



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

Number 231

(July 07, 2025)



**Mr. Anil Kohli, RP for Dunar Foods Ltd. vs. ED & Shri Amit Gupta, SRA**  
**Company Appeal (AT) (Ins.) No. 389 of 2018**  
**Date of NCLAT Order: 03<sup>rd</sup> July 2025**

### Facts of the Case: -

The Present appeal was filed u/s 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Resolution Professional (RP) of Dunar Foods Ltd./Corporate Debtor (hereinafter referred as 'Appellant') arising out of the impugned order dated 21.05.18 passed by the Adjudicating Authority (AA), against Directorate of Enforcement (ED) & Mr. Amit Gupta, Successful Resolution Applicant (SRA) (hereinafter referred as Respondent no.1 & 2) respectively. The RP challenged the refusal order of the AA to direct the Respondent no. 1 to release the provisionally attached properties of the CD.

The CD engaged in the business of processing and exporting basmati rice, had defaulted in repayments to a consortium of banks led by SBI, amounting ₹758.73 crore leading to the initiation of CIRP u/s 7 of IBC on 22.12.17. A moratorium u/s 14 came into effect from the same date. Four days later, on 26.12.17, the Respondent no. 1 passed a Provisional Attachment Order (PAO) u/s 5(1) of the PMLA, attaching assets worth ₹177.33 crore, alleging the money to be proceeds of crime traced through an investigation against M/s PD Agroprocessors Pvt. Ltd., an associate concern of the CD. The Appellant sent representations to Respondent no. 1 requesting de-attachment citing moratorium u/s 14 and overriding effect u/s 238, but received no relief. Subsequently, the Appellant approached the AA through MA No. 129/2018, seeking quashing of the PAO and release of assets, contending that the attachment obstructed CIRP and resolution prospects. The AA dismissed the plea, holding that PMLA proceedings are distinct, and the action of Respondent no. 1 does not fall under the purview of Section 14 moratorium.

Aggrieved by this, the Appellant filed the present appeal before the NCLAT reiterating that continuation of attachment is in violation of moratorium and frustrates the object of value maximization under IBC. He also placed reliance on Section 32A introduced by way of amendment in 2020 and several Supreme Court rulings to support his claim. The main issues raised before the Appellate Tribunal are:

- (i) Whether the attachment under PMLA violates the Moratorium under Section 14 of the IBC?
- (ii) Whether Section 238 of the IBC overrides PMLA in case of any inconsistency?
- (iii) Whether the NCLT/NCLAT possess jurisdiction to issue directions concerning attachment orders passed and confirmed under PMLA?



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## NCLAT's Observations:

On the first issue, the Tribunal held that although the PAO was issued post-CIRP initiation, the PMLA proceedings were based on an earlier ECIR registered in 2013, and the attached properties were allegedly proceeds of crime. As such, the Moratorium under Section 14, which protects lawful assets for resolution, would not apply to assets already under the adjudicatory process of PMLA.

On the second issue, the Appellate Tribunal noted that while Section 238 of the IBC contains a non-obstante clause granting it overriding effect over inconsistent laws, such an override can only apply where both laws operate in the same domain and are irreconcilably inconsistent. The IBC is an economic legislation aimed at resolution of distressed companies, whereas PMLA is a penal statute dealing with confiscation of criminal proceeds. These legislations operate in different fields. Consequently, the NCLAT found no direct inconsistency that would warrant overriding of PMLA by IBC. NCLAT also cited Delhi High Court judgement in the case of *Deputy Director, ED vs Axis bank, 2019* wherein it was held that “tainted assets cannot be considered part of the resolution estate under the IBC”. Furthermore, Section 32A, which provides immunity to CD's post-resolution, could not be invoked in the present case, as the ED's attachment was pre-resolution and already confirmed before the resolution plan was approved.

On the third issue of jurisdiction, the Tribunal referred to the Supreme Court's ruling in *Kalyani Transco v. Bhushan Power and Steel Ltd. 2020*, which clarified that AA and Appellate Tribunal lack jurisdiction to review or interfere with attachment orders passed by statutory authorities under the PMLA. It emphasized that challenges to PMLA attachments must be addressed before the Appellate Tribunal under the PMLA framework and not through insolvency forums.

**Order/Judgement:** The Appellate Tribunal, after analyzing all submissions and considering binding precedents, held that the provisional attachment under PMLA did not violate the Section 14 moratorium of IBC, and Section 238 of IBC does not override valid attachments under PMLA. It further held that the AA and Appellate Tribunal have no jurisdiction to direct release of such attached properties.

**Case Review:** The appeal was dismissed.