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National Company Law Appellate Tribunal affirms that assets attached by the Enforcement Directorate are excluded from insolvency proceedings

In an important decision on the interplay between the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) and the Prevention of Money Laundering Act, 2002 (“**PMLA**”), the National Company Law Appellate Tribunal, Principal Bench, New Delhi (“**NCLAT**”), in **Mr. Anil Kohli, Resolution Professional for Dunar Foods Limited vs. Directorate of Enforcement and Anr.**¹, has held that the assets attached by the Enforcement Directorate (“**ED**”) which are ‘proceeds of crime’ cannot be claimed as part of the resolution estate under the IBC. Further, it was clarified that the overriding effect of Section 238² of the IBC does not extend to negate valid actions taken under the PMLA, which operates in a distinct legislative domain.

Brief facts

1. Dunar Foods Limited (“**Corporate Debtor**”) defaulted on credit availed from a consortium of banks led by the State Bank of India (“**SBI**”). SBI initiated the proceedings under Section 7 of the IBC.
2. By an order dated December 22, 2017, the National Company Law Tribunal (“**NCLT**”), Mumbai Bench, admitted the insolvency petition and declared commencement of the Corporate Insolvency Resolution Process (“**CIRP**”). Mr. Anil Kohli was appointed as the Interim Resolution Professional (“**IRP**”) and the statutory moratorium under Section 14 of the IBC was imposed on that date.
3. ED had previously commenced an investigation on M/s PD Agroprocessors Private Limited (“**PDAP**”), an associate company of the Corporate Debtor. ED registered an ECIR against PDAP in 2013 and it was alleged that advances received by the Corporate Debtor from PDAP were proceeds of crime.
4. On December 26, 2017, 4 (four) days after CIRP began, the ED issued a Provisional Attachment Order (“**PAO**”) under Section 5(1) of the PMLA, attaching immovable and movable properties of the Corporate Debtor.
5. The Resolution Professional (“**RP**”) sought de-attachment of the said properties on the basis of the moratorium and the overriding provision under the IBC. The RP of the Corporate Debtor moved before the NCLT under Section 60(5) seeking orders to recall the PAO.
6. The NCLT dismissed this application by its order dated May 21, 2018, reasoning that the PAO did not fall within the scope of moratorium. Further, the PMLA is a special penal statute, with its own adjudicating authority, and the NCLT did not have jurisdiction to release the attached assets.

¹ Company Appeal (AT) (Ins.) No. 389 of 2018 (decided on July 3, 2025)

² The overriding provision under the IBC: “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

7. The PAO was subsequently confirmed by the adjudicating authority under the PMLA on June 11, 2018. Thereafter, the RP approached the NCLAT challenging the NCLT's order.
8. During the pendency of the appeal, the Resolution Plan submitted by successful resolution applicant ("SRA") was approved by the NCLT, and the RP was reappointed as Monitoring Professional.

Issues

1. Whether the attachment of assets by ED under PMLA violated the moratorium under the IBC?
2. Whether the IBC (Section 238) overrides the proceedings or actions taken under the PMLA when inconsistency arises, particularly if the CIRP involves tainted assets?
3. Whether the NCLT or NCLAT has jurisdiction to adjudicate upon the PAOs, confirmed by the adjudicating authority under the PMLA?

Analysis and findings

Issue 1: Applicability of moratorium to attachment orders

The RP argued that the PAO was issued after the moratorium had commenced and constituted its breach. However, the NCLAT held that the relevant consideration is not that the attachment took place after the moratorium but the nature of the proceedings and the context in which the property is attached.

ED had initiated proceedings under the PMLA long before the CIRP commenced. The ECIR dated back to 2013, and the investigation pertained to money laundering involving PDAP, with the Corporate Debtor allegedly having acquired the assets as 'proceeds of crime', "*taking them outside the regular asset pool as contemplated under IBC.*"

The NCLAT referred to the decision in *Embassy Property Developments vs. State of Karnataka*³ and observed that the NCLT does not have jurisdiction over matters arising from public law and there is a distinction between economic domain of IBC and the criminal domain of other laws. Further, the NCLAT relied on its previous judgment in *Varrsana Ispat Limited vs. ED*⁴, wherein it had held that attachment orders, – based on prior ECIRs and confirmed under the PMLA – cannot be interfered by the NCLT/NCLAT.

Ultimately, the NCLAT held that property alleged to be 'proceeds of crime' and under adjudication by competent authority cannot be deemed to be part of the freely available resolution estate. The PMLA provides for its own mechanism to challenge the attachment orders, which is separate from the IBC.

The NCLAT, thus, held that the PAO in the present case did not violate moratorium.

Issue 2: Whether IBC overrides PMLA

The RP contended that since the IBC was enacted subsequent to the PMLA (later-in-time rule) and by virtue of Section 238, it must prevail in case of conflict.

However, the NCLAT distinguished between the objectives of the 2 (two) statutes: IBC is a commercial legislation aimed at resolution and maximisation of asset value; while PMLA is a penal statute which seeks to identify, attach and confiscate properties acquired through criminal activity.

The NCLAT observed that for Section 238 to override any other statute, 2 (two) conditions must be satisfied: (a) the statutes must operate in the same legislative domain; and (b) there must be a clear inconsistency between them. Here, the NCLAT held that, these statutes, "*though occasionally intersecting, are not inherently inconsistent*".

³ (2019) SCC OnLine SC 1542; Para 53

⁴ Company Appeal (AT) (Ins.) No. 493 of 2018

The NCLAT observed that courts have consistently held that tainted assets are not protected under commercial laws and cannot be considered part of the resolution asset under the IBC.⁵

The NCLAT, thus, held that the PMLA and IBC operate in different spheres, there is no irreconcilable inconsistency between them, IBC cannot override PMLA in respect of assets which are 'proceeds of crime'; and the attachment under PMLA, if valid and confirmed, cannot be undone because of the CIRP.

Re Section 32A: Another important issue for consideration before the NCLAT was the applicability of Section 32A IBC, which grants immunity to the Corporate Debtor and its property post-resolution. The NCLAT held that Section 32A is not applicable in the present case because it is prospective in application.⁶ Section 32A was introduced in 2020, i.e., before the resolution plan was approved (2019) and before the PAO was issued (2017) and confirmed (2018).

Issue 3: Jurisdictional competence of NCLT/NCLAT in PMLA matters

Again, relying on the decision in *Embassy Property Developments (supra)*, the NCLAT held that since PAO has been confirmed by the adjudicating authority under the PMLA, the appropriate remedy is to file an appeal before the appellate tribunal under the PMLA.

The NCLAT heavily relied on the Hon'ble Supreme Court's recent decision in *Kalyani Transco vs. Bhushan Power and Steel Limited and Ors.*,⁷ and held that the "NCLAT lacks jurisdiction to interfere with the PAO, which has been subsequently confirmed by the Adjudicating Authority under the PMLA".

Note: For further details on the judgment of *Kalyani Transco* (supra), please refer to the [ISA Prism of May 19, 2025](#)

Final Decision

After concluding that the statutory provisions under the IBC cannot invalidate lawful attachment proceedings under the PMLA, particularly when confirmed by the appropriate authority, the NCLAT dismissed the appeal.

Conclusion

This judgment adds another precedent to the growing jurisprudence that insolvency law cannot be used as a tool to challenge the actions taken by the ED under the PMLA, especially where the properties/assets involved are proceeds of crime. Initiation of CIRP cannot be used to claim immunity from attachment under the PMLA, merely because it would reduce the asset pool of the Corporate Debtor.

NCLAT's reliance on earlier judgments such as *Embassy Property* (supra) and *Kalyani Transco* (supra) affirms that the scope of adjudication under the IBC is limited to commercial issues and cannot be extended to enforcement mechanisms created under the PMLA.

For stakeholders, such as the resolution applicants and the committee of creditors, this decision is yet another reminder to exercise diligence while evaluating resolution plans involving assets under investigation by enforcement authorities.

Going forward, the clear demarcation between commercial resolutions under IBC and enforcement of penal laws under statutes like PMLA will likely ensure more coherent adjudication and avoid jurisdiction overlap.

The present decision is likely to be challenged before the Supreme Court. Additionally, a review petition has been filed against the judgment in *Kalyani Transco* (supra). These proceedings are expected to prompt the Supreme Court to

⁵ *Deputy Director, ED vs. Axis Bank* (2019) SCC OnLine Del 7854

⁶ *Manish Kumar vs. Union of India*, (2021) 5 SCC 1

⁷ Civil Appeal No. 1808 of 2020

examine in detail the interplay between the IBC and the PMLA. The outcome will likely provide clarity and settle the legal position on this issue for the future.

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