

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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

(Arising against the impugned order dated 21.05.2018 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench in Misc. Application No. 129 of 2018 in Company Petition No. 1138/I&BC/NCLT/MB/MAH/2017)

IN THE MATTER OF:

Mr. Anil Kohli
Resolution Professional for Dunar Foods Ltd.

Registered office: Geetanjali Apartment,
1st floor, 8B Middleton Street, Kolkata,
West Bengal.
Email id: investor.india@akzonobel.com

...Appellant

Versus

Directorate of Enforcement
Through Deputy Director

Add:- 4th Floor, Kaiser-1,
Hind Currimbhoy Road,
Ballard Estate,
Mumbai – 400001.

...Respondent No. 1

Shri Amit Gupta,
Successful Resolution Applicant
of Dunar Foods Ltd.

...Respondent No. 2

Present:

For Appellant: **Mr. Abhishek Anand, Mr. Karan Kohli & Ms. Ridhima Mehrotra, Advocates.**

For Respondents: **Mr. Zoheb Hossain, Advocate for R-1/ED.**
Mr. Himanshu Dubey, Ms. Shruti Manchanda,
Advocates for R-2.

J U D G M E N T
(3rd July, 2025)

INDEVAR PANDEY, MEMBER (T)

This appeal arises from the impugned order dated **21.05.2018**, passed by the National Company Law Tribunal (NCLT), Mumbai Bench ('Adjudicating Authority') in **Miscellaneous Application No. 129 of 2018** in **Company Petition No. 1138/I&BC/NCLT/MB/MAH/2017**. The appeal has been filed under **Section 61(1)** of the **Insolvency and Bankruptcy Code, 2016** (in short 'Code') by **Mr. Anil Kohli**, the **Resolution Professional (RP)** for **Dunar Foods Limited** (Corporate Debtor) challenging the refusal of the Adjudicating Authority to direct the Directorate of Enforcement (ED) to release the provisionally attached assets of the Corporate Debtor.

2. The Appellant/RP asserts that the continued attachment of properties under the **Prevention of Money Laundering Act, 2002 (PMLA)** violates the **moratorium under Section 14 of the IBC** and frustrates the CIRP objectives. This appeal raises substantial questions about the conflict between two central economic legislations viz. Insolvency & Bankruptcy Code 2016 and the Prevention of Money Laundering Act, 2002.

Brief facts of the case

3. The brief facts of the case are as follows:

- (i) Dunar Foods Ltd. is a company engaged in the business of manufacturing, processing, and exporting basmati rice. It had availed substantial credit facilities from a consortium of banks led by the State

Bank of India (SBI), along with Canara Bank, Bank of India, and other lenders. At the time of filing the Sec 7 petition under the Code in on 27.06.2017, the total dues owed by the Corporate Debtor to the Banks was Rs. 758,73,62,546/-.

- (ii) Following continuing defaults in repayment obligations, Dunar Foods Ltd.'s accounts were classified as Non-Performing Assets (NPAs) by SBI and other lenders on 26.08.2014 and the Financial Creditor/Applicant Bank issued the recall notice on 08.12.2014 to the Corporate Debtor to pay its dues.
- (iii) The Financial Creditor/ Applicant Bank also issued the notice under Section 13(2) of SARFAESI Act, 2002 dated 25.02.2016 on behalf of all the banks as lead bank of the consortium to the corporate debtor to repay the entire dues of Rs. 795,60,25,675.16 as on 31.01.2016 including further interest, penal interest, incidental expenses and all costs, charges and expenses.
- (iv) In view of the defaults, the State Bank of India filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT), Mumbai Bench. The case was registered as CP No. 1138/I&BC/NCLT/MB/MAH/2017. On 22.12.2017, the NCLT, Mumbai Bench, admitted the insolvency application. It initiated the Corporate Insolvency Resolution Process (CIRP) against Dunar Foods Ltd. under Section 7 of the IBC. In the same order, Mr. Anil Kohli was appointed as the Interim Resolution Professional (IRP), a moratorium under Section 14 of the IBC was

imposed with effect from that date, and the IRP was directed to issue public announcements under Section 15 IBC and Regulation 6 of the IBBI (CIRP) Regulations.

- (v) In compliance with the statutory mandate, the IRP published public announcements on 06.01.2018 in *The Financial Express* (English) and on 07.01.2018 in *Jansatta* (Hindi). These announcements formally declared the commencement of CIRP and called upon all creditors of Dunar Foods Ltd. to submit their claims within the prescribed time.
- (vi) Meanwhile, the Directorate of Enforcement (ED), under the Ministry of Finance, Government of India, had initiated investigation under the Prevention of Money Laundering Act, 2002 (PMLA) against M/s PD Agroprocessors Pvt. Ltd., which is associate company of Dunar Foods Ltd. And traced the flow of alleged tainted funds to the Corporate Debtor. The ED registered ECIR No. ECIR/14/MZO/2013/PD AGRO/1733 based on scheduled offences under the Indian Penal Code and Foreign Exchange Management Act (FEMA), alleging that large export advances received by Dunar Foods Ltd. from PD Agroprocessors Pvt. Ltd. were proceeds of crime.
- (vii) Consequently, on 26.12.2017, the Deputy Director of the Directorate of Enforcement, Mumbai Zone, issued Provisional Attachment Order (PAO) No. 12/2017 under Section 5(1) of the PMLA, attaching various immovable and movable assets of Dunar Foods Ltd. The total value of attached assets amounted to Rs. 177,33,94,800/-.

(viii) On 14.02.2018, the RP addressed written communications to the Directorate of Enforcement requesting immediate de-attachment of the provisionally attached properties. He explained that the moratorium under Section 14 of the IBC barred all proceedings including enforcement actions like attachment against the corporate debtor. He further referred to Section 238 of the IBC, which provides the Code with overriding effect over any other inconsistent law. However, the ED did not provide any relief or respond favorably.

(ix) On 16.02.2018, in view of the deadlock, the RP filed Miscellaneous Application No. 129 of 2018 before the NCLT, Mumbai Bench, under Section 60(5) of the IBC. The application sought, inter alia, (a) quash the provisional attachment order dated 26.12.2017 being PAO No. 122017 in F.No. ECIR/14/MZO/2013/PD Agro/1733, and (b) a direction to the Directorate of Enforcement to recall the provisional attachment order against the assets of the Corporate Debtor during the CIRP or till the time moratorium is in effect.

(x) After hearing both parties, the NCLT, Mumbai Bench passed the impugned order dated 21.05.2018, whereby it dismissed the RP's application. The NCLT held that the Provisional Attachment Order issued by the ED under Section 5(1) of the PMLA did not fall within the scope of the moratorium under Section 14 of the IBC. It further opined that PMLA is a special penal statute and has a distinct adjudicatory mechanism under Sections 5 to 8 of PMLA. Therefore, unless and until the attachment was set aside by the PMLA Adjudicating Authority, the

NCLT had no jurisdiction to direct its release. It concluded that the IBC could not override PMLA proceedings in the absence of express legislative exclusion.

- (xi) The Competent Adjudicating Authority of the Prevention of Money laundering Act 2002 by its order dated 11.06.2018 under section 8 confirmed the provisional attachment order.
- (xii) Aggrieved by aforesaid decision of the NCLT, the RP preferred the present appeal under Section 61(1) of the Code. The RP has submitted that the NCLT has failed to appreciate the legislative scheme of the IBC, particularly the overriding effect granted to it under Section 238, and the mandatory nature of the moratorium under Section 14. It was contended that the continuation of attachment not only violated statutory protection but also rendered the CIRP futile, causing irreparable harm to creditors and defeating the purpose of resolution.
- (xiii) Subsequent to filing of this appeal, NCLT Mumbai vide its order dated 26.11.2019 in M.A. No. 2166 of 2019 approved the Resolution Plan submitted by the Respondent No. 2/ Successful Resolution Applicant (SRA), which was further amended vide order dated 27.01.2020 and appointed Mr. Anil Kohli (erstwhile Resolution Professional of the Corporate Debtor) as a Monitoring Professional to Monitor the implementation of the Resolution Plan.
- (xiv) The Resolution Professional/ Appellant herein, has sought the following reliefs:

- a) setting aside of the impugned order dated 21.05.2018 passed by the NCLT;
- b) a direction to the Directorate of Enforcement to release all provisionally attached properties valued at Rs. 177,33,94,800/-;
- c) a declaration that the IBC has overriding effect over the PMLA under Section 238, and that the attachment violates the moratorium under Section 14; and
- d) permission to use the attached properties for keeping the corporate debtor operational and ensuring a successful resolution under the IBC framework.

Submissions of the Appellant

4. The Counsel for the Appellant submitted that the present appeal has been preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' or the 'Code') against the order dated 19.05.2018 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench ("Adjudicating Authority"), in MA No. 129 of 2018. The Appellant, who is the duly appointed Resolution Professional ("RP") for the Corporate Debtor, Dunar Foods Ltd., had approached the Adjudicating Authority seeking quashing or recall of the Provisional Attachment Order (PAO) dated 26.12.2017 passed by the Directorate of Enforcement ("Respondent") under Section 5(1) of the Prevention of Money Laundering Act, 2002 ("PMLA").

5. Ld. Counsel stated that the said PAO was passed just four days after the CIRP had commenced on 22.12.2017, and while the moratorium under Section 14 of the IBC was in full force. The Hon'ble Adjudicating Authority,

while disposing of the Appellant's application, declined to lift the attachment and erroneously held that the attachment was not inconsistent with the CIRP as long as it did not obstruct the resolution process. The present appeal challenges the legality and propriety of that finding.

6. Ld. Counsel for the Appellant further submitted that Section 14(1)(a) of the IBC mandates a moratorium on the institution or continuation of suits or proceedings, including execution and enforcement actions, against the Corporate Debtor upon initiation of CIRP. This statutory moratorium applies to all forums—civil, criminal, quasi-judicial, or administrative—and is aimed at preserving the assets of the Corporate Debtor during the resolution process.

7. Ld. Counsel asserted that the PAO dated 26.12.2017 was passed in breach of the moratorium imposed by the Adjudicating Authority vide order dated 22.12.2017. The attachment directly affects the Corporate Debtor's assets and impairs their availability for resolution under the IBC. Such an action is contrary to both the letter and the spirit of the moratorium provision.

8. Ld. Counsel relied on various Hon'ble Supreme Court Judgments including '*Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.*, [Civil Appeal No. 16929 of 2017]', wherein Hon'ble Supreme Court held unequivocally that the moratorium bars all proceedings, including coercive measures against the Corporate Debtor. Similarly, in '*Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority*, [Civil Appeal No. 12248 of 2018]', the Apex Court reiterated that asset preservation during CIRP is fundamental and actions disrupting asset control are impermissible.

9. The Counsel for the Appellant further submitted that Section 238 of the IBC is a comprehensive non-obstante clause, which gives overriding effect to its provisions notwithstanding anything inconsistent contained in any other law. The said provision ensures that the objectives of the Code are not frustrated by contrary provisions in other enactments, including the PMLA.

10. Ld. Counsel stated that in '*Innoventive Industries Ltd. v. ICICI Bank*, [(2017) SCC OnLine SC 1025]', the Hon'ble Supreme Court held that Section 238 must be given full effect to ensure that the Code achieves its legislative purpose. This principle has been consistently reaffirmed, including by this Hon'ble Tribunal in '*Directorate of Enforcement v. Manoj Kumar Agarwal & Ors., Company Appeal (AT) (Insolvency) No. 575 of 2019*', where it was held that when there is a conflict between the IBC and the PMLA, the IBC will prevail.

11. The Counsel further submitted that in '*Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*, [AIR 2001 SC 958]', the Hon'ble Supreme Court held that where two enactments contain non-obstante clauses, the later in point of time will override the earlier. Since, the IBC was enacted subsequent to the PMLA, its non-obstante clause has superior legislative intent. Thus, counsel for appellant contended that any inconsistency between the IBC and PMLA must be resolved in favour of the IBC, especially in the context of moratorium and resolution.

12. The Counsel for the Appellant also submits that the objective of the IBC, as stated in its Preamble and consistently reiterated by the Hon'ble Supreme Court, is to maximize the value of the Corporate Debtor's assets and to ensure

a time-bound insolvency resolution. The act of attaching the Corporate Debtor's properties during CIRP frustrates this objective.

13. It was the submission of Ld. Counsel that the continuation of attachment, renders the Corporate Debtor's assets unusable and unsellable, thereby reducing the commercial viability of the resolution plan and disincentivizing resolution applicants. The assets, which ought to be monetized for the benefit of creditors, remain locked under the control of the ED, despite the statutory requirement of asset availability for resolution.

14. Ld. Counsel submitted that once a resolution plan has been approved, the assets of the Corporate Debtor must be allowed to flow into the new management without encumbrances. Maintaining the attachment post-approval defeats the commercial expectations of the Successful Resolution Applicant and could render the entire CIRP futile.

15. The Counsel for the Appellant stated that the introduction of Section 32A to the IBC has significantly altered the legal landscape by providing statutory immunity to the Corporate Debtor and its assets from prosecution and attachment for prior offences, provided the resolution plan has been approved and management has changed hands.

16. He further submitted that this provision was upheld by the Hon'ble Supreme Court in '*Manish Kumar v. Union of India, [W.P. (C) No. 26 of 2020]*', where it was held that Section 32A serves a vital purpose of ensuring that bona fide resolution applicants are not deterred from investing in insolvent companies due to past wrongdoings.

17. It was submitted that in '*JSW Steel Ltd. v. Mahender Kumar Khandelwal & Ors., Company Appeal (AT) (Insolvency) No. 957 of 2019*', this Hon'ble Tribunal held that ED and other enforcement agencies cannot attach the assets of the Corporate Debtor, once the resolution plan is approved and control has shifted. Similarly, the Delhi High Court in '*Rajiv Chakraborty, RP of EIEL v. Directorate of Enforcement, W.P. (C) No. 9531/2020*', clarified that the immunity under Section 32A applies after approval and prevents enforcement actions under PMLA.

18. Ld. Counsel thus submitted that the Respondent has no authority to continue with or seek enforcement of attachment once the statutory conditions under Section 32A are satisfied.

19. Ld. Counsel for the Appellant clarified that the instant appeal is limited to the challenge of the validity of the Provisional Attachment Order in the context of IBC provisions, in particular Section 14 (moratorium) and Section 238 (overriding effect). It is distinct from any proceedings pending before the Appellate Tribunal under PMLA, which concern the substantive legality and confirmation of the PAO under the PMLA framework.

20. He further submitted that there is no duplication of relief or forum shopping, as the reliefs sought in the present appeal pertain only to the jurisdictional inconsistency and statutory conflict between IBC and PMLA. Both forums are approached under different legal bases and arise from separate causes of action.

21. Ld. Counsel further asserted that it is incorrect to contend that the Appellant is attempting to undermine the PMLA adjudicatory process by invoking the IBC framework.

22. Ld. Counsel further submitted that during the pendency of this appeal the Resolution Plan of the Corporate Debtor was approved by the Adjudicating Authority based on the application No. M.A. No. 2166 of 2019 on 26.11.2019. However, some inadvertent errors had crept in the order dated 26.11.2019, these were subsequently rectified by the adjudicating Authority vide order dated 27.01.2021.

23. In view of the changes subsequent to filing of the appeal Ld. Counsel sought the following reliefs:

- (i) Declare that the provisions of the IBC, particularly Section 14 and Section 238, override the PMLA to the extent of any inconsistency;
- (ii) Direct that the Corporate Debtor and its assets shall not be subject to any prosecution or attachment post-approval of the Resolution Plan under Section 32A of the Code; and
- (iii) Pass such other order(s) as this Hon'ble Appellate Tribunal may deem fit and proper in the facts and circumstances of the present case.

Submissions of the Respondent No.1 (Directorate of Enforcement)

24. The Ld. Counsel for the Directorate of Enforcement/Respondent submitted that the Hon'ble National Company Law Tribunal (NCLT) and this

Hon'ble Appellate Tribunal (NCLAT) do not possess jurisdiction to adjudicate upon or interfere with provisional or confirmed attachment orders issued under the Prevention of Money Laundering Act, 2002 ("PMLA"). The exclusive jurisdiction to entertain any grievance or challenge to such attachment orders lies with the authorities and appellate forums constituted under the PMLA, namely the Adjudicating Authority under Section 8 and the Appellate Tribunal under Section 26.

25. Ld. Counsel stated that in the present matter, the provisional attachment order dated 26.12.2017 was passed under Section 5(1) of the PMLA by the competent authority, which was subsequently confirmed by the Adjudicating Authority under Section 8(3) of the PMLA on 11.06.2018. Therefore, the only statutory remedy available to the Appellant was to prefer an appeal before the Appellate Tribunal under the PMLA in accordance with Section 26 thereof.

26. Ld. Counsel cited the decision of Hon'ble Supreme Court in '*Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.*, [2019 SCC OnLine SC 1542]', wherein the SC has categorically held that the jurisdiction of the NCLT does not extend to matters involving public law, criminal law, or administrative actions taken under other statutes that fall outside the IBC's domain. The Court observed that a resolution professional cannot bypass the special statutory forums provided under other enactments and must pursue remedies under the designated mechanisms. The observations in paras 41 to 43 of the *Embassy* judgment make it abundantly clear that even if CIRP is

pending, NCLT cannot usurp the jurisdiction conferred on other statutory forums.

27. The Counsel for the Respondent further submitted that once the Provisional Attachment Order (PAO) dated 26.12.2017 was confirmed by the Adjudicating Authority under PMLA on 11.06.2018, it acquired a degree of finality under the scheme of the PMLA. The confirmation order is a quasi-judicial determination of the legitimacy of the attachment and its nexus to alleged money laundering activity. The Resolution Professional's attempt to challenge this attachment before the NCLT, without appealing the confirmation order under Section 26 of PMLA, amounts to circumvention of due process.

28. Ld. Counsel submitted that the Resolution Professional cannot be permitted to re-litigate issues which have already been decided by the competent Adjudicating Authority under the PMLA, especially when such confirmation order has not been assailed before the proper appellate forum. The principle of statutory finality, judicial discipline, and the hierarchy of forums demand that the challenge be directed to the PMLA Appellate Tribunal and not before this Hon'ble Tribunal.

29. The Counsel for the Respondent submitted that the Prevention of Money Laundering Act, 2002 is a special legislation enacted to address the serious menace of money laundering and to provide for confiscation of property derived from or involved in money laundering. The PMLA is a self-contained code with an independent mechanism for investigation, attachment, adjudication, and confiscation of tainted assets. It contains its

own set of procedural and substantive safeguards and is designed to protect the integrity of the financial system and fulfill India's international obligations under FATF (Financial Action Task Force).

30. Ld. Counsel stated that the provisions of the PMLA operate in a separate and distinct field from the IBC. While the IBC is aimed at restructuring and reviving insolvent companies, the PMLA is focused on tracing and confiscating criminal proceeds. These two statutes operate in parallel, and neither negates the other. Importantly, where assets are identified as "proceeds of crime," they do not form part of the asset pool available for insolvency resolution under the IBC, as such assets are liable to be confiscated by the State.

31. Ld. Counsel further stated that the Hon'ble Delhi High Court in '*Deputy Director, Directorate of Enforcement v. Axis Bank & Ors.*, [2019 SCC OnLine Del 7854]', clearly held that IBC cannot override PMLA in cases involving proceeds of crime. The Court ruled that while the IBC and PMLA serve different objectives, in cases involving tainted assets, the provisions of PMLA must prevail, as they serve an equally compelling and constitutionally valid public interest.

32. Ld. Counsel further cited the Judgement of the Hon'ble Supreme Court in '*Gautam Kundu v. Directorate of Enforcement*, [(2015) 16 SCC 1]', wherein Hon'ble SC has held that the PMLA is an important tool to prevent economic offences and that courts must give it due deference when construing overlapping legislative schemes.

33. The Counsel for the Respondent further stated that Section 32A of the IBC, introduced in 2020, provides immunity to the Corporate Debtor from prosecution and property attachment in certain conditions. However, this immunity is **conditional** and **prospective**. The section comes into effect only after the resolution plan has been approved and control of the Corporate Debtor has shifted to a new management unconnected with prior offences.

34. In the present case, the attachment of the Corporate Debtor's properties by the ED occurred on 26.12.2017 and was confirmed on 11.06.2018, well before the approval of the resolution plan in November 2019. Therefore, Section 32A cannot be invoked retrospectively to invalidate actions lawfully taken by the ED in the performance of its statutory duty under PMLA. The assets were already in the custody of law under the PMLA framework before the CIRP reached the resolution stage.

35. Ld. Counsel claimed that this legal position is supported by '*P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24*', wherein the Hon'ble Supreme Court upheld the preventive and punitive objectives of PMLA and declined to dilute its strict application in the face of overlapping legal provisions. Furthermore, in '*Varrsana Ispat Ltd. v. Deputy Director, Directorate of Enforcement, Company Appeal (AT) (Insolvency) No. 493 of 2018*', this Hon'ble Appellate Tribunal, while dealing with similar facts, held that if the attachment under PMLA is pre-CIRP and confirmed, then such action is outside the purview of IBC interference.

36. The Counsel for the Respondent submitted that the invocation of Section 14 by the Appellant to shield assets that are alleged proceeds of crime

is legally untenable. The moratorium under IBC is designed to preserve the economic value of the Corporate Debtor's bona fide assets for resolution—not to protect properties acquired through criminal activity or subject to attachment under a special statute like the PMLA.

37. He stated that to allow a blanket application of moratorium even in cases where tainted assets are involved would frustrate the objectives of the PMLA and encourage corporate fraudsters to launder money and then seek shelter under the insolvency framework. Such an interpretation would undermine public trust in both statutes. It has been held by the Hon'ble Supreme Court in '*Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation*, [(2013) 7 SCC 439]', the courts must prevent the misuse of legal and judicial mechanisms by economic offenders seeking to escape accountability under the guise of procedural or jurisdictional protections.

38. The Counsel for the Respondent further submitted that preventing money laundering and confiscating proceeds of crime are of paramount national and international importance. India, as a signatory to the United Nations Convention Against Transnational Organized Crime (UNTOC) and a member of the FATF, is bound to enforce stringent anti-money laundering laws. The IBC cannot be used as a safe haven to subvert such international obligations or the domestic public interest underlying the PMLA. Allowing Corporate Debtors to claim immunity from attachment under the PMLA by merely undergoing CIRP would severely impair the credibility and effectiveness of anti-money laundering enforcement in India. It would create

an unintended loophole in the legal framework and embolden future financial offenders.

39. In the end he sought dismissal of the appeal for lack of jurisdiction and merit.

Submission of Respondent No.2 – (Successful Resolution Applicant)

40. Ld. Counsel for the Respondent No.2/Successful Resolution Applicant stated that during the pendency of the appeal, the resolution plan submitted by Respondent No.2 was approved and Mr Anil Kohli erstwhile RP of the Corporate debtor was appointed as a monitoring professional to monitor the implementation of the resolution plan. This Tribunal vide its order dated 20.10.2022 allowed the prayer of appellant to implead the SRA in this appeal.

41. Ld. Counsel submitted that the NCLT, Mumbai while approving the resolution plan vide Order date 26.11.2019 was pleased to hold that the Respondent No.2/SRA shall not be held responsible for any statutory outstanding dues and other claims prior to the period of commencement of CIRP. Paragraph No.2-23 of the said Order dated 26.11.2019 are reproduced herein below:

“21. As far as question of waiver of outstanding dues and other claims as on date of approval of the Resolution Plan is concerned, the Resolution Applicant, who will step into the shoes of corporate debtor subsequent to approval of Resolution Plan by the Bench shall not be held responsible for any outstanding

statutory dues and other claims for the period before the Commencement of CIRP.

22. The Resolution Plan is binding on the Corporate Debtor and other stakeholders involved so that revival of the Debtor Company shall come into force with immediate effect and the “Moratorium” imposed under section 14 shall cease to have any effect henceforth. The Resolution Professional shall submit the records collected during the commencement of the Proceedings to the Insolvency & Bankruptcy Board of India for their record and also return to the Resolution Applicant or New Promoters. Certified Copy of this Order be issued on demand to the concerned parties, upon due compliance. That liberty is hereby granted for moving any Miscellaneous Application if required in connection with implementation of this Resolution Plan. That in respect of stepping by the New Promoters/Resolution Applicant into the shoes of the erstwhile Company and taking over the business, the provisions of Companies Act, 2013 shall be applicable and because of this reason a copy of this Order is to be submitted in the Office of the Registrar of Companies, Mumbai.

23. The RP is further directed to handover all records, premises/factories/documents to Resolution Applicant to finalize the further line of action required for starting of the operation. The Resolution Applicant shall have access to all the records/premises/factories/documents through Resolution Professional to finalize the further line of action required for starting of the operation.”

42. Ld. Counsel submits that the attachments and the encumbrances have not been removed till date, which has caused serious prejudiced to them as they have paid the entire amount and the Resolution Plan. He prays for release of assets/properties of the corporate debtor to be transferred to the Respondent No.2 without any fetters.

43. Ld. Counsel further submitted that they have made complete payment under the Resolution Plan and have also deposited interest @ of RBI base rate plus 2% from the period 27.01.2020 to 15.01.2021 due to delayed payment.

44. Ld. Counsel submitted that this Appellate Tribunal vide its order dated 10.06.2022 in CA (AT) (Ins.) No. 445 of 2021 has clarified that the SRA is to get a clean slate and all dues of the Corporate Debtor prior to the commencement of the CIRP stand extinguished. This Hon'ble Appellate Tribunal also examined the terms of the resolution plan at Para 29 of the said order dated 10.06.2022 stating the SRA is entitled to get all the assets of the Corporate Debtor free from any encumbrances and would be available for use by the SRA without any fetters or brevity and clarity.

45. Ld. Counsel submits that in spite of clear order there is still attachment on assets/properties of the Corporate Debtor by the Respondent No.1. Despite fulfilment of all the requirements/conditions as envisaged under Section 32A of the Code, the assets/properties of the Corporate Debtor have not been transferred to SRA without any attachment, encumbrances, Lien etc. till date. In support of his submission, the Respondent has cited the following judgments of Hon'ble Supreme Court and Hon'ble High Courts:

Judgments:

- (i) Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531: Para 66-67.
- (ii) Manish Kumar vs. Union of India (UOI) and Ors. (19.01.2021 SC): 2021 5 SSC 1, Para 246-247, 253-259
- (iii) Arya Constructions through Mr. Amit Singh Yadav versus Punjab National Bank Ltd; W.P (C) No. 10768/2024, Hon'ble High Court of Delhi, Para 19,20,23
- (iv) Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors, (2022) SCC 401, Para 122
- (v) V Hotels Limited Vs. Directorate of Enforcement and Ors, Order Dated 28.11.2024 passed by the Hon'ble High Court of Bombay, Writ Petition (L) No. 32216 of 2024, Para 18-20.
- (vi) Ghanshyam Mishra and Sons Private Limited versus Edelweiss Assets Reconstruction Company 2021 SCC online SC 313, Para 95(I)
- (vii) Shiv Charan and Ors. versus Adjudicating Authority under the prevention of Money Laundering Act, 2002, Department of Revenue And Ors, Writ Petition (L) No. 9943, Hon'ble High Court of Judicature at Bombay, Para- 11, 14, 52.

46. Summing up his arguments Ld. Counsel state that in view of aforesaid facts and settled position of law as seen from cited judgments this Appellate Tribunal may allow the appeal and direct unencumbered/attachment free/Lien free transfer of properties of the Corporate Debtor to the Respondent No.2/SRA.

Analysis and findings

47. We have heard the detailed submissions advanced by the Learned Counsels for both the Appellant and the Respondents. We have gone through voluminous records and written statements of the parties. Based on the same we frame the following 3 issues for determination:

- I. Whether the provisional attachment of assets by the Directorate of Enforcement (ED) under the PMLA violates the moratorium imposed under Section 14 of the IBC;
- II. 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; and
- III. Whether the NCLT/NCLAT possess jurisdiction to issue directions affecting attachment orders passed under the PMLA and confirmed by the PMLA Adjudicating Authority.

ISSUE I: Whether the provisional attachment of assets by the Directorate of Enforcement (ED) under the PMLA violates the moratorium imposed under Section 14 of the IBC.

48. Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 provides that upon the commencement of CIRP, there shall be a moratorium prohibiting, inter alia, the institution or continuation of suits or proceedings against the corporate debtor, including execution of any judgment or order. The object of the moratorium is to maintain the status quo of the debtor's assets, protect the value of the debtor's estate, and ensure that Corporate Insolvency Resolution Process can take place without disruption by individual enforcement actions.

49. The Appellant's submission is that the ED's issuance of a Provisional Attachment Order (PAO) on 26.12.2017, just four days after the CIRP commenced on 22.12.2017, constitutes a proceeding in breach of this moratorium. It is contended that the moratorium under Section 14 applies to "all proceedings" irrespective of their nature-civil, criminal, quasi-judicial or otherwise—and hence includes attachment actions under PMLA. It is further argued that such attachments impair the CIRP's viability, as the locked assets cannot be accessed or monetized.

50. Per contra, the Respondent argues that proceedings under the PMLA relate to criminal law enforcement and are not in the nature of recovery or enforcement proceedings contemplated under Section 14 of the IBC. It is further contended that the assets attached are not merely commercial assets, but are alleged "proceeds of crime", which under the scheme of the PMLA, are

liable to be preserved, adjudicated and potentially confiscated in the interest of justice and public interest.

51. Based on the records, we find the following timeline of relevant events:

- 22.12.2017 CIRP commences against Dunar Foods Ltd. By the order of the NCLT.
- 26.12.2017, a Provisional Attachment Order was issued by the ED under Section 5(1) of the PMLA, linked to alleged tainted funds received by Dunar Foods Ltd. from PD Agroprocessors Pvt. Ltd.
- 11.06.2018 The attachment order confirmed by the PMLA Adjudicating Authority.

This timeline clearly shows that the ED's action occurred after the moratorium had commenced. However, the mere temporal sequence is not determinative; the key issue is whether the ED's attachment under PMLA qualifies as a "proceeding" hit by the moratorium.

52. In '*Alchemist ARC v. Hotel Gaudavan Pvt. Ltd.* [2017 SCC OnLine SC 1362]', Hon'ble Supreme Court unequivocally held that moratorium under Section 14 covers all legal proceedings. However, the issue therein related to civil proceedings and recovery suits.

53. In '*Embassy Property Developments v. State of Karnataka*, [(2019) SCC OnLine SC 1542]', Hon'ble Supreme Court held that NCLT does not have jurisdiction over matters that arise from statutory or administrative actions under public law, thereby drawing a distinction between the economic domain of IBC and the criminal/public domain of other laws.

54. Further, in *'Varrsana Ispat Ltd. v. ED (Company Appeal (AT) (Ins.) No. 493 of 2018)*, this Appellate Tribunal held that if attachment under PMLA is based on prior ECIRs and is duly confirmed under PMLA provisions, then such action cannot be interfered with by the IBC forum merely because CIRP is ongoing.

In the present case, while the PAO was passed a few days after CIRP admission, the ECIR investigation commenced as far back as 2013. The ED's proceedings were therefore rooted in pre-existing criminal investigation processes, and the assets involved were allegedly acquired as proceeds of money laundering taking them outside the regular asset pool as contemplated under IBC.

55. Based on the discussion above we observe the following:

- Section 14 aims to preserve lawful, unencumbered assets for the purpose of resolution.
- However, if the property is alleged to be “proceeds of crime” and is already under adjudication by competent authority under a penal statute, such property cannot be deemed to be part of the freely available resolution estate.
- The PMLA provides its own adjudicatory process and remedy for challenging attachments, which is separate from the IBC.

Therefore, the issuance of the PAO dated 26.12.2017 by ED under the PMLA does not violate the moratorium under Section 14 of the IBC. Accordingly, the Issue (I) is answered in the negative.

ISSUE II: 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

56. Crux of this issue lies in a potential conflict between two central legislations viz. the Insolvency and Bankruptcy Code, 2016 (IBC) and the Prevention of Money Laundering Act, 2002 (PMLA). The IBC is a commercial legislation aimed at facilitating time-bound insolvency resolution of financially distressed companies. On the other hand, the PMLA is a penal statute that seeks to identify, attach, and confiscate properties derived from criminal activities such as money laundering.

Section 238 of the IBC states:

*“This is what is known in legal parlance as a **non-obstante clause**; a provision meant to give the statute overriding effect over any other law that contains inconsistent provisions.”*

57. The Appellant argues in view of the non-obstante clause and the fact that IBC is a later legislation, if the provisions of the PMLA in particular, the attachment of corporate debtor’s assets, stand in the way of carrying out a successful insolvency resolution, such attachment must give way to the IBC.

58. The Respondent/ED, however, contends that there is no inconsistency. The PMLA and IBC, according to the ED, operate in different domains; one deals with criminal proceeds; the other, with commercial insolvency. Where the asset is tainted as a “proceed of crime,” it ceases to be a legitimate

corporate asset and cannot be deployed for commercial resolution. In such cases, the PMLA must prevail in its domain.

59. Section 238 of the IBC is intended to ensure that the objects of the Code are not frustrated by competing statutory provisions. In *'Innoventive Industries Ltd. v. ICICI Bank, [(2017) 1 SCC 407]'*, the Hon'ble Supreme Court held that: Section 238 overrides all other laws, including company law provisions, to the extent of inconsistency. This ensures that once IBC applies, other statutes cannot interfere.

60. However, the laws do not operate in a vacuum. For the non-obstante clause to apply, two conditions must be satisfied:

- (i) There must be a clear inconsistency between the two statutes;
- (ii) Both statutes must operate in the same field or deal with the same subject matter.

Therefore, the key question is: Do the IBC and PMLA operate in the same legislative field, and do they deal with the same subject matter? If the answer is yes, then Section 238 of the IBC will override the PMLA. If not, the two must be harmonized to allow coexistence. We will now analyze both the statutes.

61. The PMLA is a criminal law designed to trace, attach, and confiscate proceeds of crime. Essentially it provides for:

- Investigation under ECIRs (equivalent to FIRs);
- Attachment under Section 5;
- Adjudication and confirmation by a specialized authority;

- Appeal to an Appellate Tribunal;
- Confiscation to the Central Government if offences are proved.

62. The IBC, by contrast, is a commercial and economic legislation that essentially provides for:

- Admission of insolvency applications;
- Constitution of the Committee of Creditors;
- Resolution plan approval;
- Liquidation, if no resolution is achieved.

63. The objectives of both statutes, though occasionally intersecting, are not inherently inconsistent. While the IBC aims at reviving commercial entities, the PMLA seeks to punish crime and prevent unjust enrichment through illicit means.

64. Hon'ble Delhi High Court in '*Deputy Director, ED v. Axis Bank* [2019 SCC OnLine Del 7854]' explicitly held that IBC and PMLA operate in different fields and must be harmoniously construed. Tainted assets cannot be considered part of the resolution estate under IBC.

65. A conflict may arise, when the ED attaches an asset during CIRP, rendering it unavailable for resolution. The Appellant contends that such action frustrates the Code's purpose of value maximization. While it is true that the IBC thrives on a free, unencumbered asset base to attract resolution applicants. If prime assets are rendered unusable due to attachment, the likelihood of resolution reduces. That, however, is not a sufficient ground to

invalidate another statute's valid operation, especially when it relates to proceeds of crime.

66. Courts have consistently held that tainted assets are not protected under commercial laws. In '*Gautam Kundu v. ED*, [(2015) 16 SCC 1]', the Hon'ble Supreme Court emphasized the importance of preserving penal provisions in the face of competing laws. Hon'ble court observed that Where money laundering is involved, courts must be cautious not to allow commercial or procedural mechanisms to defeat the legislative intent of penal enforcement.

67. The Appellant has also placed reliance on Section 32A of the IBC (introduced in 2020), which grants immunity to the Corporate Debtor and its property post-resolution. Section 32 A has been extracted below:

"Section 32A (1) states that once a resolution plan is approved and control passes to a new, unrelated management, the Corporate Debtor shall not be liable for offences committed prior to the commencement of CIRP.

Section 32A (2) further provides that such property shall not be attached or confiscated."

However, in the present case, the PAO was issued on 26.12.2017 and confirmed on 11.06.2018. The resolution plan was approved only in 2019. This makes Section 32A inapplicable in the present case, as the property was already under valid legal attachment before the statutory conditions under Section 32A were met.

68. This view finds support in '*Manish Kumar v. Union of India* [(2021) 5 SCC 1]', where the Hon'ble Supreme Court upheld the prospective nature and conditional immunity under Section 32A.

69. The doctrine of harmonious construction mandates that both statutes must be read in a manner where they complement each other, not destroy each other. Secondly, if two special laws operate in different fields, neither shall override the other, unless they are irreconcilably inconsistent.

70. 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.

71. 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.

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

72. The Appellant argues that his application under Section 60(5) of the IBC was limited to seeking release of assets to ensure CIRP continuity and that there is no forum shopping. The Respondent on the other hand relies on the judgements of Hon'ble SC in '*Embassy Property (Supra)*' and this Appellate Tribunal in '*Varrsana Ispat Ltd.(supra)*' to argue that attachment orders confirmed under the PMLA fall exclusively within the PMLA statutory framework and not within the NCLT/NCLAT's jurisdiction.

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.

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. The relevant paras 24 -25 and 27-31 of the judgment are extracted below:

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

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 to the order dated 10.10.2019 was illegal or without jurisdiction.

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.

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 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.

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 supplied)

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.

Accordingly, Issue III is also answered in the negative. All the 3 issues have been decided in the negative against the contentions of the Appellant.

76. In view of the findings above, the appeal is dismissed. Pending I. As, if any are closed. There would be no order as to costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

SA/Pragya (LRA)