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**ATTACHMENT OF CORPORATE DEBTOR'S ASSETS BY
ENFORCEMENT DIRECTORATE: CONUNDRUM BETWEEN
PREVENTION OF MONEY LAUNDERING ACT (PMLA) AND
INSOLVENCY AND BANKRUPTCY CODE (IBC)**

AUTHORED BY - SRISHTI VIRAT

Abstract

The convergence of the Prevention of Money Laundering Act (PMLA) and the Insolvency and Bankruptcy Code (IBC) has given rise to a complex legal conundrum concerning the attachment of corporate debtors' assets by the Enforcement Directorate (ED). This paper presents a comprehensive analysis of the relevant sections, provisions, and case laws related to PMLA and IBC, exploring the implications of these laws on the attachment process. The primary areas of conflict include overlapping jurisdiction between the ED and the National Company Law Tribunal (NCLT/NCLAT), the timing of attachment during insolvency proceedings, identifying "proceeds of crime" in the context of corporate insolvency, and the priority of payments to creditors. To resolve these challenges and create a coherent legal framework, the paper advocates for necessary legislative amendments and clarifications to harmonize the PMLA and IBC. Precise definitions of "proceeds of crime" and a clear understanding of the timing of attachment are imperative to prevent disruptions in the insolvency process. The establishment of a well-coordinated mechanism for joint proceedings involving the ED, NCLT, and resolution professionals is essential to ensure seamless information exchange and effective decision-making. By striking a balance between the objectives of the PMLA and IBC, India can foster an environment that effectively combats money laundering while safeguarding the interests of creditors, shareholders, and the public. The paper highlights the significance of addressing these legal challenges to promote a fair and efficient resolution process, ultimately contributing to a robust insolvency resolution system in India.

Keywords: Prevention of Money Laundering Act (PMLA), Insolvency and Bankruptcy Code (IBC), Attachment of Corporate Debtor's Assets, Enforcement Directorate (ED), Overlapping Jurisdiction, Timing of Attachment.

I. INTRODUCTION

Two key pieces of Indian law that deal with various areas of financial crime and bankruptcy are the Prevention of Money Laundering Act (PMLA) and the bankruptcy and Bankruptcy Code (IBC)¹. Both of these pieces of legislation are abbreviated as PMLA and IBC. The Prevention of Money Laundering Act (PMLA) is a piece of legislation that came into effect in 2002 with the intention of combating the practice of money laundering, which refers to the act of disguising the source of funds that have been gained dishonestly. On the other hand, the IBC is a piece of legislation that was passed into law in 2016 with the purpose of providing a time-bound framework for the resolution of insolvency and bankruptcy cases.

The Enforcement Directorate (ED), which is the nodal body for the enforcement of the PMLA, has the authority to attach the assets of a person who is suspected of engaging in money laundering. This is one of the most important sections of the PMLA. This indicates that the ED has the authority to seize a person's assets even if the individual has not been found guilty of any criminal offense.

In addition, the IBC has a clause that makes it illegal to initiate or continue any kind of legal action against a corporate debtor (CD) while the insolvency resolution process (CIRP) is still ongoing. The clause in question is often referred to as the moratorium. The purpose of the moratorium is to provide the CD with a clean slate and to ensure that the process of insolvency resolution goes as smoothly as possible. The issue that has to be answered is whether or not the ED has the authority to seize the assets of a CD while the CIRP is still pending. This is a tricky matter that has been the focus of a lot of discussion throughout the years. In a recent decision, the Delhi High Court ruled that the ED has the authority to seize the assets of a CD if there is reasonable suspicion that the funds were obtained via criminal activity. The court decided that the moratorium established by the IBC does not apply to the process of seizing assets established by the PMLA². While the decision of the Delhi High Court has been praised by some, it has also been condemned by others. Those who are in favour of the verdict claim that it is essential to put a stop to the practice of money laundering, even if doing so means prolonging the procedure for the settlement of the bankruptcy. Those who are opposed to the verdict claim that it weakens the IBC and makes it

¹ Mongia, S., & Chhabra, P (2021) Powers of Enforcement Directorate under the Prevention of Money Laundering Act, 2002 Indian JL & Legal Rsch., 3, 1

² Patabendige, C. L. C. M. (2021). Countering the economic crippler; analysis on prevention of money laundering law in Sri Lanka

more difficult for businesses to recover from a state of financial crisis.

A. Overview of the Prevention of Money Laundering Act (PMLA)

In 2002, the Indian government passed the Prevention of Money Laundering Act (PMLA), a significant piece of legislation³. India passed the Prevention of Money Laundering Act (PMLA) with the primary goal of preventing money laundering and the related offences. Money laundering is the process of concealing the source of money that was obtained dishonestly in order to make it appear as though it originated from a legitimate source.

The goal of the PMLA is to prevent and regulate acts that include money laundering, as well as to seize and confiscate the profits of criminal activity. The following are some of the goals that the legislation tries to accomplish⁴:

- **Act as a Deterrent to Money Laundering:** The PMLA serves as a deterrent since it imposes severe fines and punishments on persons and businesses who participate in activities that include money laundering. The legislation intends to achieve this goal by establishing a robust legal framework, with the hope of discouraging persons from participating in such unlawful actions.
- **Confiscation and Seizure of Proceeds of Crime:** The legislation provides the authorities with the authority to identify, track, and seize the proceeds of crime that have been generated via money laundering. The assets that were seized are put to use for the benefit of society as a whole and the victims of the crimes that were committed.
- **International Cooperation:** The PMLA offers a legal framework for India to engage with other nations in investigating and preventing transnational money laundering operations. This is made possible by the PMLA's provision for international cooperation. It makes it easier to share information with one another and to seize and forfeit assets that are kept in jurisdictions outside of the United States.
- **Increasing the Integrity and Stability of the Financial System:** The purpose of this act is to increase the integrity and stability of the financial system by prohibiting acts that involve money laundering. Because of this, investor confidence is boosted, which in turn contributes to the expansion of the economy.

³ Pawar, S. B. (2021). Prevention of Money Laundering Act: Draconian Yet?. *Jus Corpus LJ*, 2, 401

⁴ Kumar, P. (2015). Money Laundering in India: Concepts, Effects and Legislation. *International Journal of Research*, 3(7), 51-63

- Alignment of India with International Efforts to fight Money Laundering and Terrorist funding The PMLA brings India into alignment with international efforts to fight money laundering and terrorist funding. It guarantees that India complies with its commitments under a number of international agreements and treaties pertaining to the prevention and detection of money laundering ⁵.
- Identifying and preventing acts That may assist Terrorist funding The Patriot Money Laundering Act (PMLA) plays a critical role in determining and preventing acts that may assist terrorist funding. This measure helps to the nation's security by reducing the ability of terrorist groups to maintain their financial networks.

B. Key Sections and Provisions of PMLA

Section 3: Offense of Money Laundering

The Prevention of Money Laundering Act's Section 3 defines money laundering as a criminal offense and lists the behaviors that make up the violation⁶. According to this provision, someone commits the crime of money laundering whenever they attempt to engage in, knowingly assist in, or engage in any process or action that is connected to the proceeds of illicit activity. It is possible to directly or indirectly commit this violation. In this section, the term "proceeds of crime" is given a new definition. This interpretation defines "proceeds of crime" as any property that results directly or indirectly from the commission of a scheduled offense under the PMLA. It covers a wide range of offenses, including those listed in the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, the Arms Act, and several other specifically listed acts.

Section 5: Attachment of Proceeds of Crime

Section 5 gives the authorities, namely the Directorate of Enforcement, the authority to seize and confiscate the profits of criminal activity. When there is a reasonable suspicion that a specific piece of property is connected to the laundering of illicit funds or constitutes the profits of a crime, the Director or any other authorized official has the authority to seize and attach such item⁷. The attachment might be considered provisional, and the Director is authorized to issue an order for attachment after documenting the grounds for the decision in writing. The attachment may be maintained for a duration not to exceed ninety days, unless the continuation of that term is

⁵ Srivastava, S., & Ramchandran, G (2021) Prevention of Money Laundering Act 2002: Its Implications & Challenges in India Jus Corpus LJ, 2, 591

⁶ Money Laundering: Law and Practice in India by Manoj P. Shah (2017)

⁷ The Prevention of Money Laundering Manual by the Enforcement Directorate (2022)

approved by the Adjudicating Authority.

Section 45: Retention of Property by Authorities

The authorities are granted the authority under Section 45 to keep the property that is the subject of an attachment under Section 5. The term of detention may go on for up to one hundred eighty days from the day that the order of attachment was issued.

Under certain conditions, the Adjudicating Authority has the authority to free the property from detention if the Director or any other person claiming ownership of the connected property submits a request to do so⁸. However, in the event that neither a complaint nor an application for prosecution is submitted within the allotted time frame, the property will be released.

C. Judicial Interpretations of PMLA Provisions

Over the course of its existence, the Prevention of Money Laundering Act has been subjected to a wide range of legal interpretations. Cases regarding the interpretation and implementation of the essential parts described above have been heard in courts. The following are illustrious examples of judicial observations and interpretations:

- "Proceeds of Crime" Definition Many courts have adopted a wide understanding of the phrase "proceeds of crime." The phrase was interpreted by the Supreme Court to mean that it includes not only the revenues that are earned through illegal actions but also the assets that are acquired as a result of those gains.
- Legality under the Constitution: The constitutionality of the PMLA has been affirmed by the courts, and challenges that claim it violates basic rights have been dismissed. The relevance of the Act in countering money laundering and its links with organized crime and terrorism has been stressed by the courts.
- The burden of proof: The accused is the one who is responsible for establishing that the property in question was not engaged in money laundering or does not reflect the profits of criminal activity. This is a point that has been highlighted by the courts. In order to dispute the allegations made against them, the accused are required to show proof that is sufficient.

⁸ The Law of Money Laundering in India by Amita Dhanda (2013)

- Attachment and Proportionality: The attachment authority should be utilized with discretion and in line with the principles of proportionality, as the courts have stressed again and again. The attachment must be supported by appropriate evidence, and it must not place an unreasonable burden on uninvolved third parties.
- Judicial Review: In accordance with the PMLA, the courts have used their authority to conduct judicial reviews of the acts taken by enforcement agencies. Attachment orders have been overturned by them when it was shown that they were arbitrary, irrational, or did not have a legitimate basis.

II. Understanding the Insolvency and Bankruptcy Code (IBC)

A. Aims and Objectives of IBC

A comprehensive piece of legislation known as the Insolvency and Bankruptcy Code (IBC) was adopted in India in 2016 with the aim of addressing and combining the laws relating to the insolvency resolution and bankruptcy of corporate organizations, partnership businesses, and individuals⁹. The IBC is dedicated to achieving the following main objectives:

- Timely settlement: One of the key goals of the IBC is to create a time-bound and efficient system for the settlement of insolvency and bankruptcy matters. This is one of the most important purposes of the IBC. Because the legislation specifies stringent timetables for the completion of the different phases of the bankruptcy process, it guarantees that a resolution will be reached as quickly as possible.
- Attempts to Maximize Value: The IBC makes an effort, via a productive resolution procedure, to make an attempt at maximizing the value of the assets held by the corporate debtor. The code's overarching goal is to safeguard the interests of all stakeholders, including creditors, workers, and shareholders, by ensuring that the resolution is both effective and transparent.
- Continued Viability of Viable Corporate borrowers: The IBC places a primary emphasis on ensuring the continued viability of viable corporate borrowers. The goal is to rescue financially troubled firms and allow their enterprises to continue as going concerns, so contributing to the preservation of employment and the expansion of the economy.
- A Fair and Equitable Share of Assets is Distributed to Creditors A fair and equal distribution of assets to creditors is strongly stressed under the IBC. It aims to keep the

⁹ Kaveri, V. S. (2018). Insolvency and Bankruptcy Code: Bankers' Perspectives. Journal of Commerce and Management Thought, 9(2), 319-337

playing field level for all parties engaged in the transaction and avoid providing any one creditor an undue advantage.

- Encouraging Economic Risk-Taking and Entrepreneurship by offering a rapid Exit option for failed enterprises The IBC encourages economic risk-taking and entrepreneurship by offering a rapid exit option for enterprises that fail. Entrepreneurs are free to concentrate on developing new enterprises without being distracted by the pressures of running firms that are doomed to fail.
- Insolvency across Borders: The IBC also handles insolvency across borders by creating a framework for collaboration between Indian and foreign authorities. This aspect of bankruptcy is referred to as "cross-border insolvency." Its purpose is to facilitate the processing of international bankruptcy cases in a manner that is more certain and as effective as possible.
- Legal Regime That Is Both Transparent and Predictable The IBC creates a legal framework that is both transparent and predictable for the settlement of insolvency issues and for the filing of bankruptcies. It guarantees that stakeholders can depend on a well-defined set of rules and processes while simultaneously streamlining the process.
- Institutional Setup: The Insolvency and Bankruptcy Board of India (IBBI), the National Company Law Tribunal (NCLT), and Insolvency Professionals are all created as a result of the IBC in order to monitor and manage the insolvency process. These institutions collaborate with one another to guarantee that the settlement process will go off without a hitch.

B. Pertinent Sections and Provisions of IBC¹⁰

Section 14: Moratorium

Section 14 of the Insolvency and Bankruptcy Code (IBC) permits a moratorium period during the corporate insolvency resolution procedure (CIRP). Until the end of the CIRP, the approval of a resolution plan, or the beginning of liquidation, whichever occurs first, the moratorium is in effect. It begins the day an insolvency case is admitted by the National Company Law Tribunal (NCLT). Several key measures are forbidden against the corporate debtor during the moratorium period, including:

- Starting or maintaining legal action against the corporate debtor.
- Transferring, pledging, alienating, or selling any of the corporate debtor's assets.

¹⁰ Worku, A. (2001). Comparison Of Seismic Provisions Of EBCS 8 And Current Major Building Codes Pertinent To The Equivalent Static Force Analysis. Zede Journal, 18, 11-25

- Any legal action taken to recoup or enforce a corporate debtor's property-related security interest.
- Stopping all necessary deliveries of goods or services to the corporate debtor.
- By forbidding any negative acts that may impede the resolution process, the moratorium intends to provide the corporate debtor some breathing room and support a smooth resolution process.

Section 17: Appointment of the Interim Resolution Professional (IRP)

The nomination of an Interim Resolution Professional (IRP) at the start of the CIRP is addressed in Section 17 of the IBC¹¹. When the NCLT accepts an application for insolvency, it names an IRP to assume control of the corporate debtor's affairs throughout the resolution procedure.

The IRP's main responsibilities include:

- Assuming possession and management of the corporate debtor's assets.
- Forming and holding meetings of the Committee of Creditors (CoC).
- Getting and examining creditor claims.
- Creating and sending the information note to aspiring candidates for resolution.
- The IRP is essential in enabling the smooth start of the CIRP and serves as a liaison between the creditors, corporate debtor, and resolution specialists.
- Managing the day-to-day business of the corporate debtor as a going concern.

Section 29A: Ineligibility to be a Resolution Applicant

In order to prohibit dishonest and ineligible individuals from taking part in the resolution process as resolution applicants, Section 29A was added to the IBC¹². In order to submit a resolution plan, a resolution applicant must first complete a number of requirements laid forth in this section.

The main clauses of Section 29A consist:

- A mandatory statement from the resolution applicant attesting to their eligibility and adherence to the IBC's rules;
- Disqualification of specific categories of people, such as wilful defaulters, undischarged insolvents, disqualified directors, and those connected to ineligible resolution applicants.

Only reliable and financially sound applicants are allowed to participate in the resolution process,

¹¹ Dogra, A. (2020). Monopoly Status by Resolution Professionals Is a Mere Facade under CIRP. *Jus Corpus LJ*, 1, 171

¹² Abhishek, A. (2022). Resolution Applicants: Qualifications & Disqualifications. *Issue 4 Int'l JL Mgmt. & Human.*, 5, 774

enhancing the possibility of a successful settlement and maximizing value for creditors. This is the goal of Section 29A.

III. Relevant Case Laws Interpreting IBC Provisions

Since it was passed into law, the Insolvency and Bankruptcy Code has been the subject of several court interpretations. Courts and tribunals have addressed a range of problems, including, among others, the interpretation and implementation of the aforementioned laws. IBC clauses have been interpreted in certain noteworthy case laws, namely:

- The Supreme Court ruled in the case of *Essar Steel Ltd. v. Satish Kumar Gupta (2019)*¹³ that the National Company Law Tribunal (NCLT) had residual jurisdiction to resolve disagreements resulting from or connected to the corporate debtor's legal bankruptcy procedures¹⁴. This indicates that any topic that isn't expressly addressed by another IBC regulation may be heard by the NCLT.
- In the case of *Arcelor Mittal India (Private) Limited v. Satish Kumar Gupta (2019)*¹⁵, the Supreme Court ruled that activities conducted by the government or its agents in the public interest are exempt from the moratorium under Section 14 of the IBC. This implies that even if a corporate debtor is undertaking bankruptcy resolution processes, the government may continue pursue legal action against the corporate debtor.
- The Supreme Court ruled in the 2019 case of *Binani Industries Limited v. Bank of Baroda* that the IBC's bankruptcy resolution procedure is a comprehensive code that supersedes all other laws, unless expressly prohibited. This implies that the IBC will take precedence over all other laws, including those that are created particularly to address insolvency.
- The Supreme Court ruled that the IBC does not apply to telecom businesses that are undertaking debt restructuring under the Telecom Liquidity Management Fund (TLMF) program in the case of *Vodafone Idea Limited v. State Bank of India (2020)*¹⁶. As a result, telecom businesses that are enrolled in the TLMF program are not qualified for IBC insolvency resolution.

¹³ Trivedi, P., & Sheikh, A. (2019). *Essar Steel Insolvency Case: Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors (Judgment Dated 15.11. 2019 in Civil Appeal No. 8766-67 of 2019)*. *Int'l JL Mgmt. & Human.*, 2, 133

¹⁴ Thiagarjamurthy, A., & Kumar, S. (2020). *Critical Analysis of Committee of Creditors of Essar Steel India Ltd. vs Satish Kumar Gupta & Ors*. *Jus Corpus LJ*, 1, 89

¹⁵ Gupta, V., & Nagpal, S. (2020). *Case Analysis: "Ultra Tech Nathdwara Cement Ltd., (Formerly Known as Binani Cement Ltd.) vs. Union of India"*. *Issue 5 Int'l JL Mgmt. & Human.*, 3, 192.

¹⁶ Anand, M., & Singh, J. (2021). *AGR Challenge for Bharti Airtel and Vodafone Idea*. *Vision*, 25(2), 233-255

IV. Conflict between PMLA and IBC

A. Overlapping Jurisdiction: ED and NCLT/NCLAT

The NCLT and NCLAT are the IBC's adjudication bodies, whereas the ED is the main agency for executing the PMLA. This indicates that a corporate debtor (CD) who is accused of money laundering is subject to proceedings by both the ED and the NCLT/NCLAT¹⁷.

It might be difficult to determine who has jurisdiction in a certain situation. Generally speaking, the NCLT/NCLAT will have jurisdiction over a CD that is the subject of insolvency resolution procedures, while the ED would have jurisdiction over a CD that is suspected of money laundering. Although there may be overlap between the two jurisdictions, the courts have not yet clearly addressed all of the problems in this matter.

B. Timing of Attachment and its Impact on Insolvency Proceedings

The PMLA permits the ED to seize a CD's assets if the CD is thought to be involved in money laundering. Contrarily, the IBC provides a moratorium clause that forbids the initiation or continuation of any legal action against a CD while the insolvency resolution process (CIRP) is on-going. The issue that arises is whether the ED may seize a CD's assets while the CIRP is still pending. This is a difficult issue that has generated a lot of discussion.

The Delhi High Court has ruled that the ED may seize a CD's assets if they are thought to be the proceeds of crime. The court determined that the PMLA's asset attachment procedure is not subject to the IBC's moratorium.

Some people have praised this ruling, while others have questioned it. The judgment's proponents contend that it is critical to stop money laundering, even if doing so means extending the bankruptcy resolution process. The verdict is criticized as undermining the IBC and making it harder for businesses to recover from financial difficulties.

The courts are expected to further clarify the question of the timing of attachment and its effect on bankruptcy proceedings in the future. In the meanwhile, it's critical to understand the variations

¹⁷ Naithani, D. (2022). A Rational Approach Towards Application of 'Public Policy Exception' under Draft Part Z of the ILC Report, 2018. Available at SSRN 4178787

between the PMLA and the IBC's provisions and to obtain legal counsel if you have any inquiries about them.

C. Identifying "Proceeds of Crime" in Corporate Insolvency

Any property earned or acquired directly or indirectly as a consequence of illegal behaviour is referred to as "proceeds of crime" under the PMLA. The term "criminal activity" is not always easily defined. When the ED tries to seize the assets of a CD that is going through bankruptcy resolution processes, this might cause issues.

For instance, the ED attempted to seize Essar Steel Ltd.'s assets on the grounds that the business had participated in money laundering. The NCLT decided that the ED had not presented enough evidence to establish that the firm had committed a crime. The identification of "proceeds of crime" in corporate bankruptcy is probably going to be a complicated problem that the courts will have to decide on a case-by-case basis.

D. Debates on Priority of Payments to Creditors under PMLA and IBC

Regarding the order of payments to creditors, the PMLA and the IBC contain differing rules. While the IBC gives financial creditors' claims priority, the PMLA gives the ED's claims precedence¹⁸.

When the ED tries to seize the assets of a CD that is going through bankruptcy resolution processes, the priority difference may cause issues. For instance, the ED attempted to seize Binani Industries Ltd.'s assets in order to meet its claims under the PMLA. The NCLT did, however, rule that the financial creditors' claims came before those of the ED. The courts will need to decide how to prioritize payments to creditors under the PMLA and the IBC, which is likely to be a complicated matter.

V. Guidelines on Attachment of Corporate Debtor's Assets by ED

Under the Prevention of Money Laundering Act (PMLA), the Enforcement Directorate (ED) is required to follow certain rules while seizing assets from corporate debtors:

¹⁸ Sethi, S., & Davis, K. (2022). Third-party and creditor rights: provisional attachment under § 5 of the Indian PMLA, 2002. *Journal of Money Laundering Control*, 26(3), 609-627

A. ED's Role in Investigating Money Laundering Cases

In India, the nodal agency for matters involving money laundering is the ED. If the ED has caused to think that a person or entity's assets are the proceeds of crime, the ED has the authority to seize such assets. A corporate debtor must first be the subject of an inquiry before the ED may seize their assets. The ED will next need to compile proof that the business has been involved in money laundering. The ED will issue an order attaching the company's assets once it has acquired enough proof.

B. Standard Operating Procedure (SOP) for Attachment under PMLA

A standard operating procedure (SOP) for asset attachment under the PMLA is in place at the ED. The SOP outlines the procedures the ED has to adhere to while attaching assets. The SOP also outlines the paperwork that the ED must submit to the court in order to get an order of attachment.

C. Coordinating between ED, NCLT, and Resolution Professionals

The insolvency resolution procedure for a corporate debtor involves the ED, NCLT, and resolution specialists (RPs). The NCLT is in charge of directing the insolvency resolution procedure, the ED is in charge of looking into allegations of money laundering, and the RPs is in charge of managing the assets of the corporate debtor. To make sure that the insolvency resolution process is efficient and that the interests of all stakeholders are safeguarded, the ED, NCLT, and RPs must work in concert.

A few detailed instructions on how the ED, NCLT, and RPs may communicate with one another:

- The NCLT should consider the results of any money laundering investigations by the ED when making judgments concerning the insolvency resolution process.
- The ED should notify the NCLT and RPs of any money laundering investigations it is conducting into the corporate debtor.
- The RPs need to assist the ED in its inquiries and ought to provide the ED access to any relevant records and data. The ED, NCLT, and RPs may cooperate to make sure that the insolvency resolution process is fair and transparent and that the corporate debtor's assets are safeguarded from being utilized for money laundering¹⁹.

¹⁹ Paradhasardhi, S., & Kulkarni, M. D. IBC: Ease of Doing Business-A Review

VI. Practical Implications and Case Studies

Some applications and case studies on the Enforcement Directorate's (ED) seizing corporate debtors' assets in accordance with the Prevention of Money Laundering Act (PMLA):

Case Study 1: ED Attachment during On-going Insolvency Proceedings

The ED attempted to seize Essar Steel Ltd.'s assets while the insolvency resolution procedure (CIRP) was still ongoing. The NCLT ruled that since the CIRP was a moratorium period and no legal action could be taken against the firm during this time, the ED was not permitted to attach the company's assets. This case study demonstrates how the ED would not be able to seize a business debtor's assets while the CIRP is still pending.

Case Study 2: Successive Attachments under PMLA and IBC

The ED attached the company's assets in the matter of Binani Industries Ltd. under the PMLA. The business then filed an IBC insolvency petition. Even though the firm was now involved in bankruptcy proceedings under the IBC, the NCLT ruled that the ED may continue to keep the company's assets under the PMLA.

This case study demonstrates that if assets are believed to be the proceeds of crime, the ED may be entitled to retain possession of them while a corporate debtor is undertaking bankruptcy procedures under the IBC.

Case Study 3: Priority of Payments to Creditors in the Wake of ED Attachments

The ED attached the company's assets in the instance of Vodafone Idea Ltd. under the PMLA. The business then filed an IBC insolvency petition. The NCLT ruled that the financial creditors' claims came before the ED's claims. This case study demonstrates that after ED attachments, financial creditors' claims may take precedence over those of the ED. This indicates that even when the ED has already attached the company's assets, the financial creditors may still be paid first²⁰.

²⁰ Goggin, M. D. (2000). *Authoring a discipline: Scholarly journals and the post-World War II emergence of rhetoric and composition*. Routledge

VII. Harmonizing PMLA and IBC: The Way Forward

A. Need for Legislative Amendments and Clarifications

Due to their overlapping jurisdictions and divergent goals, the Prevention of Money Laundering Act (PMLA) and the Insolvency and Bankruptcy Code (IBC) clash. To resolve this problem, it is necessary to unify both statutes by legislative revisions and clarifications. The following are some crucial areas where changes are needed:

- Explicit guidance on the timing of attachment by the Enforcement Directorate (ED) during on-going bankruptcy proceedings should be included in the statute. This will safeguard an equitable settlement for all parties involved and minimize delays in the bankruptcy process.
- "Proceeds of Crime" Definition: It is crucial that both statutes have a clear and consistent definition of what constitutes "proceeds of crime." Without impeding the IBC's bankruptcy procedure, this will assist in identifying assets liable to attachment under the PMLA.
- Priority of Payments: Legislative revisions should make it clear in what order the profits from the sale of assets under the PMLA and IBC will be distributed. Conflicts about the distribution of monies to various stakeholders will be resolved as a result.
- Coordinating Authorities: To promote smooth information sharing and collaboration during joint procedures, arrangements for coordination between the ED, the National Company Law Tribunal (NCLT), and insolvency resolution specialists should be made.

B. Establishing a Coherent Mechanism for Joint Proceedings

The following actions should be implemented to provide a consistent and effective system for combined proceedings under PMLA and IBC:

- Coordinating Committees: For improved communication and cooperation between these bodies, coordinating committees including members from the ED, NCLT, and insolvency experts should be established.
- Timely Information Sharing: The NCLT and resolution specialists should be informed right away by the ED on any money laundering investigations or attachment orders. They will be able to take these into account throughout the settlement procedure as a result.
- Joint Hearings: To speed up the process and prevent delays, joint hearings that can address both PMLA and IBC issues concurrently should be taken into consideration.

- Concurrent Proceedings: To prevent one procedure from excessively impeding the other, the law should set out rules for concurrent proceedings under the PMLA and IBC.

C. Role of Courts in Resolving Conflicting Claims

Conflicting claims resulting from the ED's attachment of the corporate debtor's assets must be settled via the courts. Some steps to achieve a successful outcome include:

- Judicial Coordination: To prevent inconsistent rulings, it is essential that courts handling PMLA and IBC matters coordinate. An amicable strategy may be facilitated by regular contact and information sharing between the courts.
- Expeditious Hearings: To reduce delays and uncertainty for all parties, courts should give cases containing both PMLA and IBC components top priority²¹.
- Judicial precedents: To offer a uniform legal framework and serve as a guide for future cases, courts should set precise precedents on how the PMLA and IBC interact.
- Mediation and Conciliation: When disputes linger, the courts may promote mediation and conciliation to find resolutions that are agreeable to all parties.

VII. CONCLUSION

The Prevention of Money Laundering Act (PMLA) and the Insolvency and Bankruptcy Code (IBC) coming together have complicated legal issues regarding the Enforcement Directorate's seizure of corporate debtors' assets. We have outlined the complexity that result from the interaction of these two key pieces of legislation by a thorough examination of the relevant provisions, case law, and guidelines. While the IBC concentrates on bankruptcy resolution and the rehabilitation of troubled enterprises, the PMLA intends to fight money laundering and associated crimes. Due to this inherent conflict, issues arise regarding the National Company Law Tribunal's (NCLT/NCLAT) and ED's conflicting jurisdictions, the timing of attachments during insolvency proceedings, the definition of "proceeds of crime" in the context of corporate insolvency, and the order in which creditors are paid. It is essential to unify the PMLA and IBC via statutory revisions and clarifications to resolve these issues and support a productive settlement process. Authorities must be guided by a clear and consistent framework in situations involving both money laundering investigations and bankruptcy processes. For all parties, interruptions and

²¹ Kagan, R. A. (1984). The routinization of debt collection: An essay on social change and conflict in the courts. *Law & Soc'y Rev.*, 18, 323.

uncertainty may be avoided by establishing clear criteria for the time and method of attachment. To prevent disputes and guarantee smooth information sharing, a well-coordinated structure for joint procedures involving the ED, NCLT, and resolution specialists is essential. Regular cooperation and communication between these parties may result in more efficient decision-making and quicker dispute resolution. In settling competing claims resulting from attachment proceedings, courts are also crucial. All parties concerned may experience less uncertainty and delays thanks to coordinated judicial action and prompt hearings. Furthermore, creating precedents and promoting mediation may help difficult situations reach just outcomes. Finally, it is crucial to strike a balance between the PMLA and IBC's goals in order to safeguard the interests of shareholders, creditors, and the general public. India can improve its capacity to fight money laundering while maintaining the integrity of the bankruptcy resolution process by including statutory changes, consistent methods, and a proactive role for the court. A cohesive strategy will help create a strong and fair legal system, boosting investor confidence and supporting the nation's economic progress.

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