



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.11

I.A No. 28, 397, 543 & 925/2024

I.A (Plan) No. 03/2024 in

C.P (IB) No.113/BB/2022

IN THE MATTER OF:

Apartment Buyers Consumer Association

... Petitioner

Vs

M/s. Dreams Infra India Limited

... Respondent

Order under Section 7 of the I & B Code, 2016

Order delivered on: 28.07.2025

CORAM:

SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Resolution Professional	:	Mrs. Chithra Niramala
		Mrs. R Bhuvaneshwari
For I.A No.543/2024	:	Ms. Ragini
For R1 in I.A No.397/2024	:	Shri Theerthesh

ORDER

I.A. No. 28/2024

1. Heard the Ld. Counsel for the RP.
2. **I.A is dismissed by separate order.**

I.A. No. 397/2024

1. Heard the Ld. Counsels for the parties.
2. The matter is deferred for orders on the IA on **18.08.2025.**

-Sd-

-Sd-

RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU
BENCH
(HYBRID MODE)
IA NO. 28 of 2024
in
CP (IB) No. 113 of 2022

[Application under Section 60(5) of the IBC, 2016 RW Rule 11 of National
Company Law Tribunal Rules, 2016]

In the matter of:

Apartment Buyers Consumer Association
Vs
M/s Freamz Infra India Limited

Interlocutory Application filed by:

Ramanathan Bhuvaneshwari,

RP of M/s Dreamz Infra India Private Limited

Applicant

Versus

Enforcement Directorate

Respondent

Last date of hearing: 11.06.2025

Order delivered on: 28.07.2025

Coram:

Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)

Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

Present: for Applicant: Smt. CHITRA NIRMALA, Advocate.

O R D E R

Per RADHAKRISHNA SREEPADA MEMBER(Technical)

1. The present Application is filed on 28.11.2023 by the Resolution Professional against the Enforcement Directorate seeking the following prayers to be allowed by this Tribunal.

Prayers: The Applicant (Resolution Professional) prays for the following reliefs:

- a) *Direction to ED to de-attach and release the Dreamz Samhita Project property attached under PAO No. 03/2022 dated 04.07.2022.*



- b) Direction to ED to transfer control of the said project property to the Resolution Professional after de-attachment.*
- c) Pass any other or further order as the Hon'ble Tribunal deems just and appropriate in the circumstances.*

2. Facts of the Case:

The facts of the case as narrated in the Application are

1. M/s Dreamz Infra India Pvt. Ltd., which undertook the Dreamz Samhita real estate project, was admitted into CIRP on 24.08.2023 based on a Section 7 petition filed by Apartment Buyer's Consumer Association representing homebuyers of the project.
2. Smt. Ramanathan Bhuvaneshwari was appointed as the IRP and later confirmed as RP on 21.11.2023.
3. Upon visiting the project site, the RP discovered that the project property had been attached by the Enforcement Directorate (ED) under PAO No. 03/2022 dated 04.07.2022, confirmed by the PMLA Adjudicating Authority on 23.12.2022.
4. ED refused to release the property despite representations by the RP, citing that the directors of the corporate debtor were found guilty under the PMLA.
5. Earlier CIRP proceedings (CP(IB) 84/BB/2019) pertained only to Dreamz Sumadhur Project, as clarified by NCLT in an order dated 04.09.2020, and did not include Dreamz Samhita Project. Consequently, a fresh CIRP was initiated for Dreamz Samhita alone.
6. The RP argues that provisions of the IBC, especially Sections 14, 32A, 63, and 238, override the Prevention of Money Laundering Act, 2002 (PMLA), making the attachment by ED invalid post commencement of CIRP.
7. RP relies on multiple judgments from NCLAT, High Courts, and the Supreme Court which hold that IBC overrides PMLA in case



of conflict, especially once the moratorium is in effect and resolution proceedings are ongoing. The key observations made in those judgements are explained below:

- a) ***Directorate of Enforcement vs. Shri Manoj Kumar Agarwal (NCLAT, New Delhi), Company Appeal (AT) (Insolvency) No. 575/2019*** - Once the CIRP is initiated and the moratorium under Section 14 is in place, no proceedings can continue before the Adjudicating Authority under the PMLA. Even if the confirmation of attachment under PMLA occurred after the commencement of CIRP, such confirmation would be hit by Section 14 and is therefore invalid. Further, Section 238 of the IBC would prevail even if Section 14 did not apply because IBC is the later and more specific law, having a non-obstante clause. The main legal principle behind this judgement is that the moratorium under IBC bars continuation of civil proceedings, including those under PMLA. Further, the overriding effect of IBC u/s 238 applies even to special legislations like PMLA.
- b) ***Am Mining India Private Limited vs. Union of India, SCA No. 808/2023*** - Section 32A, Section 33(5) and Section 238 of IBC override the power of ED under the PMLA. IBC being a later special statute, prevails over the PMLA in case of conflict between two non-obstante clauses. The property of the corporate debtor cannot remain attached when CIRP or liquidation is in progress. The non-obstante clause of the IBC has primacy over PMLA, especially where both statutes conflict and IBC is later in time and the enforcement authorities under PMLA cannot attach properties of the corporate debtor once CIRP is initiated.
- c) ***Rajiv Chakraborty, Resolution Professional of EIEL vs. Directorate of Enforcement, 2022 SCC OnLine Del 3703*** - The court extensively compared PMLA and IBC, both having non-obstante clauses, and held that IBC will prevail



as it is the later enactment. Section 32A (introduced w.e.f. 28.12.2019) shields the corporate debtor and its assets from criminal proceedings, including attachment, once a resolution plan is approved or liquidation commences. While the PMLA allows for attachment during investigation, such powers cease to be effective under IBC once resolution/liquidation events occur as per Section 32A. In case of conflict between two special statutes, the later in time prevails (based on *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.* [(2001) 3 SCC 71]). Even criminal attachment proceedings under PMLA must yield to the resolution framework under IBC once trigger events of Section 32A occur.

d) ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. & Ors., (2001) 3 SCC 71*** – Where two special laws contain non-obstante clauses, the law later in time shall prevail.

e) Hence, based on the above-mentioned judgements, the RP concludes that the attachment by ED under PMLA is invalid and unenforceable post-CIRP initiation due to Section 14 and Section 238 of IBC. Further, Section 32A protects the corporate debtor's assets once a resolution/liquidation plan is approved. The property must be released for successful completion of CIRP to fulfil IBC's objectives of revival and resolution.

8. ED did not respond to RP's formal written requests (dated 17.10.2023 and 31.10.2023) for release of the project property.
9. ED also declined to provide the POA or Adjudicating Authority's order, and the RP had to rely on copies annexed in previous litigation.



ANALYSIS:

We have heard the Ld Counsel for the Resolution Professional Who vehemently pleaded for issuing Summons to the ED during the Course of the hearing.

It is clear from the information Provided in the Application that the

**Attachment by the ED was on 04.07.2022
Initiation of CIRP was on 24.08.2023**

After going through the material available on Record and the arguments advanced at the time of hearing the following Question arises for consideration.

Whether the Enforcement Directorate is bound to release the attached project property (Dreamz Samhita Project) in favour of the Resolution Professional, considering the overriding effect of the Insolvency and Bankruptcy Code, 2016, despite prior attachment under the Prevention of Money Laundering Act, 2002.

10. To find an answer to this Question , analysis of the available judicial precedents is made as under:

a. In the Case of ANIL KOHLI Company Appeal (AT) (Ins.) No. 389 of 2018, the **NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH, NEW DELHI** has held:

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

68. In the present factual matrix, the IBC cannot be said to override the PMLA merely because the ED's attachment interferes with the CIRP. The ED does not act as a creditor, but as a public enforcement agency. The attached assets are not to satisfy creditors, but to uphold penal objectives and international obligations under FATF and UN Conventions.

69. In view of the above analysis, we hold the following:

(i) that the PMLA and IBC operate in distinct spheres;



- (ii) there no irreconcilable inconsistency exists between the two;
- (iii) Section 238 of the IBC cannot override the PMLA in respect of proceedings involving proceeds of crime;
- (iv) That attachment under the PMLA, if validly made and confirmed, cannot be undone merely because CIRP is ongoing.

Accordingly, Issue II is answered in the negative.

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

70. 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.

- b. 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. The relevant paras 24 -25 and 27-30 of the judgment are extracted below:

*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 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.**, 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.*

11. From the Judgement of the Hon'ble Supreme Court, it is clear that

- a. NCLT is constituted under Section 408 of the Companies Act, 2013 and not under the IBC. The jurisdiction and powers of the NCLT and are well circumscribed under Section 31 and Section 60 so far as NCLT is concerned,
- b. The NCLT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law.
- c. As held by a Three-judge Bench in case of ***Embassy Property Developments Private Limited vs. State of Karnataka & Ors.***, 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) 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.

12.DECISION:

In View of the above detailed discussion, the Interim Application filed cannot be entertained in so far as it requires us to travel beyond the Scope of Powers given by the IBC,2016. Accordingly, We find that the Answer to Question framed in Para is negative.

13. In view of this, the **IA 28/2024 is DISMISSED.**

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**RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

-Sd-

**SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**