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## PMLA v. IBC

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as **IBC**) has been enacted with a vision to balance between the protection of the company as going concern and safeguarding the interests of creditors by approving the corporate insolvency resolution plans by the learned Adjudicating Authority i.e. National Company Law Tribunal (NCLT)[1]. Since, its promulgation, IBC has undergone multiple amendments to plug-in the loopholes, in furtherance of the aim. The Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank***[2]has observed as below:

> *"13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process*."

The Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[3]has reiterated the statement of object and reason (SOR) and opined in regard to the same as follow:

> *"78. Perusal of the SOR would reveal that one of the prime objects of the I&B Code was to provide for implementation of the insolvency resolution process in a time-bound manner for maximisation of value of assets in order to balance the interests of all stakeholders. However, it was noticed that in some cases there was extensive litigation causing undue delays resultantly hampering the value maximisation. It was also found necessary to ensure that all creditors are treated fairly. It was therefore in view of the various difficulties faced and in order to fill the critical gaps in the corporate insolvency framework, it was necessary to amend certain provisions of the I&B Code."*

The Prevention of Money Laundering Act, 2005 (hereinafter referred as **PMLA**), was an act to prohibit and prosecute offence which are related to the commission of the scheduled offences[4]. The Hon'ble Supreme Court in ***P. Chidambaram v. Directorate of Enforcement***[5] have examined the object and scheme of the legislation wherein it was observed that Section

[1] Section 5(1) of IBC
[2] (2018) 1 SCC 407
[3](2021) 9 SCC 657
[4] Defined under Section 2(1)(y) of PMLA.
[5] (2019) 9 SCC 24

3 of the PMLA stipulates "money laundering" as an offence involving proceeds of crime, directly or indirectly. Further, the Hon'ble Court observed that Section 5 of PMLA prescribes the power of attachment of the tainted property involved in money laundering on account of "reason to believe" and since the legislation does not provide definition of "reason to believe", the Hon'ble Court cited Section 26 of the Indian Penal Code, 1860.

## WILL IBC PREVAIL OVER PMLA?

Both the legislation, PMLA and IBC are special legislations in their own spheres, which govern different aspects. However, if the corporate debtor and its erstwhile management is involved in scheduled offences as prescribed under PMLA and proceedings have been initiated in terms of PMLA, simultaneously to the corporate insolvency resolution process has been initiated in accordance of IBC, then both the proceedings shall create friction.

The Hon'ble Supreme Court in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[1] has placed reliance on its earlier judgment of ***Principal Commissioner of Income Tax v. Monnet Ispat & Energy Ltd.***[2] to state that provision of IBC shall override other legislations by virtue of Section 238 of IBC.

In regard to the interplay between the PMLA and IBC, the Hon'ble Delhi High Court in ***Nitin Jain Liquidator PSL Limited v. Enforcement Directorate***[3] examined its earlier judgement in ***Directorate of Enforcement v. Axis Bank***[4] has held as follows:

> *"**79.** The interplay between the provisions of the IBC and PMLA and whether primacy could be accorded to one of the two enactments directly fell for consideration before a learned Judge of this Court in Directorate of Enforcement v. Axis Bank. The Court in that matter was dealing with appeals brought by the Enforcement Directorate against the decision delivered by the Appellate Tribunal under the PMLA which had held that the rights of banks and financial institutions as recognised under SARFESI[5], RDB[6] or the IBC would rank superior and that the PMLA would have to take a back seat. While a number of other important aspects pertaining to the provisions of the PMLA have also been considered, we are, for the purposes of the present matter, concerned only insofar as the said decision deals with the question posited above.*

[1](2021) 9 SCC 657
[2] SLP (Civil) No. 6483/2018, dated 10.08.2018
[3] 2021 SCC Online Del 5281
[4] 2019 SCC Online Del 7854
[5] Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002
[6] Recovery Of Debts And Bankruptcy Act, 1993

***80.*** *Dealing with the interplay of the statutes concerned, the learned Judge held:—*

*139. From the above discussion, it is clear that the objects and reasons of enactment of the four legislations are distinct, each operating in different field. There is no overlap. While RDBA has been enacted to provide for speedier remedy for banks and financial institutions to recover their dues, SARFAESI Act (with added chapter on registration of secured creditor) aims at facilitating the secured creditors to expeditiously and effectively enforce their security interest. In each case, the amount to be recovered is "due" to the claimant i.e. the banks or the financial institutions or the secured creditor, as the case may be, the claim being against the debtor (or his guarantor). The Insolvency Code, in contrast, seeks to primarily protect the interest of creditors by entrusting them with the responsibility to seek resolution through a professional (RP), failure on his part leading eventually to the liquidation process.*

*144. The respondent have referred to the following observations of the Supreme Court in order dated 10.08.2018 in Special Leave to Appeal (Civil) No. 6483/2018, Principal Commissioner of Income Tax v. Monnet Ispat and Energy Limited:—*

*"Given Section 238 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.*

*We may also refer in this connection to Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. (2000) 5 SCC 694 and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons."*

*145. Noticeably, the effect of Insolvency Code on PMLA was not in issue before the Supreme Court in the aforesaid case, the prime concern being the conflict arising out of claims of revenue under Income Tax Act, 1961 vis-à-vis proceedings under the Insolvency Code. For the same reasons, the ruling of the full bench of the Madras High Court in Indian Overseas Bank (supra) also would have no effect here.*

*146. A Resolution Professional appointed under the Insolvency Code does not have any personal stake. He only represents the interest of creditors, their committee having appointed and tasked him with certain responsibility under the said law. The moratorium enforced in terms of Section 14 of Insolvency Code cannot come in the way of the statutory authority conferred by PMLA on the enforcement officers for depriving a person (may be also a debtor) of the proceeds of crime. A view to the contrary, if taken, would defeat the objective of PMLA by opening an escape route. After all, a person indulging in money-laundering cannot be permitted to avail of the proceeds of crime to get a discharge for his civil liability towards his creditors for the simple reason such assets are not lawfully his to claim.*

*147. To sum up on the issue, the objective of the legislation in PMLA being distinct from the purposes of the three other enactments viz. RDBA, SARFAESI Act and Insolvency Code, the latter cannot prevail over the former. There is no inconsistency. The purpose, the text and context are different. This court thus rejects the argument of prevalence of the said laws over PMLA.*

***81.*** *Dealing with the effect of an order of attachment on the rights of creditors or persons in whose favour interests in property may have been created bona fide, the learned Judge proceeded to hold as follows:—*

*148. In view of the conclusions reached as above, rejecting the argument of prevalence of RDBA, SARFAESI Act and Insolvency Code over PMLA, the said laws (or similar other laws, some referred to above) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other, with regard to assets respecting which there is material available to show the same to have been "derived or obtained" as a result of "criminal activity relating to a scheduled offence" rendering the same "proceeds of crime", within the mischief of PMLA. The PMLA, declares, by virtue of Section 71, that it has over-riding effect over other existing laws, such provision containing non-obstante clause with regard to inconsistency apparently to be construed as referable to the dealings in "money-laundering" and "proceeds of crime" relating thereto.*

*149. An order of attachment under PMLA, if it meets with the statutory pre-requisites, is as lawful as an action initiated by a bank or financial institution, or a secured creditor, for recovery of dues legitimately claimed or for enforcement of secured interest in accordance with RDBA or SARFAESI Act. An order of attachment under PMLA is not rendered illegal only because a secured creditor has a prior secured interest (charge) in the subject property. Conversely, mere issuance of an order of attachment under PMLA cannot, by itself, render illegal the prior charge or encumbrance of a secured creditor, this subject to such claim of the third party (secured creditor) being bonafide. In these conflicting claims, a balance has to be struck. On account of exercise of the prerogative of the State under PMLA, the lawful interest of a third party which may have acted bonafide, and with due diligence, cannot be put in jeopardy. The claim of bonafide third party claimant cannot be sacrificed or defeated. A contrary view would be unfair and unjust and, consequently, not the intention of the legislature. The legislative scheme itself justifies this view. To illustrate, reference may be made to sub-section (8) of Section 8 PMLA where-under a power is conferred on the special court to direct the Central Government to "restore" a property to the claimant with a legitimate interest even after an order of confiscation has been passed.*

*161. The law conceives of possibility of third party interest in property of a person accused of money-laundering being created legitimately or, conversely, with ulterior motive "to frustrate" or "to defeat" the objective of law against money-laundering. In case of tainted asset - that is to say a property acquired or obtained as a result of criminal activity - the interest acquired by a third party from person accused of money-laundering, even if bona fide, for lawful and adequate consideration, cannot result in the same being released from attachment, or escaping confiscation, since the law intends it to "vest absolutely in the Central Government free from all encumbrances", the right of such third party being restricted to sue the wrong-doer for damages, the encumbrance, if created with the objective of defeating the law, being treated as void (Section 9).*

*162. But, in case an otherwise untainted asset (i.e. deemed tainted property) is targeted by the enforcement authority for attachment under the second or third part of the definition of "proceeds of crime", for the reason that such asset is equivalent*

*in value to the tainted asset that was derived or obtained by criminal activity but which cannot be traced, the third party having a legitimate interest may approach the adjudicating authority to seek its release by showing that the interest in such property was acquired bona fide and for lawful (and adequate) consideration, there being no intent, while acquiring such interest or charge, to defeat or frustrate the law, neither the said property nor the person claiming such interest having any connection with or being privy to the offence of money-laundering.*

*163. Having regard to the above scheme of the law in PMLA, it is clear that if a bonafide third party claimant had acquired interest in the property which is being subjected to attachment at a time anterior to the commission of the criminal activity, the product whereof is suspected as proceeds of crime, the acquisition of such interest in such property (otherwise assumably untainted) by such third party cannot conceivably be on account of intent to defeat or frustrate this law. In this view, it can be concluded that the date or period of the commission of criminal activity which is the basis of such action under PMLA can be safely treated as the cut-off. From this, it naturally follows that an interest in the property of an accused, vesting in a third party acting bona fide, for lawful and adequate consideration, acquired prior to the commission of the proscribed offence evincing illicit pecuniary benefit to the former, cannot be defeated or frustrated by attachment of such property to such extent by the enforcement authority in exercise of its power under Section 8 PMLA.*

***82.** As is evident from a reading of paragraph 147 of the report in the matter of Axis Bank, the argument of IBC or for that matter RBD or SARFESI having an unbridled or overarching effect over the PMLA was unequivocally rejected. The learned Judge while recording his conclusions in paragraph 147 of the report, took into consideration the scheme and the objects of the IBC and the PMLA and held that the two operated in distinct spheres. In any case, Axis Bank clearly holds that there is no inconsistency between the two enactments since the ".....purpose, text and context are different.""*

In view of the aforesaid observations of the Hon'ble Delhi High Court in ***Axis Bank*** (supra) case, it is clear that both legislation i.e. PMLA and IBC are independent in nature governing different aspects and attempts have to be made to harmoniously resolve the conflict between the legislations. The Hon'ble Court summarised conclusion and stated as below:-

***"171.** It will be advantageous to summarise the conclusions reached by the above discussion, as under:—*

*(i). The process of attachment (leading to confiscation) of proceeds of crime under PMLA is in the nature of civil sanction which runs parallel to investigation and criminal action vis-a-vis the offence of money-laundering.*

*(ii). The empowered enforcement officer is expected to assess, even if tentatively, the value of proceeds of crime so as to ensure such proceeds or other assets of equivalent value of the offender of money-laundering are subjected to attachment, the evaluation being open to modification in light of evidence gathered during investigation.*

*(iii). The empowered enforcement officer has the authority of law in PMLA to attach not only a "tainted property" - that is to say a property acquired or obtained, directly or indirectly, from proceeds of criminal activity constituting a scheduled offence - but also any other asset or property of equivalent value of the offender of money-laundering, the latter not bearing any taint but being alternative attachable property (or deemed tainted property) on account of its link or nexus with the offence (or offender) of money-laundering.*

*(iv). If the "tainted property" respecting which there is evidence available to show the same to have been derived or obtained as a result of criminal activity relating to a scheduled offence is not traceable, or the same for some reason cannot be reached, or to the extent found is deficient, the empowered enforcement officer may attach any other asset ("the alternative attachable property" or "deemed tainted property") of the person accused of (or charged with) offence of money-laundering provided it is near or equivalent in value to the former, the order of confiscation being restricted to take over by the government of illicit gains of crime.*

*(v). If the person accused of (or charged with) the offence of money-laundering objects to the attachment, his claim being that the property attached was not acquired or obtained (directly or indirectly) from criminal activity, the burden of proving facts in support of such claim is to be discharged by him.*

*(vi). The objective of PMLA being distinct from the purpose of RDBA, SARFAESI Act and Insolvency Code, the latter three legislations do not prevail over the former.*

*(vii). The PMLA, by virtue of section 71, has the overriding effect over other existing laws in the matter of dealing with "money-laundering" and "proceeds of crime" relating thereto.*

*(viii). The PMLA, RDBA, SARFAESI Act and Insolvency Code (or such other laws) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other with regard to the assets respecting which there is material available to show the same to have been "derived or obtained" as a result of "criminal activity relating to a scheduled offence" and consequently being "proceeds of crime", within the mischief of PMLA.*

*(ix). If the property of a person other than the one accused of (or charged with) the offence of money-laundering, i.e. a third party, is sought to be attached and there is evidence available to show that such property before its acquisition was held by the person accused of money-laundering (or his abettor), or it was involved in a transaction which had interconnection with transactions concerning money-laundering, the burden of proving facts to the contrary so as to seek release of such property from attachment is on the person who so contends.*

*(x). The charge or encumbrance of a third party in a property attached under PMLA cannot be treated or declared as "void" unless material is available to show that it was created "to defeat" the said law, such declaration rendering such property available for attachment and confiscation under PMLA, free from such encumbrance.*

*(xi). A party in order to be considered as a "bonafide third party claimant" for its claim in a property being subjected to attachment under PMLA to be entertained*

*must show, by cogent evidence, that it had acquired interest in such property lawfully and for adequate consideration, the party itself not being privy to, or complicit in, the offence of money-laundering, and that it has made all compliances with the existing law including, if so required, by having said security interest registered.*

*(xii). An order of attachment under PMLA is not illegal only because a secured creditor has a prior secured interest (charge) in the property, within the meaning of the expressions used in RDBA and SARFAESI Act. Similarly, mere issuance of an order of attachment under PMLA does not ipso facto render illegal a prior charge or encumbrance of a secured creditor, the claim of the latter for release (or restoration) from PMLA attachment being dependent on its bonafides.*

*(xiii). If it is shown by cogent evidence by the bonafide third party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property), claiming that it had acquired the same at a time around or after the commission of the proscribed criminal activity, in order to establish a legitimate claim for its release from attachment it must additionally prove that it had taken "due diligence" (e.g. taking reasonable precautions and after due inquiry) to ensure that it was not a tainted asset and the transactions indulged in were legitimate at the time of acquisition of such interest.*

*(xiv). If it is shown by cogent evidence by the bonafide third party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property) claiming that it had acquired the same at a time anterior to the commission of the proscribed criminal activity, the property to the extent of such interest of the third party will not be subjected to confiscation so long as the charge or encumbrance of such third party subsists, the attachment under PMLA being valid or operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.*

*(xv). If the bonafide third party claimant (as aforesaid) is a "secured creditor", pursuing enforcement of "security interest" in the property (secured asset) sought to be attached, it being an alternative attachable property (or deemed tainted property), it having acquired such interest from person(s) accused of (or charged with) the offence of money-laundering (or his abettor), or from any other person through such transaction (or inter-connected transactions) as involve(s) criminal activity relating to a scheduled offence, such third party (secured creditor) having initiated action in accordance with law for enforcement of such interest prior to the order of attachment under PMLA, the directions of such attachment under PMLA shall be valid and operative subject to satisfaction of the charge or encumbrance of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.*

*(xvi). In the situations covered by the preceding two sub-paragraphs, the bonafide third party claimant shall be accountable to the enforcement authorities for the "excess" value of the property subjected to PMLA attachment.*

*(xvii). If the order confirming the attachment has attained finality, or if the order of confiscation has been passed, or if the trial of a case under Section 4 PMLA has*

*commenced, the claim of a party asserting to have acted bonafide or having legitimate interest in the nature mentioned above will be inquired into and adjudicated upon only by the special court."*

**EFFECTS OF INSERTION OF SECTION 32A IN IBC – DOCTRINE OF CLEAN SLATE**

The Parliament promulgated the Insolvency and Bankruptcy Code (Amendment) Act, 2020, whereby, Section 32A was inserted, which reads as:-

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

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

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

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

*Provided further that every person who was a designated partner as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or an officer who is in default, as defined in clause (60) of section 2 of the Companies Act, 2013 (18 of 2013), or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.*

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

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

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

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

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

*(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.*

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

The Hon'ble Supreme Court in ***Manish Kumar v. Union of India***[1] upheld the constitutional validity of the aforesaid provision and *inter-alia* held as below:

***"327.*** *It must be remembered that the immunity is premised on various conditions being fulfilled. There must be a resolution plan. It must be approved. There must be a change in the control of the corporate debtor. The new management cannot be the disguised avatar of the old management. It cannot even be the related party of the corporate debtor. The new management cannot be the subject-matter of an investigation which has resulted in material showing abetment or conspiracy for the commission of the offence and the report or complaint filed thereto. These ingredients are also insisted upon for claiming exemption of the bar from actions against the property. Significantly every person who was associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of the offence in terms of the report submitted continues to be liable to be prosecuted and punished for the offence committed by the corporate debtor.*

***328.*** *The corporate debtor and its property in the context of the scheme of the Code constitute a distinct subject-matter justifying the special treatment accorded to them. Creation of a criminal offence as also abolishing criminal liability must ordinarily be left to the judgment of the legislature. Erecting a bar against action against the property of the corporate debtor when viewed in the larger context of the*

[1] (2021) 5 SCC 1

> *objectives sought to be achieved at the forefront of which is maximisation of the value of the assets which again is to be achieved at the earliest point of time cannot become the subject of judicial veto on the ground of violation of Article 14."*

The issue pertaining to the indemnity to the new management of the corporate debtor from the past litigations, the Hon'ble Court in ***Ghanashyam Mishra & Sons (P) Ltd.*** (supra) placed reliance upon the statement of Hon'ble Finance Minister which is as below:

> ***79.*** *In the Rajya Sabha debates, on 29-7-2019, when the Bill for amending the I&B Code came up for discussion, there were certain issues raised by certain members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:*
>
> *"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC.*
>
> *There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the Hon'ble Members to recognise this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear."*

However, it is necessary to understand that the position of the government under the PMLA is not similar to a secured creditor, thereby equating the position and blatantly stating that the IBC shall over-ride PMLA, after the insertion of Section 32A in IBC shall severely affect the legislative aim and policies of PMLA. The Hon'ble Delhi High Court has explained the issue and provided solutions to the same and held that:-

> ***"102.*** *Upon a conspectus of the aforesaid discussion, the Court records the following conclusions:—*
>
> *A. The Court notes that the reliefs as framed in the writ petition essentially seek a restraint against the respondent from interfering in the liquidation process which had been set in motion. That challenge cannot stand eclipsed merely on account of the issuance of the provisional order of attachment during the pendency of the writ petition. The authority of the respondent to move against the properties of the*

*corporate debtor after the liquidation process has reached a stage where a particular measure has been approved by the Adjudicating Authority, is a question which would still arise and be open to be urged and contested.*

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

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

*D. The IBC can be aptly described as an economic measure marking a significant departure from the way debt was treated for centuries by statutes prevalent in the country. IBC is firstly envisaged to be an umbrella legislation dealing with varied aspects aimed at speedy insolvency resolution. It also ushered in a regimen where the erstwhile management which earlier continued to hold onto the reigns of the indebted entity as it sunk deeper into debt, now became liable to be removed from control and the corporate debtor taken over by a professional who would take over the management and administration of the debtor pending its insolvency resolution. The third important objective of the IBC was to achieve maximization of value with the assets of the debtor being taken over and being disposed by adoption of fair and transparent means within strict and regimented time lines.*

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

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

*G. In a case where in exercise of their respective powers a conflict does arise, it is for the Courts to discern the legislative scheme and to undertake an exercise of reconciliation enabling the authorities to discharge their obligations to the extent that*

*the same does not impinge or encroach upon a facet which stands reserved and legislatively mandated to be exclusively controlled and governed by one of the competing statutes. The aspect of legislative fields of IBC and PMLA and the imperative to strike a correct balance was rightly noticed and answered by the learned Judge in Axis Bank.*

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

*I. The SOA as well as the contemporaneous material noted above, indubitably establishes a conscious adoption of a legislative measure to insulate the resolution applicant from the prospect of prosecution in respect of offenses that may have been committed by the corporate debtor prior to the commencement of the CIRP. This legislative guarantee stands enshrined in Section 32A (1). Similarly, the provision unmistakably also insulates the properties of the corporate debtor from any action that may otherwise be taken in respect thereof for an offense committed prior to the commencement of the CIRP in terms of Section 32A (2).*

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

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

*L. The principal consideration which appears to have weighed was the imperative need to ensure that neither the resolution nor the liquidation process once set into motion and fructifying and resulting in a particular mode of resolution coming to be duly accepted and approved, comes to be bogged down or clouded by unforeseen or unexpected claims or events. The IBC essentially envisages the process of resolution or liquidation to move forward unhindered.*

*M. The Legislature in its wisdom has recognised a pressing and imperative need to insulate the implementation of measures for restructuring, revival or liquidation of a corporate debtor from the vagaries of litigation or prosecution once the process of*

*resolution or liquidation reaches the stage of the adjudicating authority approving the course of action to be finally adopted in relation to the corporate debtor.*

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

*O. It becomes pertinent to recollect that one of primary objectives which informed the introduction of this provision was to assure the resolution applicant that its offer once accepted would stand sequestered from action for enforcement of outstanding claims against the corporate debtor. The imperative for the extension of this legislative guarantee subserves the vital aspect of maximization of value.*

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

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

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

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

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

## CONCLUSION

In view of the aforesaid discussion, it is apparent that both the legislation shall be construed in harmonious manner to not frustrate the intent and objects of the legislations. However, the protection prescribed under the newly inserted provision is with regard to the new management of the corporate debtor and the assets of the corporate debtor only to the extent of compliance of Section 32A of IBC. Thereby, it is quintessential to struck balance between the two different legislations, otherwise, persons involved in proceeds of crime shall abuse the law relating to insolvency and bankruptcy to escape from the liability resultantly affecting the revenue.

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