CREDITORS VS. CRIME – FIGHTERS: WHO WINS WHEN INDIA'S IBC AND PMLA CLASH OVER CORPORATE ASSETS?

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The intersection of insolvency law and anti-money laundering legislation in India has given rise to significant jurisprudential debate, particularly concerning the relationship between the Insolvency and Bankruptcy Code, 2016 (IBC) and the Prevention of Money Laundering Act, 2002 (PMLA). Both statutes occupy critical positions within India's legal framework, yet their concurrent application often creates friction that affects the rights of creditors, resolution applicants, and the broader objectives of economic governance. This article examines the nature and extent of this conflict, analyses relevant judicial pronouncements, and offers perspectives in harmonizing these legislative instruments.

Understanding the Legislative Framework

The Insolvency and Bankruptcy Code, 2016 was enacted as a comprehensive legislation to consolidate and amened laws relating to reorganization and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner.[1] The Code aims to maximize the value of assets, promote entrepreneurship, ensure the availability of credit, and balance the interest of all stakeholders. It introduced a paradigm shift from the erstwhile debtor-in-possession model to a creditor-in-control framework, establishing the National Company Law Tribunal (NCLT) as the adjudicating authority for corporate insolvency matters.[2]

The Prevention of Money Laundering Act, 2002, on the other hand, was enacted to prevent money laundering, provide for confiscation of property derived from or involved in money laundering, and address matters connected therewith. [3] The Act empowers the Enforcement Directorate (ED) to attach properties involved in money laundering and prosecute individuals engaged in such activities. The PMLA operates under the presumption that proceeds of crime must be recovered and confiscated to deter financial crimes and preserve the integrity of the

[1] Preamble, Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016).
[2] Swiss Ribbons Private Limited v. Union of India, (2019) 4 SCC 17.
[3] Preamble, Prevention of Money Laundering Act, 2002 (Act No. 15 of 2003)

economic system.

The Core Conflict

The fundamental tension between these two statutes arises from their divergent objectives and the manner in which they treat assets of a corporate debtor. While the IBC prioritizes the maximization of value of creditors through resolution or liquidation, the PMLA seeks to confiscate and attach properties that constitute proceeds of crime, regardless of claims by third parties, including creditors.

The conflict manifests most acutely in three primary areas. First, there exists a clash between the moratorium provisions under Section 14 of the IBC and the attachment powers under Sections 5 and 8 of the PMLA. Section 14 of the IBC declares that upon admission of an insolvency application, a moratorium shall be imposed prohibiting the institution or continuation of suits or proceedings against the corporate debtor, including any action to recover, foreclose, or enforce any security interest created by the corporate debtor. [4] However, the PMLA empowers the ED to attach properties provisionally and subsequently confirm such attachment through the Adjudicating Authority, irrespective of any other proceedings.

Second, there is uncertainty regarding whether assets attached under the PMLA form part of the resolution or liquidation estate under the IBC. The resolution professional is mandated to take control of all assets of the corporate debtor under Section 17 of the IBC, yet properties attached under the PMLA remain under the constructive possession of the ED. [5]

Third, questions arise concerning the hierarchy of claims and whether the rights of secured creditors under the IBC take precedence over the confiscation rights of the State under the PMLA.

Judicial Interpretations

In *Vijay Madanlal Choudhary v. Union of India* (2022)[6], the Supreme Court upheld the PMLA's constitutional validity and held that properties tainted by money laundering do not automatically become distributable assets in insolvency proceedings. Earlier, in *Embassy*

[4] Section 14(1), Insolvency and Bankruptcy Code, 2016
[5] Section 17(1)(b), Insolvency and Bankruptcy Code, 2016
[6] (2022) SCC OnLine 929

Property Developments Private Limited v. State of Karnataka (2019)[7], the Court clarified that the NCLT and NCLAT lack jurisdiction over PMLA disputes, as specialized authorities under special legislations retain exclusive authority.

In *Deputy Director, Directorate of Enforcement v. Axis Bank* (2019)[8], the Court recognized that proceeds of crime cannot be treated as part of ordinary estate available for distribution to creditors. *P. Mohanraj v. Shah Brothers Ispat Private Limited* (2021)[9] distinguished civil recovery proceedings from criminal proceedings serving larger public purposes, suggesting the Section 14 moratorium may not extend to proceedings with a predominantly criminal character. In *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta* (2019)[10], the Court emphasized the primacy and finality of IBC resolution processes, observations that have been cited in debates over whether PMLA attachments survive resolution plan approval.

In *Oasis Hospitality Private Limited v. Union of India* (2023)[11], the Bombay High Court emphasized the need for case-by-case analysis of provisional attachment orders based on property nature and attachment timing. The NCLT in *SREI Infrastructure Finance Limited* (2021)[12] similarly recognized that the IBC moratorium, though broad, does not automatically suspend special criminal legislation proceedings.

The NCLAT's decision in *Directorate of Enforcement v. Manoj Kumar Agarwal (Resolution Professional of Rotomac Global Private Limited)* (2020)[13] held that PMLA- attached properties require coordination between insolvency and enforcement authorities. In *State Bank of India v. The Liquidator of Deccan Chronicles Holdings Limited* (2022)[14], the NCLAT ruled that properties validly attached under the PMLA cannot be unilaterally included in the liquidation estate without orders from the competent PMLA authority. The Delhi High Court in *Bhushan Power and Steel Limited v. Union of India* (2019)[15] held that PMLA investigations and proceedings being criminal in nature, are not stayed by the IBC moratorium.

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[7] (2020) 13 SCC 308
[8] (2019) 4 SCC 786
[9] (2021) 6 SCC 258
[10] (2020) 8 SCC 531
[11] Bombay High Court, Writ Petition No.2341/2023
[12] In re: SREI Infrastructure Finance Limited, NCLT Kolkata Bench, CP (IB) No. 294/KB/2021
[13] NCLAT, Company Appeal (AT) (Insolvency) No. 1065/2020
[14] NCLAT, Company Appeal (AT) (Insolvency) No. 112/ 2022
[15] Delhi High Court, W.P. (C) 2869/2019

The Question of Overriding Effect

Both the IBC and the PMLA contain non-obstante clauses claiming overriding effect over other laws. Section 238 of the IBC provides that the provisions of the Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Similarly, Section 71 of the PMLA stipulates that the provisions of the Act shall have overriding effect over other laws.

Courts have approached this apparent conflict by examining the nature and purpose of each statute. In *Solidaire India Limited v. Fairgrowth Financial Services Limited* (2001)[16], the Supreme Court established that when two special statutes contain non-obstante clauses, the later statute would ordinarily prevail. However, this principle has been applied with caution in the IBC-PMLA context, as courts have recognized that the two statutes operate in fundamentally different spheres, with one addressing civil insolvency and the other addressing criminal proceeds.

The Supreme Court's reasoning in *B.K. Educational Services Private Limited v. Parag Gupta and Associates* (2018) reinforced the special nature of the IBC as a consolidated code for insolvency matters.[17] The Court emphasized that the IBC is intended to be a complete code in itself for matters related to insolvency and that its provisions should be interpreted to give effect to its objectives of timely resolution. However, subsequent decisions have clarified that this "complete code" characterization does not extend to displacing specialized criminal legislation like the PMLA.

In *Anjali Rathi. V. Today Homes and Infrastructure Private Limited* (2022)[18], the NCLAT examined the rights of third-party claims when properties are attached under the PMLA during ongoing insolvency proceedings. The tribunal emphasized that innocent third parties, including secured creditors who had no involvement in the predicate offense, deserve protection, though the mechanism for such protection remains a matter of ongoing judicial development.

An Unlikely Compass: Jurisprudential Guidance from Arsha Vidya[19]

The Madras High Court decision in the FCRA registration matter, while not directly addressing

[16] (2001) 3 SCC 71
[17] (2019) 11 SCC 633
[18] NCLAT, Company Appeal (AT) (Insolvency) No.876 /2022
[19] WP (MD) No. 29610 of 2025

IBC-PMLA tensions, provides an analogical framework worth examining critically.

Justice's "clean-slate" doctrine – holding that compounded offenses cannot perpetually prejudice applicants- offers a compelling argument for releasing ED attachments upon acquittal in predicate offenses. However, this analogy has limitations: PMLA attachments are designed to preserve proceeds of crime regardless of criminal conviction, operating on a civil standard distinct from criminal compounding.

The natural justice observations carry together transferability. The requirement that affected parties receive specific notice before adverse orders in procedurally sound and arguably already mandated under PMLA Section 8. Yet the decision does not address whether resolution professionals, as successor custodians rather than original wrongdoers, possess standing equivalent to directly accused parties.

The proportionality principle – distinguishing "stark" violates from "purely technical" ones – oversimplifies PMLA's architecture. Money laundering, by statutory design, treats all proceeds as tainted regardless of the severity of the predicate offense. Grafting proportionality analysis onto a regime premised on complete disgorgement creates doctrinal tension.

Most problematic is the legitimate expectation argument. While administratively appealing, it essentially asks courts to estop statutory authorities from exercising legislatively conferred powers based on their prior silence- a position that conflates procedural fairness with substantive immunity.

The decision provides useful rhetorical resources for harmonization arguments but ultimately reflects principles developed in a regulatory context fundamentally different from PMLA's criminal property regime. Its persuasive value depends heavily on judicial willingness to prioritize commercial rehabilitation over anti-money laundering objectives.

Limitations of the Framework

Certain limitations must be acknowledged. The PMLA operates in a criminal domain distinct from FCRA's regulatory sphere; money laundering carries national security implications justifying stringent approaches. The PMLA specifically addresses "proceeds of crime", with strong public policy interests in ensuring criminals do not benefit from illegal activities. The compounding mechanism under FCRA lacks a PMLA parallel, which predominantly operates through prosecution and confiscation. Moreover, secured creditors' IBC rights are civil in nature, while the State's PMLA interest has criminal and public interest dimensions- courts have generally been reluctant to subordinate criminal objectives to civil recovery mechanisms.

Impact on Resolution Process and Stakeholders

The conflict between the IBC and PMLA has practical implications for various stakeholders in the insolvency process. Resolution applicants face uncertainty regarding the status of attached properties, which may affect their valuation and bid considerations. The resolution plan may be rendered commercially unviable if significant assets remain attached or are subsequently confiscated under the PMLA.

Secured creditors, who constitute the financial backbone of the Committee of Creditors under the IBC, may find their security interests subordinated to claims under the PMLA. This creates a chilling effect on lending, as creditors cannot be certain of recovering their dues even through the structured insolvency process.

Resolution Professionals face operational challenges in managing the corporate debtor's affairs when properties are attached, as they may be unable to deal with such assets freely. The time-bound nature of IBC process is also compromised when parallel proceedings under the PMLA introduce delays and uncertainties.

Towards Harmonization: Possible Solutions

Several approaches have been suggested for harmonizing the IBC and PMLA frameworks. First, a legislative amendment could explicitly delineate the relationship between the two statutes, providing clarity on matters such as the effect of moratorium on PMLA proceedings and the treatment of attached properties in insolvency proceedings.

Second, a distinction could be drawn between properties that were proceeds of crime before they came to be secured to creditors and properties that became tainted subsequently. This approach would protect bonafide creditors who advance funds without knowledge of the underlying criminality.

Third, a coordination mechanism between the NCLT and the Adjudicating Authority under the PMLA could be established to ensure that proceedings under both statutes are conducted in a manner that respects the objectives of each legislation.

Conclusion

The conflict between the Insolvency and Bankruptcy Code and the Prevention of Money Laundering Act represents a fundamental tension between economic rehabilitation and criminal deterrence. While the IBC seeks to rescue viable enterprises and maximize creditor value, the PMLA aims to strip criminals of their ill-gotten gains and preserve economic integrity. Both objectives are legitimate and necessary for a well-functioning legal system. The judiciary has attempted to balance these competing interests through careful interpretation, but ultimate clarity may require legislative intervention. Until such clarity emergers, stakeholders must navigate this complex landscape with awareness of the uncertainties and plan accordingly. The evolution of jurisprudence in this area will significantly shape India's insolvency and anti-money laundering frameworks in the years ahead.