



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

IN THE MATTER OF:

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED

... Financial Creditor.

Versus

CORPORATE POWER LIMITED

... Corporate Debtor.

*An Application under Section 60(5) read with Rule 35(1)(F) of the
Insolvency and Bankruptcy Code, 2016, and Rule 11 of the National
Company Law Tribunal Rules, 2016.*

IN THE MATTER OF:

Pankaj Dhanuka

... Liquidator/ Applicant.

Versus

The Deputy Director of Directorate of Enforcement (ED)

... Respondent No. 1.

And

Assets Care and Reconstruction Enterprise Limited

... Respondent No. 2.

Date of Pronouncement: July 24, 2025.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE. SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearances:

For the Liquidator:

Ms. Manju Bhuteria, Sr. Adv.

Mr. Anupam Prakash, Adv.

Ms. Kirti Talreja, Adv.

Mr. Pankaj Dhanuka, Liquidator

For the Appellant in

APPEAL (IBC)/ 1(KB)2025:

Mr. Rohit Das, Adv.

Ms. Kishwan Rahman, Adv.

Mr. Vishesh Pandey, Adv.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

**For the PF Authorities in
I.A. (I.B.C)/2335(KB)2024 and
I.A. (I.B.C)/162(KB)2025:**

**Mr. S.C. Prasad, Adv.
Mr. Avijit Tiwari, Adv.**

For the Eastern Railway:

**Mr. Ajay Chaubey, Adv.
Ms. Hema Mukherjee, Adv.
Ms. Prity Panja, Adv.**

**For the Respondent No.1
(DG, CISF):**

Ms. Sumita Sarkar, Adv.

For SPP, ED:

Mr. Adil Rashid, Adv.

Table of Contents

A. Parties to the proceedings:	3
B. Reliefs sought:	3
C. Factual Matrix:	4
D. Contentions of the Applicant – Liquidator:	6
E. Reply by the Respondent No. 1 – Directorate of Enforcement:	10
F. Reply by the Respondent No. 2 – Assets Care and Reconstruction Enterprise Ltd.:	12
G. Core Issues:	15
H. Analysis and Findings:	15
CONCLUSION:	57
DIRECTIONS:	59



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

ORDER

Per Bidisha Banerjee, Member (Judicial):

1. The Court congregated through a hybrid mode.
2. Ld. Sr. Counsels/ Counsels were heard at length.

A. Parties to the proceedings:

3. The present application preferred by Mr. Pankaj Dhanuka, liquidator of the corporate debtor – Corporate Power Limited, hereinafter referred to as “Applicant”/ “Liquidator” under Section 60(5) read with Rule 35(1)(F) of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code” against the Deputy Director of Directorate of Enforcement, hereinafter referred to as “Respondent No. 1” and Assets Care and Reconstruction enterprise Limited, hereinafter referred to as “Respondent No. 2”.

B. Reliefs sought:

4. The Applicant liquidator has sought for the following reliefs:

- a. *permit the Liquidator to carry out the sale of the Corporate Debtor, Corporate Power Limited, as a going concern, on an 'as is where is' basis, as per the directions of this Hon'ble Tribunal as contained in the order dated 20.12.2024 passed in I.A. No. 447/2024, notwithstanding the provisional attachment order no. 06/2024 dated 24.10.2024 in ECIR/NGSZO/02/2023 passed by the Respondent No.1, or any subsequent confirmation thereof, and any proceeding in relation thereto;*



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

- b. *grant approval to the Liquidator under the proviso to 33(5) of the Code, to institute appropriate legal proceedings against the provisional attachment order no. 06/2024 dated 24.10.2024 in ECIR/NGSZO/02/2023 passed by the Respondent No.1, or any subsequent confirmation thereof, before a competent forum; and/ or pass any order(s) that this Hon'ble Tribunal may deem fit and proper.*

C. Factual Matrix:

5. The facts lie in a narrow compass:

5.1 The liquidator has rushed to this Tribunal vide an application alleging interdiction and interference caused in the sale process of the corporate debtor – Corporate Power Limited by the Provisional Attachment Order being 06/2024 dated 24.10.2024 (“PAO”) in ECIR/NGSZO/02/2023, issued by the Deputy Director, Directorate of Enforcement, Nagpur (“ED”) during the liquidation process of the Corporate Debtor.

5.2 By way of the said PAO, the Directorate of Enforcement had provisionally attached certain assets and properties, *inter alia*, of the Corporate Debtor, under the provisions of Section 5 of the Prevention of Money Laundering Act, 2002 (“PMLA”).

5.3 After issuance of the PAO, the ED also preferred an original complaint, being Original Complaint No. 2481/2024 on 21.11.2024 (OC) before the Learned Adjudicating Authority, PMLA, under Section 5(5) of the PMLA, 2002, seeking *inter alia*, confirmation of the PAO.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

5.4 Resultantly, the Learned PMLA Adjudicating Authority commenced proceedings under Section 8 of PMLA, 2002 and issued a Notice to Show Cause on 04.12.2024 in this regard. The Corporate Debtor was arrayed as Defendant No. 26 in the said Original Complaint.

5.5 Hence, this application.

5.6 During the pendency of the instant application, the Learned Adjudicating Authority (PMLA) adjudicated the Original Complaint and confirmed the PAO by its order dated 16.04.2025.

5.7 During the course of arguments, the ED has clarified that it does not have any objection to prayer (b) above. However, the ED has raised vehement objection to the grant of prayer (a) due to pendency of investigation with regard to the properties of the corporate debtor required out of “proceeds of crime” and accordingly, the ED says that no adverse order that will cause unnecessary interference during the course of investigation and will jeopardise the entire PMLA proceedings, be passed.

5.8 In counter, the applicant – liquidator would submit that the Applicant is not seeking lifting or vacation of the attachment by ED, but merely seeking permission from this Tribunal to carry out the sale process of the Corporate Debtor on an ‘*as is where is*’ basis, which is permissible in terms of settled law.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

D. Contentions of the Applicant – Liquidator:

6. In course of argument, Ld. Sr. Counsel Ms. Manju Bhuteria appearing on behalf of the liquidator would submit the following:

6.1. The attachment by the Directorate of Enforcement has caused an impediment in the sale process of the corporate debtor:

6.1.1. This Tribunal on 20.12.2024 directed the liquidator as under:

“[t]o issue a fresh Swiss challenge notice in Two National Dailies and One in vernacular, with the bid of Orissa Metalics being the anchor bid. The EMD for the sale notice shall be kept as per the standard norms to meet the requirement of reasonableness. The liquidator shall initiate the process from the stage of issuances of the notice for Swiss Challenge process strictly in accordance with law.”

Thus, the Liquidator is obligated to take necessary and adequate steps for conducting the Swiss Challenge process for sale of the Corporate Debtor as a going concern.

6.1.2. The attachment of the assets of the Corporate Debtor by the ED has caused an impediment for the Liquidator to carry out his functions and duties as per the provisions of the I&B Code, particularly Sections 35(1)(b) and 35(1)(f) of the I&B Code and the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

IBBI (Liquidation) Process Regulations 2016, in terms of the Order passed by this Tribunal on 20.12.2024.

6.2. The actions of ED are in violation of Section 33(5) of the Code:

6.2.1. Section 33(5) of the I&B Code states that:

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor.

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

6.2.2. Ld. Sr. Counsel for the liquidator would submit that the investigation, issuance of PAO and the institution of proceedings before the Learned PMLA Adjudicating Authority by the ED are in the teeth of the provisions of Section 33(5) of the I&B Code, which bars the institution of any suit or any legal proceeding against the corporate debtor when a liquidation order has been passed by the NCLT. Reliance to that effect is placed on ***AM Mining India Private Limited v. Union of India*** reported in (2024) 252 Comp Cas 557, paras 17, 20, 21.

6.3. Permission to proceed with the sale process is necessary for culmination of the liquidation process of the corporate debtor:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

6.3.1. Ld. Sr. Counsel for the liquidator would submit that alike CIRP, liquidation is a time bound process to maximize the value of the corporate debtor and thus, the permission of this Tribunal as sought for herein, is necessary to take steps for sale of the corporate debtor and to expeditiously conclude the liquidation process of the corporate debtor.

6.3.2. Relying on Section 32A of the I&B Code, Ld. Sr. Counsel would submit that the legislature has chosen to place an embargo upon the continuation of the criminal proceedings including action of attachment under PMLA 2002, once a resolution plan has been approved or sale under the liquidation process takes place. Thus, it is imperative that the liquidator should be permitted to proceed with the sale process of the corporate debtor, notwithstanding the PAO and its subsequent confirmation, to reach the stated trigger point under Section 32A of the I&B Code, which otherwise would not be possible if the liquidator is not permitted to proceed with the sale process.

6.4. **Decisions relied upon by the applicant:**

6.4.1. Ld. Sr. Counsel for the liquidator in course of arguments would rely upon the following decisions to strengthen her case:

a. ***AM Mining India Private Limited v. Union of India***, reported in (2024) 252 Comp Cas 557, paras 17, 20, 21. Hon'ble Gujarat High Court in this matter has laid down that the provisions of the I&B Code would override the powers of the ED to attach properties under the PMLA after the initiation of liquidation



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

proceedings, and any such attachment post initiation of liquidation would be barred by Sections 33(5), 32(A)(2) and 238 of the I&B Code.

b. ***Rajiv Chakraborty Resolution Professional of EEIL v. Directorate of Enforcement***, reported in 2022 SCC OnLine Del 3703, paras 118 and 119, wherein the Hon'ble Delhi High Court has held that an order of attachment made under the PMLA, 2002, does not result in the corporate debtor or the resolution professional or liquidator facing a *fait accompli*.

c. In ***Deputy Director Directorate of Enforcement Delhi v. Axis Bank and Others***, reported in 2019 SCC OnLine Del 7854, paras 163-165, 171, the Hon'ble Delhi High Court has observed that the lenders of the Corporate Debtor had acquired a bona fide secured interest in the Corporate Debtor's land as collateral prior to the alleged offence under the provisions of the PMLA, 2002. Therefore, the lenders or banks have a right to enforce their security interest through the liquidation process or to take steps under the provisions of the I&B Code.

d. Further, in ***State Bank of India v. R.P. Info System Ltd.***, reported in 2021 SCC OnLine NCLT 2021, para 60 and 61, this Tribunal, while delving into the interplay between the provisions of the PMLA, 2002 and the I&B Code, has observed that a provisional attachment order does not invest in the authority a superior or overriding right in the property and the resolution process under the Code can proceed notwithstanding attachment of the properties of a corporate debtor by ED.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

e. In ***Sri. Rajesh Chillale Resolution professional, G. S. Biotech Limited v. The Directorate of Enforcement, Hyderabad***, in I.A. 910/2023 in C.P. (IB) No. 335/7/HDB/2022, paras 14 and 16, the Coordinate Bench of Hyderabad has allowed resolution professionals or liquidators to carry on the process of sale under the provisions of the Code despite attachment of properties and assets by the ED.

E. Reply by the Respondent No. 1 – Directorate of Enforcement:

7. Mr. Adil Rashid, Ld. Counsel appearing on behalf of the Respondent No. 1 – ED would submit as under:

7.1. The proceedings under the Prevention of Money Laundering Act, 2002, (PMLA) and the I&B Code are different and proceedings under I&B Code before the NCLT cannot prevail over the PMLA proceedings.

7.2. Ld. Counsel for the ED would submit that “proceeds of crime” as defined under Section 2(1)(u) of the PMLA is not an operational debt in terms of Section 5(21) of the I&B Code. The Directorate of Enforcement being Respondent No. 1 herein would not fall within the definition of an operational creditor as defined under Section 5(20) of the I&B Code.

7.3. It is submitted that the ED being a statutory body proceeds with the attachment of properties which constitutes the proceeds of crime, which stand on a completely different pedestal



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

and relate to ill-gotten assets derived or obtained from the commission of offense.

7.4. It is further submitted that proceedings to attach and confiscate process of crime, the action of the ED is essentially aimed at taking away from a persona or an entity all that may have been illegitimately secured by indulging in proscribed criminal activity. Reliance to that effect is placed on ***The Deputy Director Directorate of Enforcement Delhi and Ors. vs. Axis Bank and Ors.*** reported in 2019 SCC OnLine Del 7854.

7.5. However, it is emphatically admitted that long after the corporate debtor was admitted into liquidation on 08.10.2021, the Directorate of Enforcement Nagpur started investigation under PMLA on 23.01.2023, and PAO was issued on 24.10.2024. The liquidator was issued summons and was directed to appear before the ED and his statement was also recorded under Section 50 of the PMLA. However, it is submitted that the entire matter with regard to “private sale” and/or “proceeds of crime” are under investigation, thus any adverse order passed by this Tribunal by way of allowing the private sale will jeopardise the entire PMLA proceedings.

7.6. The decisions cited by Ld. Counsel for the ED in support are as under:

a. ***Nazir Ahmed v. King Emperor*** reported in AIR 1936 PC 252 (2) wherein it has been held that where the power is given to do certain things in a certain way the thing must be done that way or not at all. Other methods



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

of performance are necessarily forfeited. This doctrine has often been applied to Courts following *Taylor v. Taylor*, reported in (1875) 1 Ch. D. 426, 431.

b. ***Vijay Madan Lal Choudhary & Ors. v. Union of India*** reported in 2022 SCC OnLine SC 929.

c. ***Deputy Director v. PNB Housing Finance Limited*** reported in CRA-S-4326-SB-2017 (O&M) (P&H High Court)

d. ***Rajiv Chakraborty, RP of EIEL v. ED*** reported in 2022/DHC/004739.

e. ***Kiran Shah v. ED, Kolkata***, C.A. (AT) (Ins) No. 817 of 2021.

F. Reply by the Respondent No. 2 – Assets Care and Reconstruction Enterprise Ltd.:

8. The following submissions are advanced on behalf of the SCC through Assets Care and Reconstruction Enterprise Ltd. (Respondent No. 2):

8.1. The institution of proceedings before the PMLA Adjudicating Authority is in the teeth of Section 33(5) of the I&B Code which bars institution of any suit or any legal proceeding against the Corporate Debtor when a liquidation order has been passed. A provisional attachment order does not invest in the superior or overriding right in the property.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

8.2. Relying on the decision passed by Hon'ble NCLAT in ***Directorate of Enforcement vs. Manoj Kumar Agarwal reported in 2021 SCC Online NCLAT 121*** wherein it is held that if a property of the Corporate Debtor has been attached by the ED under PMLA, the said property shall be made available to fulfil the objects of the I&B Code till a resolution takes places or sale of liquidation assets occur in terms of Section 32A of the I&B Code, it is submitted that even in case where there existed an attachment order under PMLA prior to the commencement of CIRP, the provision of I&B Code could override those of PMLA provisions, and the attachment proceedings would be suspended during ongoing moratorium.

8.3. Reliance is further placed on ***Sri Rajesh Chillale RP G.S Biotech vs The directorate of Enforcement, Hyderabad in IA 910/2023 in C.P.(IB) NO.335/7/HDB/2022***, where the NCLT Hyderabad has directed the RP/Liquidator to carry on the process of sale under the provisions of the I&B Code, despite the attachment of property and assets by the Enforcement Directorate.

9. We have heard Ld. Sr. Counsels/ Ld. Counsels for the parties, perused records and considered implications of the cited provisions and decisions.

10. **Discernible facts:**

10.1. In the present case, CIRP was admitted in respect of the corporate debtor – Corporate Debtor on 19.02.2020.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

10.2. During CIRP, one resolution plan was received from Vedanta Limited, which was non-compliant of the provisions of the Code and accordingly, the resolution plan could not be put to vote. Thus, the RP has filed an application under section 33(1) of the I&B Code for liquidation of the Corporate Debtor on expiry of the CIRP period.

10.3. Liquidation of the corporate debtor was ordered by this Adjudicating Authority on 08.10.2021.

10.4. Evidently, an interdiction and interference have been caused in the sale process of the corporate debtor – Corporate Power Limited due to the Provisional Attachment Order (“PAO”) being 06/2024 dated 24.10.2024 in ECIR/NGSZO/02/2023, issued by the Deputy Director, Directorate of Enforcement, Nagpur (“ED”).

10.5. Such PAO has been issued long after initiation of CIRP and in an ongoing liquidation process of the Corporate Debtor, which ought not to have been issued.

10.6. By way of the said PAO, the Directorate of Enforcement has provisionally attached certain assets and properties, *inter alia*, of the Corporate Debtor, under the provisions of Section 5 of the Prevention of Money Laundering Act, 2002 (“PMLA”).

10.7. After issuance of the PAO, the ED has also preferred an original complaint, being Original Complaint No. 2481/2024 on 21.11.2024 (OC) before the Learned Adjudicating Authority, PMLA, under Section 5(5) of the PMLA, 2002, seeking *inter alia*, confirmation of the PAO.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

10.8. Resultantly, the Learned PMLA Adjudicating Authority having commenced proceedings under Section 8 of PMLA, 2002, has issued a Notice to Show Cause on 04.12.2024 and has confirmed the PAO. The Corporate Debtor was arrayed as Defendant No. 26 in the said Original Complaint.

G. Core Issues:

11. Thus, the issue that has cropped up for determination is whether an Attachment Order passed by the Ld. Adjudicating Authority under PMLA in exercise of its power under Section 5(5) of the PMLA after initiation of CIRP and in course of liquidation would stall the liquidation process and prevent the Liquidator from issuing an 'Auction Sale Notice' to sell the corporate debtor as a going concern on 'as is where is' basis under the I&B Code.

H. Analysis and Findings:

12. The liquidator alleges that such PAO and its confirmation could not have been done under PMLA in an ongoing liquidation process, the ED had the right to attach properties and such attachment is in teeth of Sections 33(5), 32A and 238 of the I&B Code.

13. Further that, after initiation of the CIRP, no investigation and proceedings could have been continued and no provisional or final attachment could have been issued.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

14. *Per contra*, ED would claim that such attachment was legal and sale of tainted properties pending investigation under PMLA should not be permitted.

15. **Object of the Prevention of Money Laundering Act, 2002, (“PMLA” in short):**

15.1. Before embarking upon answering the issue in hand, it would be appropriate to go through the objective of the Prevention of Money Laundering Act, 2002, as envisaged under the “Preamble” of the Act, which is as under:

“An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.”

15.2. The PMLA was enacted in terms of a declaration adopted by the United Nations General Assembly wherein India was a part of such resolution. The legislative intent to the promulgation of the PMLA was categorically spelt out by the Hon’ble Apex Court in its judgment ***Vijay Madanlal Choudhury v. Union of India*** reported in **2022 SCC OnLine 929: MANU/SC/0924/2022**, Paras 23, 43 and 44, whereof would be as under:

“23. [...] Even the Preamble of the Act reinforces the background in which the Act has been enacted by the Parliament being commitment of the country to the international community. It is crystal clear from the Preamble that the Act has been enacted to prevent money laundering and to provide for confiscation of property derived from or involved in money-



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

laundering and for matters connected therewith or incidental thereto. It is neither a pure regulatory legislation nor a pure penal legislation. It is amalgam of several facets essential to address the scourge of money-laundering as such. In one sense, it is a sui generis legislation.”

xxx

xxx

xxx

“43. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act - for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

44. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

(a) Placement: which is to move the funds from direct association of the crime.

(b) Layering: which is disguising the trail to foil pursuit.

(c) Integration: which is making the money available to the criminal from what seem to be legitimate sources.”

(Emphasis Added)

16. **Object of the Insolvency and Bankruptcy Code, 2016**
(“I&B Code” in short):

16.1. Juxtaposed to the above, the object of the I&B Code, is as explicit in its “Preamble” as follows:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

persons, partnership firms and
individuals in a time bound manner
for maximization of value of assets of
such persons, to promote
entrepreneurship, availability of
credit and balance the interests of all
the stakeholders including alteration in
the order of priority of payment of
Government dues and to establish an
Insolvency and Bankruptcy Board of
India, and for matters connected
therewith or incidental thereto.”

16.2. Now coming to the object of PMLA, we find that it is enacted to deal with the offence of money laundering, to provide for confiscation of property derived from the money laundering or “proceeds of crime”. Under PMLA, the competent authority – Enforcement Directorate (ED) has power to provisionally attach such property for specified period till its confirmed by the Ld. Adjudicating Authority. Upon establishment of the offence of money laundering, such property is confiscated by the Union Government and vests with the Union Government free from all encumbrances.

16.3. As both I&B Code and PMLA have non obstante clauses overriding effect of other laws, Section 32A of the I&B Code was introduced to impose a statutory bar on taking any action against the corporate debtor’s property in relation to an offence committed prior to commencement of the CIRP. Thus, power to seize property under Section 5 of PMLA would cease to be exercisable once liquidation is allowed to commence. However, no bar is imposed on continuing investigations.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

16.4. At this juncture, we would refer to the judgment rendered by the Hon'ble Kerala High Court in **C.A. Jasin Jose, Liquidator of Atlas Gold Township Ponmattom vs. Directorate of Enforcement** reported in MANU/KE/2846/2024, wherein the Enforcement Directorate having attached the property during ongoing liquidation proceedings, the Liquidator approached the Hon'ble High Court stating his inability to proceed due to the attachment and the entire proceedings before the NCLT has effectively come to a stand-still. Accordingly, a prayer was made to pass an interim order permitting the sale to take place as part of the liquidation process, after lifting the attachment order issued by the Enforcement Directorate.

The Hon'ble High Court opined that “[...] *the interest of the parties can be safe guarded pending this litigation by permitting the sale to go on and ensuring that the proceeds of the sale shall be liable for attachment by the Enforcement Directorate.*”, and granted an interim direction “to lift the attachment effected by the Enforcement Directorate on the properties which are subject matter of the liquidation to facilitate the Liquidator to sell the properties”, on a condition that “the Liquidator shall ensure that the proceeds of the sale are retained in the account and the attachment which had been ordered by the Enforcement Directorate will continue to be effective on the said proceeds of the sale” and that “*the representatives of the Enforcement Directorate will also be kept informed of the details of the proposed sale. This order is also justified in view of the interim order which have been issued by the Hon'ble Supreme Court in Ashok*



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

Kumar Sarawagi v. Enforcement Directorate and Another
[SLP(C)No.30092/2022].”

17. Primacy of I&B Code:

Section 238 of the I&B Code:

17.1. Section 238 of the I&B Code lays down that *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.*

Section 32A of the I&B Code:

17.2. With regard to the action against the property of the corporate debtor which is attached, seized, retained or confiscated, by under PMLA, the mandate of Section 32A of the I&B Code, is reproduced as under:

Section 32A: Liability for prior offences, etc.

[32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

management or control of the corporate debtor to a person who **was not**—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a **prosecution** had been instituted during the corporate insolvency resolution process against such corporate debtor, it **shall stand discharged** from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a “designated partner” as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an “officer who is in default”, as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, **shall continue** to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor’s liability has ceased under this sub-section.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

*(i) an action against the **property** of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;*

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be **required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.**

17.3. The decision of the Hon'ble NCLAT in ***Directorate of Enforcement, New Delhi v Manoj Kumar Agarwal***, reported in 2021 SCC OnLine NCLAT 121: MANU/NL/0144/2021, has effaced all conflicts that may have been looming over the primacy of the I&B Code over all other statutes, and interpreted Section 32A of I&B Code purposively by relying upon the object and scheme of the I&B Code, which aims at achieving effective revival of the corporate debtor, which would not be possible if the resolution professional is not given charge of the properties of the debtor and where uncertainties loom over the entitlement of the corporate debtor to such assets. The Hon'ble NCLAT would hold that:

“238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

other law for the time being in force or any instrument having effect by virtue of any such law."

*If this Section is perused, the provisions of this Code would have effect notwithstanding anything inconsistent therewith contained "in any other law" for the time being in force. Section 238 of IBC does not give over riding effect merely to Section 14. The other provisions also are material, and will have effect if there is anything inconsistent therewith contained in any other law for the time being in force. **Thus if the Authorities under PMLA on the basis of the attachment or seizure done or possession taken under the said Act resist handing over the properties of the Corporate Debtor to the IRP/RP/Liquidator the consequence of which will be hindrance for them to keep the Corporate Debtor a going concern till resolution takes place or liquidation proceedings are completed, the obstructions will have to be removed.** We have already referred to the various Acts required to be performed by IRP/RP/Liquidator to achieve the aims and objects of IBC in time bound manner. **If properties of Corporate Debtor would not be available to keep it a going concern, or to get the properties valued without which Resolution/Sale would not be possible, the obstruction will have to be removed.** To take over properties of Corporate Debtor, and manage the same, and keep Corporate Debtor a going concern are acts which fall within purview of IBC. **IRP/RP/Liquidator under IBC have duty and right to take over and manage assets of Corporate Debtor as long as the assets are property of the Corporate***



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

Debtor, so that the other duties conferred on them by the statute are performed. These are issues relating to resolution/liquidation. If hindrance is being created by the attachment or by taking over the possession, it would be a question of priority arising out of or in relation to the insolvency resolution or liquidation proceedings of the Corporate Debtor and such question can be decided by the Adjudicating Authority under Section 60(5)(c) of IBC which reads as under:

"60.

(5)....

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

42. In our view, there is no conflict between PMLA and IBC and even if a property has been attached in the PMLA which is belonging to the Corporate Debtor, if CIRP is initiated, the property should become available to fulfill objects of IBC till a resolution takes place or sale of liquidation asset occurs in terms of Section 32A."

(Emphasis Added)

17.4. In **Nitin Jain Liquidator PSL Limited vs. Enforcement Directorate** reported in MANU/DE/3563/2021, the Hon'ble Delhi High Court has elucidated the true import of Section 32A of the I&B Code, and its application to liquidation process, in the following words:



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

“96. This Court is of the opinion that the answer to determining when the bar under Section 32A would come into play must be answered bearing in mind the ethos of Section 32A and upon an interpretation of the provisions of the IBC and the Regulations framed thereunder. As is evident from a careful reading of Section 32A(2), the Legislature in its wisdom has provided that no action shall be taken against the properties of the corporate debtor in respect of an offense committed prior to the commencement of the CIRP and once either a resolution plan comes to be approved or when a sale of liquidation assets takes place. The objective underlying the introduction of this provision has been eloquently explained by the Supreme Court in Manish Kumar. The intent of the mischief sought to be addressed is clearly borne out from the Committee Reports as well as the SOA. The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered. The Legislature in its wisdom has recognised a pressing and imperative need to insulate the implementation of measures for restructuring, revival or liquidation of a corporate debtor from the vagaries of litigation or prosecution once the process of resolution or liquidation reaches the stage of the Adjudicating Authority approving the course of action to be finally”



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

adopted in relation to the corporate debtor. Section 32A legislatively places vital import upon the decision of the Adjudicating Authority when it approves the measure to be implemented in order to take the process of liquidation or resolution to its culmination. It is this momentous point in the statutory process that must be recognised as the defining moment for the bar created by Section 32A coming into effect. **If it were held to be otherwise, it would place the entire process of resolution and liquidation in jeopardy. Holding to the contrary would result in a right being recognised as inhering in the respondent to move against the properties of the corporate debtor even after their sale or transfer has been approved by the Adjudicating Authority. This would clearly militate against the very purpose and intent of Section 32A.** It becomes pertinent to recollect that one of the primary objectives which informed the introduction of this provision was to assure the resolution applicant that its offer once accepted would stand sequestered from action for enforcement of outstanding claims against the corporate debtor or from penalties connected with offenses committed prior thereto. The imperative for the extension of this legislative guarantee subserves the vital aspect of maximization of value.

97. The issue of creation of an offense or its nullification is a matter of legislative policy. An offense or a crime, on a jurisprudential or foundational plane, must be founded in law. Manoj Kumar has duly taken note of this aspect when it held that the creation or cessation of an offense is ultimately an issue of legislative policy. **The Parliament upon**



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

due consideration deemed it appropriate and expedient to infuse the clean slate doctrine bearing in mind the larger economic realities of today. Regard must also be had to the fact the cessation of prosecution stands restricted to the corporate debtor and not the individuals in charge of its affairs. The PMLA as well as the IBC for that matter stand steadfast against its dilution against persons who were in control of the corporate debtor in respect of offenses committed prior to the commencement of the CIRP. It was this delicate balance struck by the Legislature which met with approval in Manish Kumar.

98. As was observed earlier, Section 32A in unambiguous terms specifies the approval of the resolution plan in accordance with the procedure laid down in Chapter II as the seminal event for the bar created therein coming into effect. Drawing sustenance from the same, this Court comes to the conclusion that the approval of the measure to be implemented in the liquidation process by the Adjudicating Authority must be held to constitute the trigger event for the statutory bar enshrined in Section 32A coming into effect. It must consequently be held that the power to attach as conferred by Section 5 of the PMLA would cease to be exercisable once any one of the measures specified in Regulation 32 of the Liquidation Regulations 2016 comes to be adopted and approved by the Adjudicating Authority. The expression "sale of liquidation assets" must be construed accordingly. The power otherwise vested in the respondent under the PMLA to provisionally attach or move against the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

properties of the corporate debtor would stand foreclosed once the Adjudicating Authority comes to approve the mode selected in the course of liquidation. To this extent and upon the Adjudicating Authority approving the particular measure to be implemented, the PMLA must yield. The Court also bears in mind that the bar that stands created under Section 32A operates and extends only insofar as the properties of the corporate debtor are concerned. That statutory injunct does not apply or extend to the persons in charge of the corporate debtor or the rights otherwise recognised to exist and vested in the respondent to proceed against other properties as was explained by the learned Judge in Axis Bank.”

(Emphasis supplied)

In conclusion, on the primacy of the I&B Code, over PMLA in the Hon’ble Delhi High Court in **Nitin Jain (Supra)** has laid down that:

“101. Upon a conspectus of the aforesaid discussion, the Court records the following conclusions:-

A. The Court notes that the reliefs as framed in the writ petition essentially seek a restraint against the respondent from interfering in the liquidation process which had been set in motion. That challenge cannot stand eclipsed merely on account of the issuance of the provisional order of attachment during the pendency of the writ petition. The authority of the respondent to move against the properties of the corporate debtor after the liquidation process has reached a stage where a particular measure has been approved by the Adjudicating



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

Authority, is a question which would still arise and be open to be urged and contested.

B. The Court also notes that the challenge to the action of the respondent is raised on jurisdictional grounds by the petitioner. That issue cannot be recognised to stand interdicted merely on account of a provisional order of attachment coming to be issued in the interregnum and during the pendency of the writ petition. The preliminary objection is thus negatived.

C. When considering the rival submissions of primacy between the IBC and PMLA as urged by respective counsels, the Court bears in mind that when dealing with two statutes which may independently employ a legislative command for their provisions to have effect notwithstanding anything to the contrary contained in any other law, the first question that must be answered is whether there is in fact an element of irreconcilability and incompatibility in the operation of the two statutes which cannot be harmonized. The issue of incompatibility in the operation of two statutes should not be answered on a mere perceived or facial plane but on a deeper and meticulous examination of the operation of the competing provisions and the subject that is sought to be regulated.

D. The IBC can be aptly described as an economic measure marking a significant departure from the way debt was treated for centuries by statutes prevalent in the country. IBC is firstly envisaged to be an umbrella legislation dealing with varied aspects aimed at speedy insolvency resolution. It also ushered in a regimen where the erstwhile management which earlier continued to hold onto the reigns of



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

the indebted entity as it sunk deeper into debt, now became liable to be removed from control and the corporate debtor taken over by a professional who would take over the management and administration of the debtor pending its insolvency resolution. The third important objective of the IBC was to achieve maximization of value with the assets of the debtor being taken over and being disposed by adoption of fair and transparent means within strict and regimented time lines.

E. The PMLA on the other hand is a statute fundamentally concerned with trying offenses relating to money laundering, following the proceeds of crime and for confiscation of properties obtained in the course of commission of those offenses or connected therewith. It sets up an investigative and adjudicatory mechanism in respect of offenses committed, attachment of tainted properties and other related matters.

F. Viewed in that backdrop, it is evident that the two statutes essentially operate over distinct subjects and subserve separate legislative aims and policies. While the authorities under the IBC are concerned with timely resolution of debts of a corporate debtor, those under the PMLA are concerned with the criminality attached to the offense of money laundering and to move towards confiscation of properties that may be acquired by commission of offenses specified therein. The authorities under the aforementioned two statutes must be accorded sufficient leeway to discharge their obligations and duties within the spheres of the two statutes.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

G. In a case where in exercise of their respective powers a conflict does arise, it is for the Courts to discern the legislative scheme and to undertake an exercise of reconciliation enabling the authorities to discharge their obligations to the extent that the same does not impinge or encroach upon a facet which stands reserved and legislatively mandated to be exclusively controlled and governed by one of the competing statutes. The aspect of legislative fields of IBC and PMLA and the imperative to strike a correct balance was rightly noticed and answered by the learned Judge in Axis Bank.

H. The issue of reconciliation between the IBC and the PMLA, in so far as the present cause is concerned, needs to be answered solely on the anvil of Section 32A. Once the Legislature has chosen to step in and introduce a specific provision for cessation of liabilities and prosecution, it is that alone which must govern, resolve and determine the extent to which powers under the PMLA can be permitted in law to be exercised while a resolution or liquidation process is ongoing.

I. The SOA as well as the contemporaneous material noted above, indubitably establishes a conscious adoption of a legislative measure to insulate the resolution applicant from the prospect of prosecution in respect of offenses that may have been committed by the corporate debtor prior to the commencement of the CIRP. This legislative guarantee stands enshrined in Section 32A (1). Similarly, the provision unmistakably also insulates the properties of the corporate debtor from any action that may otherwise be taken in respect thereof for an offense committed prior to the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

commencement of the CIRP in terms of
Section 32A (2).

J. Undisputedly and as has been explained in the decisions of the Supreme Court noticed above, maximization of value would be clearly impacted if a resolution applicant were asked to submit an offer in the face of various imponderables or unspecified liabilities. The amendment to sub-Section (1) of Section 31 and the introduction of Section 32A undoubtedly seek to allay such apprehensions and extend an assurance of the resolution applicant being entitled to take over the corporate debtor on a fresh slate. Section 32A assures the resolution applicant that it shall not be held liable for any offense that may have been committed by the corporate debtor prior to the initiation of the CIRP. It similarly extends that warranty in respect of the properties of the corporate debtor once a resolution plan stands approved or in case of a sale of liquidation assets.

K. A close reading of Section 32A (1) and (2) establishes that the legislature in its wisdom has erected two unfaltering barriers. It firstly prescribes that the offense, which may entail either prosecution of the debtor or proceedings against its properties, must be one which was committed prior to the commencement of the CIRP. Secondly the cessation of liability for the offense committed is to occur the moment a resolution is approved by the Adjudicating Authority or upon sale of liquidation assets.

L. The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered.

M. The Legislature in its wisdom has recognised a pressing and imperative need to insulate the implementation of measures for restructuring, revival or liquidation of a corporate debtor from the vagaries of litigation or prosecution once the process of resolution or liquidation reaches the stage of the adjudicating authority approving the course of action to be finally adopted in relation to the corporate debtor.

N. Section 32A legislatively places vital import upon the decision of the Adjudicating Authority when it approves the measure to be implemented in order to take the process of liquidation or resolution to its culmination. It is this momentous point in the statutory process that must be recognised as the defining moment for the bar created by Section 32A coming into effect. If it were held to be otherwise, it would place the entire process of resolution and liquidation in jeopardy. Holding to the contrary would result in a right being recognised as inhering in the respondent to move against the properties of the corporate debtor even after their sale or transfer has been approved by the Adjudicating Authority. This would clearly militate against the very purpose and intent of Section 32A.

O. It becomes pertinent to recollect that one of primary objectives which informed the



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

introduction of this provision was to assure the resolution applicant that its offer once accepted would stand sequestered from action for enforcement of outstanding claims against the corporate debtor. The imperative for the extension of this legislative guarantee subserves the vital aspect of maximization of value.

P. The issue of creation of an offense or its nullification is a matter of legislative policy. An offense or a crime on a jurisprudential or foundational plane must be founded in law. Manoj Kumar has duly taken note of this aspect when it held that the creation or cessation of an offense is ultimately an issue of legislative policy. The Parliament upon due consideration deemed it appropriate and expedient to infuse the clean slate doctrine bearing in mind the larger economic realities of today.

Q. Regard must also be had to the fact the cessation of prosecution stands restricted to the corporate debtor and not the individuals in charge of its affairs. The PMLA and its provisions stand steadfast and do not stand diluted in their rigour and application against persons who were in control of the corporate debtor. It was this delicate balance struck by the Legislature which met approval in Manish Kumar.”

In the following words it specifically puts an embargo on applicability of PMLA, once the proceedings under I&B Code is set into motion:

“R. Section 32A in unambiguous terms specifies the approval of the resolution plan in accordance with the procedure laid down



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

in Chapter II as the seminal event for the bar created therein coming into effect. Drawing sustenance from the same, this Court comes to the conclusion that the approval of the measure to be implemented in the liquidation process by the Adjudicating Authority must be held to constitute the trigger event for the statutory bar enshrined in Section 32A coming into effect. It must consequently be held that the power to attach as conferred by Section 5 of the PMLA would cease to be exercisable once any one of the measures specified in Regulation 32 of the Liquidation Regulations 2016 comes to be adopted and approved by the Adjudicating Authority.

It then imports the immunity under Section 32A of the I&B Code to the liquidation process in following words:

*“S. The expression "sale of liquidation assets" must be construed accordingly. The power otherwise vested in the respondent under the PMLA to provisionally attach or move against the properties of the corporate debtor would stand foreclosed **once the Adjudicating Authority comes to approve the mode selected in the course of liquidation.** To this extent and upon the Adjudicating Authority approving the particular measure to be implemented, the PMLA must yield.*

T. The Court thus comes to hold that from the date when the Adjudicating Authority came to approve the sale of the corporate debtor as a going concern, the cessation as contemplated under Section 32A did and would be deemed to have come into effect.

Q. OPERATIVE DIRECTIONS



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

102. Accordingly and for all the aforesaid reasons, this writ petition shall stand allowed in the following terms. **The Liquidator is held entitled in law to proceed further with the liquidation process in accordance with the provisions of the IBC. The respondent shall hereby stand restrained from taking any further action, coercive or otherwise, against the liquidation estate of the corporate debtor or the corpus gathered by the Liquidator in terms of the sale of liquidation assets as approved by the Adjudicating Authority under the IBC.** The Court grants liberty to the petitioner to move the Adjudicating Authority for release of the amounts presently held in escrow in terms of the interim order passed in these proceedings. Any application that may be made in this regard by the Liquidator shall be disposed of by the Adjudicating Authority bearing in mind the conclusions recorded hereinabove.

(Emphasis Added)

17.5. The Hon'ble Apex Court in ***Manish Kumar vs. Union of India***, reported in MANU/SC/0029/2021: (2021) 5 SCC 1, indicated that the object of the value maximization of the assets of the corporate debtor would be jeopardy if the successful resolution applicant was made to face various unspecified liabilities for prior act of the corporate debtor. Section 32A thus seeks to mitigate the disputes to ensure that the corporate debtor is taken over as a fresh slate. The hon'ble Apex Court held that:

“258. It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. **The new management cannot be the subject matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto.** These ingredients are also insisted upon for claiming exemption of the bar from actions against the property. **Significantly every person who was associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor.** The corporate debtor and its property in the context of the scheme of the code constitute a distinct subject matter justifying the special treatment accorded to them. Creation of a criminal offence as also abolishing criminal liability must ordinarily be left to the judgment of the legislature. **Erecting a bar against action against the property of the corporate debtor when viewed in the larger context of the objectives sought to be achieved at the forefront of which is maximisation of the value of the assets which again is to be achieved at the earliest point of time cannot become the subject of judicial veto on the ground of violation of Article 14.** We would be remiss if we did not remind ourselves that attaining public welfare very often needs delicate balancing of conflicting interests. As to what priority must be accorded to which interest must remain a legislative value judgment and if



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

seemingly the legislature in its pursuit of the greater good appears to jettison the interests of some it cannot unless it strikingly ill squares with some constitutional mandate suffer invalidation.”

(Emphasis Added)

17.6. Under the scheme of I&B Code, it is trite, axiomatic, and settled law that this Adjudicating Authority has the power to grant only such reliefs that are directly in tune with the I&B Code and the Companies Act, within the powers of the NCLT. The reliefs that pertain to other governmental authorities/departments may be dealt with by the respective competent authorities/forums/offices, Government or Semi-Government of the State or Central Government concerning the respective reliefs, waivers, and concession, whenever sought for. The competent authorities including the Appellate authorities may consider granting such reliefs, waivers and concessions keeping in view the spirit of the I&B Code, 2016 and the Companies Act, 2013.

18. In course of arguments, reliance was placed on the judgments of the High Court of New Delhi in ***Rajiv Chakraborty Resolution Professional of EIEL v. Directorate of Enforcement*** [2022 SCC OnLine Del. 3703] and that of the High Court of Gujarat in ***AM Mining India Private Limited v. Union of India*** (Special Civil Application No. 808 of 2023) to contend that where the insolvency proceedings had been started even before the attachment is ordered by the Enforcement Directorate, the proceedings before the NCLT will have to prevail over the proceedings of the Enforcement Directorate.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

19. In a case of the Hon'ble Bombay High Court in ***Shiv Charan and Ors. vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002, Department of Revenue and Ors.*** reported in MANU/MH/1369/2024, wherein the NCLT had directed lifting of the attachment invoking the powers under Section 32A of the I&B Code and had directed release of assets under PMLA, the Hon'ble High Court has recognised the authority of NCLT and that Section of I&B Code has a non obstante clause which overrides the objectives of the I&B Code so that proceedings under the I&B Code do not get derailed by external legal disputes.

While explaining the true import of Section 32A of the I&B Code, the Hon'ble Bombay High Court has observed that:

“16. A plain reading of the forgoing would show that Section 32A is a non-obstante provision. Its jurisdiction is attracted only when a resolution plan gets approved under Section 31. Besides, the immunity conferred by Section 32A is available if and only if the approved resolution plan results in a complete change in the character of ownership and control of the corporate debtor. Explicitly, Section 32A(1) stipulates that the liability of the corporate debtor for an offense committed prior to commencement of the CIRP shall cease. The corporate debtor is explicitly protected from being prosecuted any further for such an offense, with effect from the approval of the resolution plan. Section 32A disentitles the corporate debtor from such immunity if the promoters or those in the management or control of the corporate debtor prior to the CIRP, or any related party of such



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

persons, continues in management or control of the corporate debtor under the approved resolution plan. Likewise, the corporate debtor would be disentitled from immunity even if third parties, who were not promoters or persons in management or control of the corporate debtor come into management or control of the corporate debtor under the resolution plan but are persons who the Investigating Authority has reason to believe (based on material) had abetted or conspired for the commission of the offense in question.

17. Should the ingredients of Section 32A(1) be met, it enables an automatic discharge from prosecution, for the corporate debtor alone. The provision takes care to ensure that the immunity is available only to the corporate debtor and not to any other person who was in management or control or was in any manner, in charge of, or responsible to, the corporate debtor for conduct of its business, or was associated with the corporate debtor in any manner, and directly or indirectly involved in the commission of the offense being prosecuted. Such others who are charged for the offense would continue to remain liable to prosecution. Effectively, all other accused remain on the hook and it is the corporate debtor who alone gets the statutorily-stipulated immunity, and that too only when a resolution plan is approved under Section 31, and such resolution plan entails a clean break from those who conducted the affairs in the past at the time when the offense was committed. A complete dissociation of the individuals involved in the management and control at the time of commission of the alleged



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

offense is a fundamental requisite for the immunity to become available.

18. **Section 32A(2) goes a step further and also protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP.** Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the same ingredients as set out in Section 32A(1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A(2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an "action against the property" of the corporate debtor, from which immunity would be available, "shall include the attachment, seizure, retention or confiscation of such property under such law" as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002.

19. **Section 32A(2) also affords similar immunity without a successful resolution having been approved - where a successful sale of assets of the corporate debtor is effected to an unconnected purchaser in liquidation proceedings. In short, action against the property is prohibited so that the purchaser of the property in liquidation proceedings of the corporate debtor can enjoy it freely, and therefore pay the best value when bidding for it. Since**



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

that facet of the matter is not relevant to the facts at hand, we are not analysing it further.

20. Therefore, as a matter of law, once the resolution plan is approved with the attendant conditions set out in Section 32A being met, further prosecution against the corporate debtor and its properties, would cease. Section 32A(3) enjoins the corporate debtor to continue to cooperate with the enforcement agencies in the continued prosecution against the individuals in question.

21. Now, applying this position in law to the facts of the case, it is common ground that under the Approval Order, a resolution plan in respect of the Corporate Debtor was approved under Section 31 of the IBC, 2016. It is also common ground that none of the Resolution Applicants is a person in charge of or responsible for the commission of the alleged scheduled offense being prosecuted by the ED. It is not the ED's case that the Resolution Applicants are third parties who have aided and abetted the commission of the alleged offences. In short, it is common ground that all the ingredients of Section 32A of the IBC, 2016 are met. However, what the ED disputes is the power of the NCLT to rule upon the interpretation of Section 32A when the effect of such interpretation would lead to release of attachment of property that had been levied under the provisions of the PMLA, 2002."

(Emphasis Added)

In conclusion, the Hon'ble Bombay High Court in **Shiv Charan (Supra)**, has observed that:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

“52. As a result, we return the following findings and conclusions in disposing of the two writ petitions:-

i. The NCLT was well within its jurisdiction in declaring, both in the Approval Order (dated 17th February, 2023) under Section 31 of the IBC, 2016 and in the April 2023 Order (under Section 60(5) of the IBC, 2016), that the corporate debtor would stand discharged from the offences alleged to have been committed prior to the CIRP and that the Attached Properties as identified in the Approval Order became free of attachment from the time of approval of the resolution plan eligible for benefit of Section 32A. On facts, it is evident that the NCLT was accurate in the valid exercise of its explicit jurisdiction;

XXX

XXX

XXX

iv. There is one other facet that makes the scheme and import of Section 32A of the IBC, 2016 clear, logical and reasonable. **The attachment under Section 5 of the PMLA, 2002 is but a measure in aid of eventual potential confiscation under Section 8(5) of the PMLA, 2002.** Confiscation of the property of the corporate debtor can only be effected upon conviction of the corporate debtor for an offence of money laundering. Where Section 32A(1) of the IBC, 2016 confers immunity to the corporate debtor from prosecution, there can be no conviction that can follow. Consequently, it is but logical that the property of the corporate debtor would have protection from any continued attachment by reason of Section 32A(2). Therefore, when there is no potential in law for an eventual



IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

confiscation, the attachment, which is only an interim measure in aid of the final measure of confiscation must necessarily abate and come to an end, since it cannot continue in a vacuum.

v. We are not opining on the implications of Section 14 of the IBC, 2016 for continuation of a prior attachment during the course of a CIRP. In the facts at hand, the jurisdiction of Section 14 came to an end, and the jurisdiction of Section 32A commenced, on 17th February, 2023. Therefore, dealing with a conflict between the provisions of the PMLA, 2002 and Section 14 of the IBC, 2016 was rendered irrelevant with effect from 17th February, 2023;

vi. As a consequence of Section 32A of the IBC, 2016, the ED must now necessarily release the attachment on the Attached Properties, without being bogged down by the question of how to interpret the continuation of attachment after the commencement of the CIRP and before the Approval Order, and the implications for the same under Section 14 of the IBC, 2016. We are not opining on this facet of the law as it is wholly unnecessary to dispose of the case at hand. It is trite law that no court should rule on questions of law in a vacuum;

vii. The Approval Order, which interpreted questions of fact and answered the question of law on implications of Section 32A for the corporate debtor, has not been challenged by the ED - neither in an appeal from the Approval Order nor in WP 29111 filed before us. The ED's challenge is to the April 2023 Order that allowed IA 383 on the strength of Section 32A. The April 2023 Order does



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

contain remarks about the interplay between Section 14 and the attachment but that is not the ratio of the April 2023 Order, which explicitly relies on Section 32A of the IBC, 2016 to direct the release of the Attached Properties. Even if purely for the sake of argument, the April 2023 Order were to be set aside, the Approval Order would hold the field and that order correctly requires the ED to release the Attached Properties owing to the operation of Section 32A of the IBC, 2016;

*viii. The NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end. It is possible that in a given case, the application of Section 32A of the IBC, 2016 may have an effect on existing and intended attachments and prosecution by enforcement agencies operating under laws such as the PMLA, 2002. **However, since both Section 32A and Section 60(5) are non-obstante provisions, they would prevail, with no room for concern, real or imagined, about any conflict between legislations.** We, therefore, hold that the interpretation by the NCLT in both, the Approval Order, and the April 2023 Order, did not at all render nugatory, the provisions of the PMLA, 2002 or its legislative objectives. The NCLT has merely given effect to the provisions of Section 32A of the IBC, 2016 in its terms and that is an accurate decision, as explained by us above; and*

XXX

XXX

XXX

53. In the result, we rule that the attachment by the ED over the Attached Properties, being



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

the four bank accounts of the Corporate Debtor, (with aggregate balances to the tune of Rs.3,55,298/- and any interest earned thereon) and the 14 flats constructed by the Corporate Debtor valued at Rs.32,47,55,298/-, came to an end on 17th February, 2023. Such release has occurred by operation of Section 32A of the IBC, 2016, and the ministerial act of communicating must be communicated by the Respondents in WP 9943 and the Petitioner in WP 29111 forthwith to the Corporate Debtor, marking a copy to the Petitioner in WP 9943, within a period of six weeks from the date of this judgement. Such a communication is necessary to enable the Attached Properties to be bankable assets that can be deployed into the revival of the Corporate Debtor in terms of the objective of resolution.”

(Emphasis Added)

20. Comparing the objectives of both the legislations i.e., I&B Code and PMLA, this Bench on an earlier occasion in **State Bank of India vs. R.P. Info System Ltd.**, reported in MANU/NC/2665/2024, has held that:

“51. From the enumeration as above, it is manifestly evident that the object of the PMLA is to prevent the suspected from enjoying the fruits of a "tainted property" or "proceeds of crime", and not to allow the Government to don the hat of a creditor. Juxtaposed to the above, the object of the IBC essentially is to pay off the creditors of a corporate debtor by way of insolvency resolution or liquidation in a time bound manner maximizing the value of the assets of the corporate debtor and balancing the interest of all stakeholders of it.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

52. Taking note of this apparent conflict between various judgments of the NCLAT on this issue, a very recent decision rendered by the Hon'ble High Court of Delhi, in the case of **Rajiv Chakraborty Resolution Professional of EIEL vs. Directorate of Enforcement** reported in MANU/DE/4428/2022: 2022/DHC/004739: (2022) ibclaw.in 257 HC deserves mention. It is extracted hereunder to the extent relevant and germane to the lis:

XXX

XXX

XXX

53. The gist of the principles that could be culled out from the decision supra, would be as under:

- i. The PMLA provides for the confiscation of the illegal acquired assets (tainted properties) out of proceeds of crimes to prevent a person from enjoying fruits of such tainted properties or the "proceeds of crime".
- ii. A Provisional Attachment Order (PAO) does not invest in the authority a superior or overriding right in the property.
- iii. Similarly, the attachment of tainted properties does not divest a person of a right to establish that the properties attached are not out proceeds of crime.
- iv. A third party having a legitimate interest over such property can always seek its release by showing that its interest in such property was acquired bona fide and for lawful (adequate) consideration.
- v. An order of attachment under PMLA if it meets with the pre- requisites, is as lawful



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

as an action initiated by a bank or a financial institution or a secured creditor for recovery of its dues or enforcement of its secured interest in accordance with RDBA or SARFAESI Act.

vi. An order of PMLA is not rendered illegal only because a secured creditor has a prior security interest in the subject property.

vii. PMLA does not result in the corporate debtor or the Resolution Professional facing a fait accompli.

viii. The statutes provide adequate means and avenues for redressal of claims and grievances.

ix. It could be open to a Resolution Professional to approach the competent authorities under the PMLA for such reliefs in respect of tainted properties as may be legally permissible.

54. Having noted as above, we are of the view that PMLA and I&B Code subserve completely different, divergent and distinct purpose. The rights of the Enforcement Directorate over the properties subject to attachment would stand restricted to the extent as recognised in the judgments rendered in **Axis Bank (Supra)** and later in **Rajiv Chakraborty (Supra)**.”

(Emphasis Added)

21. Further, we would rely upon the judgment in **Embassy Property Developments Pvt. Ltd. vs. State of Karnataka** reported at **MANU/SC/1661/2019: (2020) 13 SCC 308**, wherein, the Hon’ble Apex Court has laid down that:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

“39. If NCLT has been conferred with jurisdiction to decide all types of claims to property, of the corporate debtor, Section 18(f)(vi) would not have made the task of the interim resolution professional in taking control and custody of an asset over which the corporate debtor has ownership rights, subject to the determination of ownership by a court or other authority. In fact an asset owned by a third party, but which is in the possession of the corporate debtor under contractual arrangements, is specifically kept out of the definition of the term "assets" under the Explanation to Section 18. This assumes significance in view of the language used in Sections 18 and 25 in contrast to the language employed in Section 20. Section 18 speaks about the duties of the interim resolution professional and Section 25 speaks about the duties of resolution professional. These two provisions use the word "assets", while Section 20(1) uses the word "property" together with the word "value". Sections 18 and 25 do not use the expression "property". Another important aspect is that Under Section 25(2)(b) of IBC, 2016, the resolution professional is obliged to represent and act on behalf of the corporate debtor with third parties and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial and arbitration proceedings. Section 25(1) and 25(2)(b) reads as follows:

25. Duties of resolution professional -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of Sub-section (1), the resolution professional shall undertake the following actions:



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

(a).....

(b) represent and act on behalf of the corporate debtor with third parties, **exercise rights for the benefit of the corporate debtor in judicial, quasi judicial and arbitration proceedings.**

This shows that wherever the corporate debtor has to exercise rights in judicial, quasi-judicial proceedings, the resolution professional cannot short-circuit the same and bring a claim before NCLT taking advantage of Section 60(5).

40. Therefore in the light of the statutory scheme as culled out from various provisions of the IBC, 2016 it is clear that wherever the corporate debtor has to exercise a right that falls outside the purview of the IBC, 2016 especially in the realm of the public law, they cannot, through the resolution professional, take a bypass and go before NCLT for the enforcement of such a right.”

(Emphasis Added)

Effect of “Bhushan Power and Steel Ltd.”:

22. In ***Kalyani Transco v. Bhushan Power and Steel Ltd. and Ors.***, reported in (2025) ibclaw.in 173 SC, referred to by Ld. Counsel Mr. Adil Rashid, appearing on behalf of the Enforcement Directorate, the Hon’ble Apex Court, in a case where a Provisional Attachment Order (PAO) was issued after approval of the resolution plan, has laid down the Powers of the NCLT and NCLAT as under:

**“(V) POWERS OF NCLAT TO REVIEW THE
DECISION OF STATUTORY AUTHORITY
UNDER THE PMLA: –**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

24. *This takes us to the issue as to whether the NCLAT had any powers of Judicial Review over the decision taken by the Statutory Authority under the PMLA?*

As per the chronology of events stated earlier, after the NCLT vide the Order dated 05.09.2019 approved the Resolution Plan of JSW, subject to the conditions mentioned in para 128 thereof, the Directorate of Enforcement of Central Government on 10.10.2019 had provisionally attached the assets of CD-BPSL under Section 5 of PMLA. The SRA-JSW challenged the powers of ED to pass Provisional Attachment Order by raising an issue in the Appeal being Company Appeal No. 957 of 2019 pending before the NCLAT. The NCLAT vide the Order dated 14.10.2019 stayed the said PAO dated 10.10.2019, in the said Company Appeal No.957 of 2019.

25. *It appears that couple of months thereafter, Section 32A came to be inserted in the IBC by Act 1 of 2020 w.e.f. 28.12.2019, which pertained to the liability of a Corporate Debtor for an offence committed prior to the commencement of CIRP. The NCLAT therefore, while deciding the Company Appeal No. 957 of 2019 filed by the JSW along with other Company Appeals filed by the other parties against the Order passed by the NCLT dated 05.09.2019, held in the impugned Judgment and Order dated 17.02.2020 that in view of Section 32A(1)(2), the Directorate of Enforcement/Investigating Agencies did not have the powers to attach assets of Corporate Debtor, once the Resolution Plan had stood approved, and that the criminal investigations against the Corporate Debtor also would stand abated. The NCLAT also declared in para 71 of the impugned Judgment that the attachment of assets of Corporate Debtor by the ED pursuant*



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

to the order dated 10.10.2019 was illegal or
without jurisdiction.

26. As stated hereinabove, the Civil Appeal Nos. 14503-14504 of 2024 arising out of the SLP(Civil) Nos. 29327-29328 of 2019 filed by the Committee of Creditors, challenging the PAO dated 10.10.2019 passed by the ED and the Order dated 14.10.2019 passed by the NCLAT in Company Appeal No.957 of 2019, and the Civil Appeal No.3362 of 2020 filed by the ED against the JSW & Others challenging the impugned Judgment dated 17.02.2020 passed by the NCLAT in Company Appeal No. 957 of 2019, came to be disposed of by this Court vide the Order dated 11.12.2024. While passing the said order, it was clarified by this Court that the said order was passed in the peculiar facts and circumstances of the case, more particularly, the fact that the order of provisional attachment was passed by the ED after the Adjudicating Authority i.e. NCLT had approved the RP submitted by the SRA. It was also clarified and that the Court had not expressed any opinion on the interpretation of Section 32A (2) of IBC or on the powers of the ED to attach the property of the Corporate Debtor which was undergoing CIRP, or on any other legal issues involved in the other connected Appeals (i.e. the present Civil Appeals) pending before this Court.

27. In this regard, 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



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

*Government or Statutory Authority in relation to a matter which is in the realm of Public Law. As held by a Three-judge Bench in case of **Embassy Property Developments Private Limited vs. State of Karnataka & Ors.**³, the Section 60(5) speaks about any question of law or fact, arising out of or in relation to insolvency resolution, but a decision taken by the Government or a statutory authority in relation to a matter which is in the realm of Public Law, cannot be brought within the fold of the phrase “arising out of or in relation to the insolvency resolution” appearing in Section 60(5)(C) IBC. It has been further held therein that in the light of the statutory scheme as culled out from the various provisions of the IBC, it is clear that wherever the Corporate Debtor has to exercise a right that falls outside the purview of the IBC, especially in the realm of the public law, they cannot take a bypass and go before NCLT for the enforcement of such a right.*

28. *In view of the settled proposition of law, when the NCLT could not exercise the powers of judicial review falling outside the purview of the IBC, or falling within the purview of public law, the NCLAT also, being an Appellate Authority under Section 61 over the orders passed by the NCLT, could not exercise any power or jurisdiction beyond Section 61 of IBC.*

29. As held by us earlier, a person aggrieved by an order of the Adjudicating Authority can prefer an Appeal to the NCLAT under Section 61(1), and that an Appeal against the order approving a Resolution Plan under Section 31 could be filed only on the grounds mentioned in clauses (i) to (v) of sub-section (3) of Section 61. Hence, for filing an Appeal under Section 61, there has to be an order passed by the NCLT so far as sub-section (1) is concerned, and if the Appeal is filed against the order of NCLT



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

approving the Resolution Plan under Section 31, it could be filed only on the grounds mentioned in sub-section (3) of Section 61.

30. *In the instant case, after the approval of Resolution Plan of JSW by the NCLT on 05.09.2019, subject to the conditions mentioned therein, the PAO came to be passed by the ED on 10.10.2019 under Section 5 of the PMLA. The said PAO was challenged by SRA-JSW directly in the Company Appeal being No. 957 of 2019 filed by it before the NCLAT, and the NCLAT vide the ex parte order dated 14.10.2019 had stayed the PAO. It is pertinent to note that the said PAO dated 10.10.2019 was also the subject matter of challenge before this Court in the SLPs filed by the CoC and the same was stayed by this Court vide the Order dated 18.12.2019 in the said SLPs. Despite such position, the NCLAT while passing the impugned Judgment and Order dated 17.02.2020 recorded its findings on Section 32A of IBC to the effect that the assets of the Corporate Debtor of which JSW was a Successful Resolution Applicant, were immuned from attachment by Directorate of Enforcement. Such an Order of NCLAT is clearly in teeth of the law laid down by this Court in **Embassy Property Developments** (supra). **The PMLA being a Public Law, the NCLAT did not have any power or jurisdiction to review the decision of the Statutory Authority under the PMLA.** In our opinion, apart from the fact that the said issue was pending before this Court in respect of the same PAO dated 10.10.2019 and therefore the NCLAT should not have decided the said issue, it was beyond the jurisdiction of the NCLAT to decide the said issue in the Company Appeal filed by JSW under Section 61 of IBC.*



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

31. *In that view of the matter, it is held that the observations made and the findings recorded by the NCLAT in the impugned judgment with regard to the PAO dated 10.10.2019 passed by the Directorate of Enforcement under the PMLA, being without any authority of law and without jurisdiction, were coram non judice.*

(Emphasis Added)

CONCLUSION:

23. With the rendering of decision in ***Bhushan Power and Steel Ltd. (Supra)***, the immunity under Section 32A of I&B Code came to be looked down upon and with much dilution by the ED itself. However, the Hon'ble Apex Court has not toned down the effect of Section 32A of the I&B Code on the corporate debtor as clearly evident from the extract above. In the case of ***Bhushan Power and Steel Ltd. (Supra)***, the PAO was issued on 10.10.2019, clearly post approval of plan on 05.09.2019. The judgment simply restrains the NCLT and even the Hon'ble Appellate Forum from exercising any right of review over any PAO issued under PMLA. It does not restrain this Adjudicating Authority from exercising its right to direct the RP or Liquidator to approach the competent authorities under PMLA to de-attach or release the properties of the corporate debtor, given the fact that the PAO has been issued after commencement of CIRP, as has been directed or approved by the various High Courts of our country referred to supra.

24. At this juncture, it would be profitable to quote a very recent decision of the Hon'ble NCLAT in ***Anil Kohli (RP) v.***



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

Directorate of Enforcement and Anr., reported in (2025) ibclaw.in 470 NCLAT. It is a case where CIRP commenced on 22.12.2017, by the NCLT Mumbai Bench order and PAO was issued thereafter on 26.12.2017, and confirmed on 11.06.2018, before approval of the resolution plan in November 2019. The issue was whether Section 32A of the I&B Code could be validly invoked to invalidate the actions lawfully undertaken by the ED in discharge of their statutory obligation. The Hon'ble NCLAT noticed **Embassy Property Development (Supra)**, **Bhushan Power and Steel Ltd. (Supra)**, and **P. Chidambaram v. Directorate of Enforcement** reported in (2019) 9 SCC 24 dated 05.07.2019 a non-I&B Code case where primacy of PMLA was deliberated upon and decision was rendered before giving an effect of Section 32A (inserted by the "Insolvency and Bankruptcy Code (Amendment) Act, 2020", w.e.f. 28.12.2019). The Hon'ble NCLAT held that:

*"73. Hon'ble Supreme Court in **Embassy Property (supra)** has categorically held that **NCLT cannot interfere in decisions of statutory or quasi-judicial authorities functioning under special statutes like the Mines and Minerals Act. By extension this would automatically include a special statute like the PMLA.***

*In the present case, **the PAO was confirmed under Section 8(3) of the PMLA by its Adjudicating Authority. The proper remedy for the Appellant/ RP was to file an appeal under Section 26 of the PMLA before the Appellate Tribunal constituted thereunder.***



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

74. We also note that subsequent to conclusion of hearing in this case, Hon'ble Supreme Court delivered a landmark judgment exactly on this issue. Hon'ble SC in its judgment dated 02.05.2025 in 'Kalyani Transco Vs. M/s. Bhusan Power and Steel Ltd and Others (Civil Appeal No. 1808 of 2020)' discussed the powers of NCLAT vis a vis provisions under PMLA 2002 and laid down the law in this regard. [...]

XXX

XXX

XXX

75. It is absolutely clear from the above Judgement of the Hon'ble SC **that NCLAT lacks jurisdiction to interfere with the PAO, which has been subsequently confirmed by the Adjudicating Authority under the PMLA.** The Judgement of Hon'ble SC in ***Kalyani Transco (Supra)*** has ***settled the law in this regard.***"

(Emphasis Added)

DIRECTIONS:

25. In the aforesaid backdrop we pass the following order:

i. We allow the liquidator to seek lifting of the final attachment order issued by the Ld. Adjudicating Authority under PMLA, by way of institution of appropriate legal proceedings in accordance with law before the competent forum.

ii. Further, we allow the Liquidator to issue Auction Sale Notice, if not already done, or to issue a



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

corrigendum thereto specifying the sale of the Corporate Debtor will be as a going concern, on an 'as is where is' basis, clearly clarifying without leaving any scope of any ambiguity or ambivalence with regard to the existence of an Attachment Order passed under PMLA over such properties and identifying those properties which stands already attached by the Directorate of Enforcement under the provisions of PMLA.

iii. We further direct that the proceeds of sale if any received out of the tainted properties shall be kept aside in a separate account to preserve the rights of the Enforcement Directorate to attach the proceeds of crime, until the attachment order is recalled or lifted, and properties are released by the appropriate forum.

26. We, however, made it clear that such sale should not be construed as a discharge of liability of the directors of the corporate debtor in any ongoing investigation or proceedings undertaken by the Directorate of Enforcement and the present order should not be viewed as an outcome of any judicial review of any order passed by the Statutory Authority under PMLA including that of any Attachment Orders.

27. Accordingly, with the above direction, the present application being **I.A. (IB) No. 162/KB/2025** is **disposed of**.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

I.A. (IB) No. 162/KB/2025

In

Company Petition (IB) No. 23/KB/2019

28. Certified copy of the orders, if applied for with the Registry, be supplied to the parties upon compliance with all requisite formalities.

Cmde. Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on 24th Day of July 2025.

Bose, R. K. [LRA]