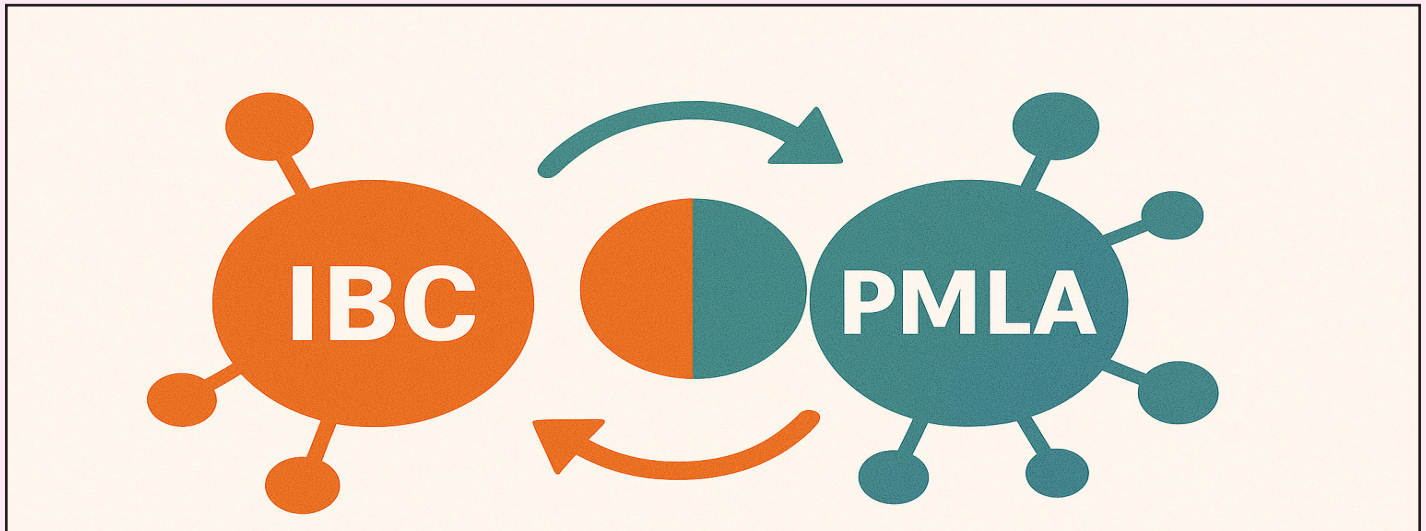


Evolving Chemistry between IBC & PMLA



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*The intersection of the Insolvency and Bankruptcy Code, 2016 (IBC), and the Prevention of Money Laundering Act, 2002 (PMLA) has generated significant jurisprudential debate. Central controversies include whether the moratorium under the IBC bars the Enforcement Directorate's (ED) attachment proceedings, whether the NCLT can direct the ED to release attached assets, and how the non obstante clauses in both statutes interact—particularly whether the immunity granted under Section 32A of the IBC overrides PMLA proceedings. Recent rulings, notably the Supreme Court's verdict in Kalyani Transco, have sought to delineate jurisdictional boundaries, reaffirming that while the IBC aims at economic revival, it does not supersede the enforcement framework of the PMLA. This article examines the evolving legal landscape shaped by divergent interpretations of tribunals and constitutional courts, navigating complex questions of statutory overlap and legislative intent. **Read on to know more...***

1. Introduction

The two litigations that have been making a huge impact on the financial landscape of our country in recent years are the Insolvency & Bankruptcy Code, 2016 (IBC) and the Prevention of Money Laundering Act, 2002 (PMLA). On one hand, IBC is a young legislation, less than a decade old, still evolving and not fully notified and on the other hand PMLA, though enacted almost 25 years ago, has gained momentum in recent years.

IBC was enacted to provide a consolidated framework for reorganization, insolvency resolution and liquidation of corporate persons, partnership firms and individuals in debt, as to maximize the value of assets. Though provisions of Chapter

III, pertaining to insolvency and bankruptcy of individuals and partnership firms, have not been notified yet (except for Personal Guarantor to Corporate Debtors), it has already made a mark in redefining debtor and creditor relationships and has had a profound positive impact on health of our banking sector. As per the RBI's report, IBC accounts for 48% of all recoveries made by banks in financial year 2023-24.

On the other hand, the PMLA was introduced to combat money laundering and related offenses in India. It aimed to prevent the legalizing of income or profits derived from illegal activities like smuggling, narcotics, organ trade, child trafficking, etc., and to enable the confiscation of property derived from such proceeds of crime. It is administered through Directorate of Enforcement

(ED), which is empowered to provisionally attach assets derived from or involved in money laundering and investigating the matter.

Legal interpretation issues arise when a person gets into the ambit of both these acts together mainly, because both these legislatures are specialized laws with distinct objectives but include non-obstante clauses (Under section 71 of PMLA and Section 238 of IBC), which ensure that the provisions of these statutes take precedence over any other conflicting laws. The courts in India, to the level of Supreme Court, have been actively involved in sorting issues when they intersect each other during insolvency proceedings. Though, initially there have been conflicting decisions at various levels, but gradually issues have been gaining clarity as in recent judgements, courts have interpreted these legislations so as to harmonize them, ensuring that the objectives of each one are met without undermining the other.

2. Major Issues

Two critical provisions of the IBC — Section 14, which imposes a moratorium during the CIRP, and Section 32A, which provides immunity to the Corporate Debtor (CD) and its assets following the approval of a Resolution Plan — have been central to judicial and academic debate, raising certain thought-provoking questions of legislative primacy and jurisdictional supremacy between IBC & PMLA like:

- (i) Which statute prevails when conflicting mandates arise as non-obstante clause exist in both?
- (ii) What would be effect of Moratorium under Section 14 on attachment of properties under PMLA?
- (iii) Whether PMLA is a civil or criminal proceeding?
- (iv) Does NCLT/ NCLAT has jurisdiction to direct ED?
- (v) Does Section 32A effectively provide a complete shield to the corporate debtor's assets against PMLA attachment after resolution?

2.1. The Non-Obstante Clauses: A Statutory Conflict: Both statutes wield potent non-obstante clauses, which are reproduced below:

- **Section 238 of IBC:** “The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law...”
- **Section 71 of PMLA:** “The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law...”

This dual supremacy creates a legislative stalemate, compelling courts to reconcile competing mandates using principles such as *lex specialis derogat legi generali* (special law overrides general

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law), year of enactment and purposive construction to harmonize the statutes. As none of the statute can be categorised as general law, the first principle becomes infructuous here. As regards the order of enactment, in cases where there is a conflict between two statutes containing non-obstante clauses, the one which has been enacted later would prevail as has been held in numerous cases like in *Maruti Udyog Vs. Ram Lal*¹ where the Supreme Court observed that:

“It is well settled that when both statutes containing non obstante clauses are special statutes, an endeavour should be made to give effect to both of them. In case of conflict, the later shall prevail”

Not only the year of enactment of a statute is important in such cases, date of subsequent amendments in an existing statute have also been recognised to be viewed as later act, for determining the overriding effect of an Act as was held in *Bank of India Vs. Ketan Parekh*², by the Supreme Court.

However, it is pertinent to note that this rule is not universally applied and may not always constitute the solitary principle of interpretation, and much would also depend on the intent and scope of the two intersecting statutes. Delhi High Court in *Rajiv Chakraborty Resolution Professional of EIEL v. Directorate of Enforcement*³ (2022) clearly stated that:

“When faced with a situation where both the special legislations incorporate non obstante clauses, it becomes the duty of the Court to discern the true intent and scope of the two legislations....” (Para 108)

So, the ultimate test, while giving effect to intersecting provisions of the two statutes, would be “the intent and scope of the statute” or “intent of incorporating a particular provision in the statute” and the same need to be examined.

2.2. Moratorium (IBC) Vs. Attachment (PMLA)

Section 14 of the IBC provides for a moratorium on the initiation or continuation of legal proceedings, execution of any judgment or order, and the transfer or disposal of any assets of the CD

1. AIR 2005 SUPREME COURT 85

2. (2008) 8 SCC 148

3. W.P.(C) 9531/2020;

during Corporate Insolvency Resolution Process (CIRP).

Whereas under sections 5 and 8 of the PMLA, the ED is empowered to provisionally attach any property which is believed to be “proceeds of crime.” After attachment, the matter is adjudicated by the Adjudicating Authority (AA) under Section 8 of the PMLA, potentially resulting in either confirmation and ultimate confiscation of the attached property to the Central Government or release of the property.

Now the question arises that, can ED attach properties of CD, which is under CIRP, or continue to attach properties of corporate debtor on initiation of CIRP which it had attached prior to initiation of such proceedings. Though there were some contrary views initially, position has now gained some clarity.

NCLAT in *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement*⁴ (2018) and also in *Rotomac Global Pvt. Ltd. v. Deputy Director* (2019)⁵ held that the attachment of assets under the PMLA relates to ‘proceeds of crime’ and Section 14 of the IBC is not applicable to such criminal proceedings. In *Varrsana Ispat*, it was further held that since the assets were attached prior to CIRP initiation, no benefit can be derived out of Section 14 of the IBC, as the notice of attachment was already available to the relevant stakeholders. Citing its decision in *Varrsana Ispat*, the NCLAT, also upheld the ED’s attachment in case of *Rotomac Global*, even though attachment order in this case was after the CIRP commencement date.

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Similarly, in *Nitin Jain Liquidator PSL Ltd. v. Enforcement Directorate*⁶ (2021), the High Court Of Delhi has held that the moratorium under Section 14 cannot come in the way of the statutory authority conferred on the ED by PMLA as doing so would defeat the objective of PMLA and provide an escape route for CD alleged to be holding proceed of crime. Court further observed that:

Para 146: “....After all, a person indulging in money-laundering cannot be permitted to avail of the proceeds of crime to get a discharge for his civil liability towards his creditors for the simple reason such assets are not lawfully his to claim”.

4. *Company Appeal (AT)(Insolvency) No. 493 of 2018*

5. *Company Appeal (AT) (Insolvency) No. 140 of 2019*

6. *W.P.(C) 3261/2021*

There have also been contradictory views as regards classification of PMLA proceeding as civil or criminal to determine the applicability of moratorium.

A contrary view however was taken by NCLAT in *Directorate of Enforcement Vs Manoj Kumar Agarwal & Others*⁷, (2021) where a provisional attachment order (PAO) was passed after the moratorium came into effect, NCLAT held that considering the aim and object of the IBC, it would be impermissible for the authorities under the PMLA to exercise the powers of attachment once the moratorium has come into effect. However, para 42 of the order clearly stated that, even if a property has been attached under the PMLA, and if CIRP is initiated, the property should become available to fulfil objects of the IBC.

However, now the series of judgements, like a larger three member bench judgement of NCLAT in *Kiran Shah, RP of KSL and Industries Ltd. v. Enforcement Directorate*⁸, (2022), Delhi High Court in *Rajiv Chakraborty RP of EIEL v. Directorate of Enforcement*⁹ (2020) and validation of NCLAT judgement of *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement* by Supreme Court¹⁰ (2019), has eventually settled the issue that the power to attach under Sections 5 and 8 of the PMLA, would not be effected by moratorium under Section 14 of the IBC as the provisional attachment of properties, does not result in extinguishment or effacement of property rights and would not violate the primary objectives of Section 14 of the IBC, which is to protect the assets of CD during the pendency of CIRP. The rationale behind this is that attachment by ED is just to prevent alienation of the property by the accused and does not create any kind of debt on CD or confer any title of the property involved, in the favor of ED or Central Government. It simply enables authorities under the PMLA to restrain any further transactions of the property related to suspected proceeds of crime, till the trial under PMLA is concluded.

In many of the above-mentioned cases there have also been contradictory views as regards classification of PMLA proceeding as civil or criminal to determine the applicability of moratorium. In some cases, proceedings under PMLA have been regarded as civil proceedings as they deal with attachment of property, whereas in other cases they have been regarded as criminal proceedings as they deal with proceeds of crime. For instance, as per para 171 in matter *M/s Kaushalya Infrastructure Development Corporation*

7. *CA (AT)(IBC) No. 575 of 2019*

8. *CA (AT)(IBC) No. 817 of 2021*

9. *W.P.(C) No. 9531 of 2020- Delhi High Court*

10. *Varrsana Ispat Limited v. Deputy Director, Directorate of Enforcement*

*Limited v. UOI*¹¹, the Jharkhand High Court has held that “The process of attachment (leading to confiscation) of proceeds of crime under PMLA is in the nature of civil sanction which runs parallel to investigation and criminal action vis-a-vis the offence of money-laundering.”

2.3. Section 32A: A shield protecting attachment

Inserted by the IBC (Amendment) Act, 2020, Section 32A represents a legislative breakthrough, providing crucial safeguards for corporate debtors and new management, post-resolution or liquidation for criminal offences committed by the CD under old management, thereby encouraging resolution and revival of distressed companies. Section 32A provides that:

- (a) **Once the resolution plan is approved by the NCLT or assets are sold as liquidation estate, Sub-section (1)** precludes prosecution of the CD for offences committed prior to the commencement of the CIRP, conditional on a bona fide change of management unconnected with previous promoters. However, the immunity does not extend to the erstwhile promoters, directors, officers, or persons in control of the CD who were directly or indirectly involved in the offence and such persons can still be prosecuted and held liable.
- (b) **Sub-section (2)** bars attachment, confiscation, or retention of the CD’s property under any law, for an offence committed prior to the commencement of the CIRP, on approval of Resolution Plan or sale of liquidation asset provided there is a change of control of management.
- (c) **Sub-section (3) of 32A states that** agencies can continue investigation or inquiry against the CD for prior offences even after resolution and CD and any person, who may be required should provide assistance to investigating agencies.

It would be pertinent to comprehend that this section was introduced in response to practical difficulties faced by resolution applicants, due to pending criminal investigations and attachments. Investors were reluctant to bid for companies whose assets were embroiled in criminal proceedings, thereby undermining the IBC’s objective of timely and effective resolution. Apprehensions regarding misuse of IBC proceeding section, to escape the consequences of criminal offense were also kept in mind while drafting the section.

The insertion of Section 32A was challenged on constitutional grounds that it violates Articles 14 (equality), 19 (freedom of speech and expression), 21 (protection of life and personal liberty), and 300A (protection against deprivation of property) of the Constitution. It was argued that it unfairly grants immunity to the CD while potentially allowing those who committed offenses

to escape liability. However, the Supreme Court, in *Manish Kumar v. Union of India*¹², upheld the constitutional validity of Section 32A, emphasizing the need to provide a clean slate for successful resolution applicants. It held that that immunity is not universal, as it is conditional upon a genuine change of management or control of CD wherein the new management has no involvement in prior offences. Moreover, it was also emphasized that the clean slate is only in respect to the corporate entity post resolution or sale in liquidation, whereas the individuals responsible for mis-ventures, would continue to be prosecuted in their individual capacities. The court observed — “the provision is not an escape route for the wrongdoer but a mechanism to save a corporate debtor which may still be a viable economic entity.”

Now, there are plethora of decisions by various High Courts on similar lines, some of which are discussed below:

The Delhi High, in *Rajiv Chakraborty v. ED* (2020), gave a reasoned analysis as to why 32A would override attachment by ED under PMLA.

The Delhi High, in *Rajiv Chakraborty v. ED* (supra), gave a reasoned analysis as to why 32A would override attachment by ED under PMLA. It stated that attachment does not result in extinguishment or effacement of property rights and is done only to prevent alienations. Any right over the said property does not vest over the ED or Central Government, just on provisional attachment. It also held that since Section 32A, which was introduced by Amendment Act in 2020, with retrospective effect from December 28, 2019, it would have over-riding effect over PMLA by the virtue of being the later act and thus govern the extent to which the non obstante clause enshrined in the IBC.

Even before the aforesaid amendment was done, the Delhi High Court in *Directorate of Enforcement v. Axis Bank*¹³, had held that the attachment of property does not make the government/ its authority a “creditor”. Also, the value of property attached cannot be termed as “debt” due or payable to the government. Therefore, any person who is a bona fide purchaser can always approach the AA under PMLA for release of the attached property.

It is pertinent to note that, in a recently passed judgement in matter of *Anil Kohli v. Directorate of Enforcement*¹⁴, NCLAT New Delhi, has held that the Section 32A of the IBC was introduced in 2020 and the immunity it provides to the CD from prosecution and property attachment, is conditional and prospective and hence Section 32A is inapplicable in the scenarios where the property was already under valid legal attachment. In this case

11. W.P. (Cr.) No. 226 of 2021

12. (2021) ibclaw.in 16 SC

13. CRL.A. 143/2018 and Crl.M.A. 2262/2018

14. Company Appeal (AT) (Ins.) No. 389 of 2018

the Resolution Plan was approved in November 2019, before introduction of Section 32A.

Amidst the above conflicting jurisdictional mandates, many a times there has also been debate whether NCLT or NCLAT, which are quasi-judicial authorities created under sections 408 and 410 of the Companies Act, 2013, can give directions to ED, a statutory authority under PMLA. Though in many cases initially, various NCLTs & NCLAT issued directions to ED to de-attach the assets, the higher courts now are of unanimous view that such

“These judgments have contributed to jurisprudence that is expected to facilitate timely resolution and effective implementation of distressed assets.”

actions of NCLT/NCLAT are beyond their jurisdiction. Both, the Delhi High Court in Nitin Jain case (supra) and the Supreme Court in Kalyani Transco (supra) held that the NCLT/NCLAT cannot judicially review or nullify provisional attachments made by the ED under the PMLA. They emphasized that such powers lie exclusively with the PMLA’s own adjudicating authorities—not with insolvency tribunals as PMLA is a public law. Extracts of Para 27 of SC’s order passed on July 25, 2025 in matter of Kalyani Transco (supra) is as below:

“...it is pertinent to note that the NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and NCLAT are well circumscribed under Section 31 and Section 60 so far as NCLT is concerned, and under Section 61 of IBC so far as the NCLAT is concerned. Neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken

by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law”.

3. Conclusion

As stated, IBC is still evolving and the interplay between IBC and various other Acts are bound to happen. The higher courts have taken decisions after thorough examination of conflicting legislations including their intent and overall objectives of their enactment and have made efforts to harmonize Acts wherein neither has been held superior to others. The initial ambiguity has led to litigations and delays in implementing resolution plans, which is detrimental for all stakeholders and results in loss of value of assets of CD. In June this year, according to media reports, the Enforcement Directorate (ED) has cleared the transfer of Vadraj Cement’s ₹952-crore plant to the successful resolution applicant (SRA), Nuvoco Vistas—a Nirma Group company—following a money laundering probe in the IL&FS case. Thus, upholding the legitimacy of ownership under the approved Resolution Plan which also harmonizes with provisions of Sections 8(7) and 8(8) of PMLA and Rule 3A of the PML (Restoration of Property) Rules, 2016, authorizing the handover to the proceeds of crime to rightful claimants. Very recently, on 4th November 2025, IBBI has issued a Circular, advising Insolvency Professionals to file an application before the Special Court under sections 8(7) or 8(8) of the PMLA for restitution of assets of the corporate debtor that are under attachment by the ED. To facilitate expedite disposal of such application, IBBI in consultation with ED, has also formulated an undertaking to be given by IPs along with the application. The undertaking requires that the reinstituted assets will not be transferred or sold to any person covered under Section 32A(2)(i) or (ii) of the IBC or named in ECIR. It also mandates IPs to make full disclosure of all properties under ED’s attachment in the Information Memorandum or auction notice. The recent judgements and this circular is expected to facilitate timely and effective resolution of distressed assets, thereby enhancing their value and increasing recoveries for creditors.

