- Section 238 of the IBC cannot override the PMLA in respect of proceedings involving proceeds of crime;
- That attachment under the PMLA, if validly made and confirmed, cannot be undone because CIRP is ongoing.

3. Whether the NCLT/NCLAT have jurisdiction to interfere with confirmed attachments under the PMLA:

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NCLAT by relying upon the two Supreme Court rulings (Embassy Property Developments Pvt. Ltd. Vs State of Karnataka & Ors. [2019 SCC ONLine SC 1542] & Kalyani Transco Vs, M/s. Bhushan Power and Steel Ltd. and Others [Civil Appeal No. 1808 of 2020]) held that in view of the settled proposition of law, it is absolutely clear that NCLAT lacks jurisdiction to interfere with the PAO, which has been subsequently confirmed by the adjudicating authority under the PMLA and therefore answered the third issue also in negative and dismissed the appeal by affirming the order dated May 21, 2018 passed by NCLT, Mumbai Bench.

VA View:

This ruling will have wider ramifications under the IBC ecosystem as the ring fencing mechanism of moratorium under Section 14 of IBC, which is vital for successful resolution, will no longer be available for the assets of a corporate debtor as the law enforcement agencies in particular the ED under the PMLA can initiate coercive proceedings including attachment of assets for the alleged offence(s), thereby rendering the assets of a corporate debtor unusable and unsellable, ultimately reducing the

SOLVE-ENCY

commercial viability of the resolution prospects and resolution plan leading to disincentivizing prospective resolution applicants to come forward with intention to bail out a distressed entity.

The finding of NCLAT that even during the subsistence of moratorium, ED's action of provisional attachment of assets is permissible under law may not be correct for the reason that ED's action of provisional attachment of assets is based on mere allegation of commission of scheduled offence and until and unless the adjudicating authority under the PMLA decides that such property is involved in money-laundering and confirms the provisional attachment, the alleged tainted property continue to belongs to / vests in the corporate debtor and it is only once the special court under the PMLA on conclusion of trial of the alleged offence finds that the offence of money laundering has been committed, it stands confiscated to the Central Government. Therefore, it may not be correct to say that once a property is provisionally attached by ED, it remains out of the pool of the corporate debtor's resolution process.

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Further, by allowing the successful resolution applicant to take the alleged tainted assets on clean slate principle will not frustrate the objective of the PMLA as Section 32A of the IBC only provides immunity to the corporate debtor from the prior offences and not those involved in the commission of such offences. Hence, once a resolution plan is approved by NCLT under the IBC, the assets of the corporate debtor must be allowed to flow into the new management without any encumbrances. Maintaining the attachment post approval of the resolution plan defeats the commercial expectations of the successful resolution applicant and could render the entire resolution process futile.

We hope this judgment would be assailed before the Hon'ble Supreme Court and the Hon'ble Supreme Court adopts a harmonized interpretation to maintain a proper balance between both these statutes. In the meanwhile, prospective resolution applicants will have to tread with caution when dealing with corporate debtors against whom PMLA proceedings are pending and any such acquisition may be fraught with probable longdrawn litigation with the ED purportedly claiming that the assets in question are proceeds of crime.