



ISSN: 2583-7753

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

[ISSN: 2583-7753]

Volume 4 | Issue 1

2026

DOI: <https://doi.org/10.70183/lijdlr.2026.v04.63>

© 2026 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com

Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal Legal Research has decided to publish this submission as part of the publication.

In case of any suggestions or complaints, kindly contact (info.lijdlr@gmail.com)

To submit your Manuscript for Publication in the LawFoyer International Journal of Doctrinal Legal Research, To submit your Manuscript [Click here](#)

THE CLEAN SLATE IN A CONTAMINATED ESTATE: RESOLVING THE STRUCTURAL CONFLICT BETWEEN SECTION 32A OF THE INSOLVENCY AND BANKRUPTCY CODE AND THE ENFORCEMENT DIRECTORATE'S ATTACHMENT POWERS UNDER THE PREVENTION OF MONEY LAUNDERING ACT

Tahura Wasif¹ & Kriti Kumari²

I. ABSTRACT

The insertion of Section 32A into the Insolvency and Bankruptcy Code (IBC) established the “Clean Slate” doctrine, aiming to immunize successfully resolved corporate debtors from prior criminal liabilities. However, this commercial imperative frequently collides with the Enforcement Directorate’s (ED) independent mandate to attach “proceeds of crime” under the Prevention of Money Laundering Act (PMLA). Despite the doctrine’s constitutional validation in Manish Kumar v. Union of India, recent flashpoints most notably the Kalyani Transco saga and Supreme Court observations in early 2026 demonstrate that judicial policy prioritizing resolution speed cannot permanently override a competing executive statutory framework. Furthermore, while the IBC (Amendment) Bill, 2025 rationalizes the waterfall priority of standard statutory dues, it leaves the PMLA threshold attachment problem completely unaddressed, resulting in continued bid suppression and structural value destruction. Drawing on comparative jurisprudence from U.S. Chapter 11 bankruptcy and the UK Insolvency Act, this paper proposes a targeted legislative intervention: the enactment of Section 32A(3). This proposed mechanism mandates pre-approval consultation and escrow safeguards, structurally harmonizing the state’s anti-money laundering enforcement with the IBC’s core objective of value maximization.

¹ Student, 8th semester, B.A.LL.B (H) at Amity University Jharkhand (India). Email: twasif559@gmail.com

² Student, 8th semester, B.A.LL.B (H) at Amity University Jharkhand (India). Email: kritikumari10408@gmail.com

II. KEYWORDS

Insolvency and Bankruptcy Code, Section 32A, Prevention of Money Laundering Act, Corporate Insolvency, Clean Slate Doctrine, Enforcement Directorate.

III. INTRODUCTION AND THESIS

The Insolvency and Bankruptcy Code, 2016 (“IBC”) was constructed on an unambiguous premise: that the resurrection of a distressed enterprise demands the surgical separation of the corporate debtor’s future from its past. Section 32A, inserted by the IBC (Amendment) Act, 2020, operationalizes this premise through what is now commonly termed the “Clean Slate Doctrine”, a provision that extinguishes the criminal liability of the corporate debtor, and immunizes the assets vested in a successful resolution applicant, from prosecution or attachment in respect of offences committed prior to the commencement of the Corporate Insolvency Resolution Process (“CIRP”). The legislative logic is compelling in its directness: no commercially rational actor will invest capital in a distressed enterprise if that enterprise arrives encumbered with the unquantifiable liabilities of its former management’s conduct.

The Prevention of Money Laundering Act, 2002 (“PMLA”), however, does not recognize this logic. The Enforcement Directorate (“ED”), exercising powers under Sections 5 and 8 of the PMLA, attaches property that constitutes “proceeds of crime”, a category defined with sufficient breadth to encompass the operational and fixed assets of a corporate debtor whose former promoters stand accused of scheduled offences. The ED’s mandate is constitutionally grounded and institutionally independent. It answers not to the National Company Law Tribunal (“NCLT”), but to a chain of authorities running directly to the executive, and ultimately to the State’s obligation under international anti-money laundering frameworks to pursue criminal proceeds regardless of the civil status of the entity that holds them.

These two mandates now occupy the same physical and legal space with increasing frequency, and the collision between them is neither academic nor peripheral. The

Bhushan Power & Steel Ltd. insolvency , a paradigmatic case in which an NCLT-approved resolution plan collided with pre-existing ED attachments over assets valued in excess of ₹19,000 crore , demonstrated that the Clean Slate Doctrine, however confidently articulated by the Supreme Court in *Manish Kumar v. Union of India*,³ does not resolve the conflict at the level of operational reality. The more recent *Kalyani Transco v. Bhushan Power & Steel Ltd.* litigation, with its 2025–2026 fallout, has confirmed that judicial validation of a statutory provision and the practical displacement of a competing executive power are categorically different achievements.

The Supreme Court's March 2026 observations, delivered by Nagarathna J., have restated with considerable authority the Court's institutional preference for speed, commercial wisdom, and resolution certainty over exhaustive pre-approval judicial scrutiny. These observations represent a significant statement of judicial policy. They do not, however, constitute a durable legislative solution. Policy preferences expressed from the Bench cannot permanently subordinate a separately enacted parliamentary mandate, particularly one that draws its authority from India's international obligations and from Article 300A of the Constitution.

This paper argues with three propositions. First, that the conflict between Section 32A of the IBC and the PMLA's attachment regime is structural and cannot be resolved through harmonious construction alone, because the two statutes proceed from irreconcilable first principles regarding the relationship between corporate rescue and criminal accountability. Second, that the Supreme Court's existing jurisprudence, including *Essar Steel*⁴ and *Manish Kumar*, has validated the IBC's architecture without actually neutralizing the ED's competing jurisdiction, leaving resolution applicants exposed to a form of legal uncertainty that the Clean Slate Doctrine was specifically designed to eliminate. Third, that the IBC (Amendment) Bill, 2025 presents an imperfect but retrievable opportunity to enact a targeted legislative fix, one that preserves the state's prosecutorial interest against individual wrongdoers while definitively

³ *Manish Kumar v. Union of India*, (2021) 5 SCC 1 (India).

⁴ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

subordinating corporate asset attachment to the insolvency waterfall, a model demonstrably workable under both Chapter 11 of the U.S. Bankruptcy Code and the UK Insolvency Act 1986.

The stakes of inaction are not theoretical. Every unresolved attachment dispute imposes a discount on resolution bids, reduces recovery for creditors, and erodes institutional confidence in the IBC's foundational promise. The Clean Slate Doctrine is sound in principle; it is failing in practice. The cure lies in Parliament, not in further rounds of litigation before overburdened benches.

A. Research Objectives

This paper pursues three interrelated research objectives. First, it examines whether the conflict between Section 32A of the Insolvency and Bankruptcy Code, 2016 and the asset-attachment regime under the Prevention of Money Laundering Act, 2002 represents a structural incompatibility between two statutory mandates. Second, it evaluates the extent to which existing judicial interpretation, particularly the Supreme Court's jurisprudence in *Essar Steel* and *Manish Kumar v. Union of India*, resolves or merely contextualizes this conflict. Third, it assesses whether the IBC (Amendment) Bill, 2025 adequately addresses the operational consequences of this statutory collision and proposes a targeted legislative reform capable of harmonizing insolvency resolution with anti-money laundering enforcement.

B. Research Questions

This paper addresses the following research questions:

1. Whether the conflict between Section 32A of the Insolvency and Bankruptcy Code and the attachment powers exercised under the Prevention of Money Laundering Act constitutes a structural statutory conflict or one capable of resolution through judicial interpretation.
2. Kumar v. Union of India isprudence of the Supreme Court, particularly *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* and *Manish*

Kumar v. Union of India, effectively resolves the operational tension between insolvency resolution and criminal asset forfeiture.

3. Whether the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 adequately addresses the interaction between insolvency proceedings and PMLA attachment powers, and what legislative mechanism could harmonize the two regimes.

C. Research Methodology

This study adopts a doctrinal legal research methodology. The analysis is based primarily on statutory interpretation of the Insolvency and Bankruptcy Code, 2016 and the Prevention of Money Laundering Act, 2002, supplemented by examination of relevant judicial precedents of the Supreme Court of India and the National Company Law Tribunal. In addition, the paper employs comparative legal analysis by examining analogous mechanisms within the United States Bankruptcy Code and the United Kingdom's insolvency and proceeds-of-crime frameworks. These comparative insights are used to develop a normative legislative prescription aimed at harmonizing India's insolvency resolution regime with its anti-money laundering enforcement architecture.

IV. THE JURISPRUDENTIAL FOUNDATION OF THE CLEAN SLATE

A. Statutory Architecture and Its Deliberate Asymmetry

Section 32A of the IBC operates through a two-limb mechanism. The first limb extinguishes the liability of the corporate debtor for offences committed prior to the commencement of CIRP, provided that the resolution plan has received NCLT approval and control of the debtor has effectively passed to a resolution applicant unconnected with the preceding management.⁵ The second limb immunizes the assets of the corporate debtor from attachment, seizure, or confiscation in connection with such prior

⁵ Insolvency and Bankruptcy Code, 2016, § 32A (1), No. 31, Acts of Parliament, 2016 (India), as amended by the Insolvency and Bankruptcy Code (Amendment) Act, 2020, No. 1, Acts of Parliament, 2020 (India).

offences.⁶ The architecture is deliberately asymmetric: individual criminal liability, of promoters, directors, and officers, survives intact. Only the corporate estate is insulated. The PMLA occupies a structurally different register. Section 5 confers on the ED the power to provisionally attach property believed to constitute “proceeds of crime” for up to one hundred and eighty days, without awaiting criminal conviction, and Section 8 provides for the adjudication and confirmation of such attachment before the Adjudicating Authority.⁷ Critically, neither provision contains an insolvency carve-out. The PMLA’s attachment jurisdiction is triggered by the character of the property, its alleged taint, not by the identity or legal status of the entity that presently holds it. A corporate debtor undergoing CIRP is, in the ED’s statutory framework, irrelevant to the attachment calculus.

This asymmetry between Section 32A’s asset-focused immunity and Section 5’s asset-focused attachment power is not merely textual friction. It reflects deeper incommensurability: the IBC defines value through the prism of resolution, while the PMLA defines property through the prism of criminality. Parliament enacted both statutes; neither expressly yields to the other.

B. Essar Steel: Commercial Wisdom as Constitutional Principle

In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, the Supreme Court elevated the Committee of Creditors’ (“CoC”) commercial judgment to a near-inviolable constitutional principle, holding that the adjudicating authority’s role is not to reassess the economic merits of a resolution plan but to examine whether it conforms to the requirements of the IBC.⁸ The Court’s reasoning carried an explicit temporal charge: delay in resolution is itself a form of value destruction, and any judicial or administrative intervention that extends the resolution timeline without statutory warrant is presumptively impermissible.⁹ The significance of this holding for

⁶ Id. § 32A (2).

⁷ Prevention of Money Laundering Act, 2002, §§ 5, 8, No. 15, Acts of Parliament, 2003 (India).

⁸ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, ¶ 54 (India).

⁹ Id. ¶ 79.

the Section 32A conflict lies not in what it decided, the case predated Section 32A's insertion, but in the interpretive template it established. Essar Steel effectively constitutionalized speed and certainty as the IBC's governing values, providing the doctrinal foundation upon which Section 32A's immunity regime would later be justified.

C. Manish Kumar: Constitutional Validation Without Operational Resolution

The Supreme Court's three-judge bench decision in *Manish Kumar v. Union of India* upheld Section 32A in its entirety, rejecting challenges grounded in Articles 14, 19, and 21 of the Constitution.¹⁰ The Court held that the provision represents a legitimate legislative choice, that the classification between the corporate debtor and its former management is constitutionally defensible, and that the extinguishment of corporate criminal liability does not amount to the conferral of a windfall but is instead the necessary price of resolution.¹¹ The Court further clarified that Section 32A's immunity is conditional, it attaches only upon NCLT approval and only where the incoming resolution applicant is not a "related party" within the meaning of the IBC.¹²

What Manish Kumar conspicuously did not do is resolve the operational mechanics of the Section 32A-PMLA conflict. The judgment validated the provision's constitutional architecture; it did not adjudicate how an NCLT-approved immunity interacts with a pre-existing ED provisional attachment that has already been crystallized under Section 5 of the PMLA. The Court acknowledged the PMLA's independent statutory footing without pronouncing a hierarchy.¹³ This omission, perhaps inevitable in the context of an abstract constitutional challenge, has proven consequential. Resolution applicants confronting active ED attachments cannot extract from Manish Kumar a clear operational rule; they extract only the reassurance that Section 32A is constitutionally

¹⁰ *Manish Kumar v. Union of India*, (2021) 5 SCC 1 (India).

¹¹ *Id.* ¶¶ 142–145.

¹² *Id.* ¶ 150; see also Insolvency and Bankruptcy Code, 2016, § 32A(1)(b) (India).

¹³ *Manish Kumar v. Union of India*, (2021) 5 SCC 1, (India).

sound, a reassurance that the ED's institutional conduct has rendered functionally insufficient.

The result is a judicial cartography that has mapped the terrain with accuracy while declining to alter it. Essar Steel and Manish Kumar together establish that speed, certainty, and clean-slate immunity are IBC-validated constitutional values. They do not establish that those values override a separately enacted parliamentary mandate backed by India's Financial Action Task Force obligations and independent constitutional grounding under Article 300A. That gap, between doctrinal validation and operational displacement, is where the Bhushan Power litigation has taken up residence, with consequences examined in the sections that follow.

V. THE NCLT VS. ED FLASHPOINT, WHERE DOCTRINE MEETS OPERATIONAL REALITY

A. Bhushan Power & Steel: The Anatomy of a Collapse

The Bhushan Power & Steel Ltd. ("BPSL") insolvency is the most consequential stress-test that Section 32A has yet endured, and its continuing litigation trajectory reveals the precise point at which the Clean Slate Doctrine fractures under operational pressure. JSW Steel Ltd.'s resolution plan, approved by the NCLT in September 2019 and subsequently upheld through successive appellate rounds, encountered ED attachments on BPSL assets exceeding ₹4,025 crore, attachments predicated on the ED's characterization of those assets as "proceeds of crime" under the PMLA.¹⁴ The attachments had crystallized before CIRP commenced and survived, in the ED's institutional position, the NCLT's approval order entirely.

The critical legal fault line exposed here is not between the IBC and the general law of statutory dues. That distinction must be kept precise. Statutory dues, tax arrears, provident fund obligations, regulatory fees, are addressed within the Section 53

¹⁴ JSW Steel Ltd. v. Mahender Kumar Khandelwal, 2019 SCC OnLine NCLAT 677, ¶¶ 12-15 (India); see also Enforcement Directorate v. Bhushan Power & Steel Ltd., Company Appeal (AT) (Ins.) No. 957 of 2019 (NCLAT) (India).

waterfall and the Supreme Court has, since *Essar Steel*, settled the priority question regarding operational creditors and the government as a financial claimant.¹⁵ “Proceeds of crime” under PMLA Section 2(1)(u) constitute an entirely different legal category: they are not debts owed to the State as creditor but property whose title is impugned by the State as sovereign enforcer. The PMLA does not assert a preferential claim in the insolvency waterfall; it asserts that the property itself is tainted and must be forfeited irrespective of who holds it. Conflating these two categories obscures the genuine constitutional problem and permits false solutions, extending the government’s priority in the waterfall does nothing to address an attachment that denies the asset’s presence in the waterfall altogether.

B. Kalyani Transco: Article 142 and the Limits of Extraordinary Jurisdiction

The *Kalyani Transco v. Bhushan Power & Steel Ltd.* proceedings brought the conflict to its sharpest expression. The Supreme Court’s invocation of Article 142 to protect the resolution plan’s integrity, and the subsequent recall or modification of that direction, illustrated with uncomfortable clarity the institutional inadequacy of judicial improvisation as a substitute for legislative clarity.¹⁶ Article 142, which empowers the Court to pass orders necessary to do “complete justice,” is by design a residual and exceptional jurisdiction. Its repeated deployment in IBC matters, including the BPSL saga, reflects not judicial creativity but legislative incompleteness. When the apex court must reach for extraordinary constitutional powers to protect an ordinary statutory mechanism, the statutory mechanism has failed in its primary function.

The recall or qualification of the Article 142 direction, the precise terms of which remain subject to further proceedings, compounded the uncertainty. Resolution applicants who had structured bids around the assumption of Section 32A immunity were confronted with the possibility that even a Supreme Court order, in its final form, might not

¹⁵ Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531, ¶¶ 86–89 (India); Insolvency and Bankruptcy Code, 2016, § 53, No. 31, Acts of Parliament, 2016 (India).

¹⁶ INDIA CONST. art. 142; see *Grishma Investments v. Bhushan Power & Steel Ltd.*, (2021) 9 SCC 552, ¶¶ 20–23 (India) (earlier Article 142 invocation in related BPSL proceedings).

extinguish the ED's attachment jurisdiction with sufficient finality to permit clean title transfer. The commercial consequence of this uncertainty is not abstract: it manifests as a risk premium embedded in every resolution bid submitted in respect of an enterprise whose former promoters face PMLA proceedings.

C. Justice Nagarathna's March 2026 Observations and Their Institutional Limits

Justice Nagarathna's observations in March 2026, which articulated a clear judicial preference for privileging speed and transactional certainty over exhaustive pre-approval scrutiny of every competing legal claim, represent the most authoritative recent statement of the IBC's governing philosophy. The reasoning is structurally sound: the IBC's time-bound framework, 180 days extendable to 330 days under Section 12, reflects a legislative judgment that resolution value is time-sensitive and that indefinite litigation over competing claims defeats the statute's commercial purpose.¹⁷

Yet these observations, however authoritative in tone, carry a structural limitation that their judicial force cannot overcome. A bench of the Supreme Court may express, with considerable clarity, its view that IBC's legislative choice to privilege speed is sound policy. That expression does not, however, create a statutory hierarchy between the IBC and the PMLA where Parliament has declined to enact one. Justice Nagarathna's observations constitute judicial endorsement of a value; they do not constitute statutory subordination of a competing legislative mandate. The ED's counsel, in any future attachment proceeding, may acknowledge the Court's policy preference and still correctly insist that Section 5 of the PMLA contains no insolvency exception and that only Parliament can create one.

D. The Chilling Effect: Value Destruction Before the Bid Is Submitted

The most damaging consequence of unresolved ED attachment jurisdiction operates not in courtrooms but in boardrooms. A prospective resolution applicant conducting due

¹⁷ Insolvency and Bankruptcy Code, 2016, § 12, No. 31, Acts of Parliament, 2016 (India), as amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019, No. 26, Acts of Parliament, 2019 (India).

diligence on a CIRP target that carries active or potential PMLA exposure faces a structurally unanswerable question: what is the enterprise value of an asset that may be attached after plan approval? Section 32A offers statutory immunity; *Manish Kumar* validates that immunity constitutionally; and *Kalyani Transco* demonstrates that the immunity does not, in practice, prevent years of post-approval litigation over the same assets.

The rational response to this uncertainty is not litigation, it is bad suppression. Resolution applicants either discount their offers to account for PMLA litigation risk or exit the bidding process entirely in favour of targets unburdened by criminal exposure. Either outcome directly reduces recovery for financial creditors or frustrates the IBC's core objective of value maximization. The loss is systemic: it is not recoverable through any post-hoc judicial remedy, and it accumulates silently across every CIRP in which PMLA exposure is a material variable. This is not a theoretical chilling effect. It is the operational cost of a legislative gap that Section 32A addressed in principle and that the PMLA's unreformed architecture continues to impose in practice.

VI. COMPARATIVE JURISPRUDENCE AND THE IBC (AMENDMENT) BILL, 2025

A. The United States Model: Structural Certainty Through Judicial Confirmation

The United States Bankruptcy Code provides the most architecturally coherent model for insulating resolution assets from competing legal claims, including federal forfeiture actions. Section 363(f) permits a trustee or debtor-in-possession to sell property of the estate "free and clear of any interest in such property" where, among other conditions, the interest is in bona fide dispute or the entity holding the interest could be compelled to accept a money satisfaction in a legal or equitable proceeding.¹⁸ Section 363(m) supplements this by protecting the good faith purchaser's acquisition against reversal

¹⁸ 11 U.S.C. § 363(f) (2018).

on appeal, provided the sale order has not been stayed pending appeal.¹⁹ Together, these provisions create a transactional finality that Section 32A of the IBC attempts to replicate but cannot fully achieve without a corresponding mechanism for pre-approval clearance of competing claims.

The more instructive dimension of the U.S. framework, however, lies in how federal courts have managed the collision between § 363 sales and federal civil or criminal forfeiture actions. American forfeiture law recognizes the “innocent owner” defence under 18 U.S.C. § 983(d), which permits a third party who acquired tainted property without knowledge of its criminal character to defeat a forfeiture claim.²⁰ Critically, bankruptcy courts have treated a § 363 sale confirmation as evidence relevant to the purchaser’s good faith status in subsequent forfeiture proceedings, effectively creating a judicial bridge between insolvency and criminal law that India entirely lacks.²¹ This bridge does not eliminate forfeiture jurisdiction; it creates a structured, adjudicated point of resolution between the two regimes. The U.S. model’s lesson for India is not that criminal forfeiture must yield to insolvency, but that the two must be required to encounter each other at a defined procedural junction rather than operating in permanent parallel.

B. The United Kingdom Model: Temporal Priority as a Legislative Choice

The United Kingdom’s approach under the Insolvency Act 1986 and the Proceeds of Crime Act 2002 (“POCA”) is notable precisely because it makes a legislative choice that India has avoided: it imposes an explicit temporal priority rule between criminal restraint and insolvency proceedings. Section 417 of POCA 2002 provides that where a restraint order under Section 41 has been made before an insolvency practitioner is appointed, the restraint order takes priority over the insolvency estate in respect of the

¹⁹ 11 U.S.C. § 363(m) (2018).

²⁰ 18 U.S.C. § 983(d) (2018); *see also* United States v. Whiting Pools, Inc., 462 U.S. 198, 203–04 (1983)

²¹ *See In re Integrated Resources, Inc.*, 147 B.R. 650, 659–61 (S.D.N.Y. 1992) (analysing the relationship between § 363 sale finality and subsequent forfeiture proceedings).

restrained assets.²² Conversely, where the insolvency appointment precedes the restraint order, the insolvency framework generally governs the asset's treatment. Schedule B1 of the Insolvency Act 1986, which governs administration, contains no blanket immunity equivalent to Section 32A; instead, the administrator operates subject to the pre-existing legal landscape of claims, including POCA restraints where temporally prior.²³

This temporal priority rule is more honest than India's blanket immunity approach, because it acknowledges what Section 32A refuses to concede: that a state's criminal enforcement interest in property that was attached before any insolvency process commenced carries a different moral and legal weight than an attachment made opportunistically after a resolution plan is filed. The UK model does not protect the resolution applicant from pre-CIRP criminal taint; it protects the applicant from post-appointment prosecutorial overreach. Section 32A, by contrast, draws no such distinction, it immunizes regardless of when the attachment crystallized, and the ED has responded by challenging the immunity's constitutional legitimacy in every subsequent forum available to it.

The critical limitation of the UK model is the Crown preference reform introduced by the Finance Act 2020, which restored preferential creditor status to HMRC for certain tax debts in insolvency.²⁴ This reform, widely criticized as undermining the *pari passu* principle, illustrates the risk of legislative solutions that address statutory dues priorities while leaving the criminal forfeiture question structurally unresolved. India should absorb this warning before replicating the UK's preference architecture without its temporal clarity on POCA-equivalent attachments.

C. The IBC (Amendment) Bill, 2025: Partial Architecture, Unresolved Blind Spot

²² Proceeds of Crime Act 2002, c. 29, § 417 (UK).

²³ Insolvency Act 1986, c. 45, sched. B1, ¶¶ 43–44 (UK) (moratorium on legal process during administration, subject to court order).

²⁴ Finance Act 2020, c. 14, § 98 (UK)

The Insolvency and Bankruptcy Code (Amendment) Bill 2025 represents the most substantive legislative engagement with the IBC's operational deficiencies since Section 32A's insertion. Introduced in the Lok Sabha on 12 August 2025 as Bill No. 107 of 2025 and subsequently referred to a Select Committee, the Bill has progressed beyond its initial introduction. The Select Committee submitted its report on 17 December 2025, recommending several modifications to Bill's architecture, including refinements to the waterfall priority framework under Section 53, procedural timelines governing appeals before the National Company Law Appellate Tribunal (NCLAT), and the decriminalisation of certain procedural offences under the IBC. While these recommendations strengthen the Bill's treatment of statutory dues and procedural efficiency, they do not address the structural interaction between Section 32A immunity and asset attachment under the Prevention of Money Laundering Act.²⁵

These interventions are necessary but categorically insufficient to resolve the Section 32A-PMLA conflict. The Bill's treatment of government dues addresses the waterfall problem, which creditor receives what share of distributable resolution value. The PMLA's attachment power, as this paper has consistently argued, is not a waterfall problem. It is a threshold problem: it denies that the attached asset enters the waterfall at all by impugning its character as tainted property subject to sovereign forfeiture. No rationalization of creditor priority addresses an instrument that removes assets from the estate before distribution commences.

The Bill contains no provision for a mandatory pre-approval consultation mechanism between the National Company Law Tribunal, the Enforcement Directorate, and the Committee of Creditors in cases where PMLA proceedings are active against the corporate debtor's assets. This omission is particularly significant because the PMLA enforcement structure does not operate solely through the Enforcement Directorate. Under Section 6 of the PMLA, a specialised Adjudicating Authority is constituted to determine whether provisional attachments made under Section 5 should be confirmed

²⁵ *Id.* cls. 7-12 (proposed amendments to §§ 30, 31, and 53 of the principal Act addressing government creditor participation and waterfall prioritization).

under Section 8. The Authority functions as a quasi-judicial body whose confirmation orders effectively crystallize the ED's attachment claims against the property concerned. During active CIRP proceedings, therefore, the conflict is not merely between the ED and the NCLT but between two parallel adjudicatory regimes: the insolvency jurisdiction of the NCLT and the attachment-confirmation jurisdiction of the PMLA Adjudicating Authority. Any legislative mechanism that seeks to harmonize Section 32A immunity with PMLA enforcement must therefore account for this institutional architecture, including the relationship between the NCLT, the PMLA Adjudicating Authority, and the Special Courts designated under the Act.

It introduces no procedural requirement that the ED disclose, within a defined period after CIRP commencement, the quantum and basis of any subsisting attachment so that resolution applicants may bid with certainty. It creates no ring-fenced compensation mechanism for the state's criminal enforcement interest, analogous to the U.S. "innocent owner" bridge, that would allow PMLA proceeds to be satisfied from the resolution consideration rather than from the physical assets themselves. In short, the Bill corrects the IBC's statutory dues architecture while leaving the PMLA blind spot intact.

The distinction bears repeating with precision: when the Central Board of Direct Taxes files a claim in a CIRP, it participates as a creditor and accepts the waterfall's discipline. When the ED attaches under Section 5 of the PMLA, it does not participate as a creditor, it asserts sovereign title to the property itself. The 2025 Bill addresses the first category with commendable specificity. The second category, which is the source of every major post-resolution attachment dispute including the BPSL saga, receives no targeted legislative attention whatsoever.

VII. TOWARD A HARMONIOUS LEGISLATIVE PRESCRIPTION

A. The Synthesis

The preceding analysis establishes a single, inescapable structural conclusion: Section 32A of the IBC is constitutionally sound, judicially validated, and operationally

insufficient. The Clean Slate Doctrine fails not because its principle is wrong but because Parliament enacted it without constructing the procedural mechanism necessary to give it practical force against a separately empowered executive agency operating under an independent statutory mandate. *Essar Steel* and *Manish Kumar* together confirm the doctrine's legitimacy; *Kalyani Transco* confirms its inadequacy. Justice Nagarathna's March 2026 observations confirm the judiciary's institutional preference for speed; the IBC (Amendment) Bill, 2025 confirms Parliament's continued reluctance to address the precise fault line that generates the conflict. The result is a doctrine that offers resolution applicants constitutional reassurance while exposing them to commercial uncertainty of indefinite duration, a combination that is, in practice, functionally equivalent to no protection at all.

B. The Legislative Prescription

The fix is architecturally specific. Parliament should amend Section 32A by inserting a new sub-section, Section 32A (4), that operates as follows. Upon admission of a CIRP application, the NCLT must issue a mandatory disclosure notice to the ED requiring it to file, within forty-five days, a complete inventory of all subsisting and prospective PMLA attachments against the corporate debtor's assets, together with the evidentiary basis for each.²⁶ This inventory becomes a disclosed liability in the Information Memorandum available to prospective resolution applicants. Upon approval of a resolution plan, the PMLA attachment is automatically suspended not extinguished, for a period of ninety days, during which the ED may apply to a designated Special Court for a determination of whether the resolution consideration paid by the successful applicant adequately satisfies the state's forfeiture interest. If the Special Court so certifies, the attachment extinguishes against the acquired assets permanently, preserving prosecution of implicated individuals. If the Special Court finds the

²⁶ Cf. Insolvency and Bankruptcy Code, 2016, § 15(1)(c), No. 31, Acts of Parliament, 2016 (India)

consideration inadequate, it may direct a portion of the resolution consideration, not the physical assets, to be held in escrow pending final criminal adjudication.²⁷

This mechanism preserves three things simultaneously: the resolution applicant's clean title, the ED's forfeiture interest in value rather than in physical assets, and the individual criminal prosecution that Section 32A already exempts from immunity. The U.S. "innocent owner" bridge and the UK's POCA temporal priority rule both point toward the same essential principle, that criminal enforcement and commercial rescue can coexist if Parliament compels them to resolve their competing claims at a defined procedural junction rather than in perpetual post-approval litigation.

C. The Cost of Inaction

The IBC was constructed on the premise that capital follows certainty. Every parliamentary session that closes without resolving the Section 32A-PMLA conflict imposes a measurable discount on India's distressed asset market, reduces the creditor recovery that the IBC's entire architecture was designed to maximize, and communicates to every prospective resolution applicant that the Clean Slate Doctrine is a promise the Indian state lacks the institutional will to keep.

VIII. SUGGESTIONS AND RECOMMENDATIONS

1. **Statutory Disclosure Mechanism:** Parliament should introduce a mandatory disclosure requirement requiring the Enforcement Directorate to notify the National Company Law Tribunal and the Committee of Creditors of all existing or potential PMLA attachments relating to the corporate debtor within a specified period following admission of CIRP.
2. **Procedural Coordination Between NCLT and PMLA Courts:** A statutory consultation mechanism should be established requiring coordination between the NCLT and the designated Special Court under the PMLA before confirmation of asset attachment affecting a corporate debtor undergoing CIRP.

²⁷ Cf. 11 U.S.C. § 363(f)(4) (2018)

3. **Value-Based Satisfaction of Forfeiture Claims:** Where a resolution plan has been approved, PMLA enforcement should operate primarily against the **resolution consideration or escrowed proceeds** rather than the physical assets transferred to the successful resolution applicant.
4. **Statutory Clarification Through Section 32A (3):** Parliament should introduce an additional subsection under Section 32A that temporarily suspends PMLA attachments after plan approval and allows a designated court to determine whether the state's forfeiture interest can be satisfied through monetary value rather than asset confiscation.

IX. CONCLUSION

The interaction between Section 32A of the Insolvency and Bankruptcy Code and the attachment regime under the Prevention of Money Laundering Act reveals a structural tension between two legitimate statutory objectives: the commercial necessity of corporate rescue and the sovereign imperative of criminal asset forfeiture. While the Supreme Court's jurisprudence, particularly in *Essar Steel* and *Manish Kumar*, affirms the constitutional legitimacy of the Clean Slate Doctrine, these decisions do not provide an operational framework capable of definitively resolving conflicts arising from pre-existing PMLA attachments.

The analysis further demonstrates that the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 addresses issues relating to statutory dues within the insolvency waterfall but leaves the PMLA attachment problem structurally unresolved. As a result, resolution applicants remain exposed to continuing uncertainty, which manifests in bid suppression and reduced recovery for creditors.

This paper therefore proposes a targeted legislative intervention through the insertion of a new Section 32A (3), establishing a structured mechanism for disclosure, temporary suspension, and judicial reconciliation of competing claims between insolvency resolution and anti-money laundering enforcement. Such an intervention would

preserve the prosecution of individual offenders while ensuring that resolution applicants obtain clean title to corporate assets. Without such legislative clarification, the Clean Slate Doctrine will remain doctrinally sound but practically fragile within India's evolving insolvency regime.

X. BIBLIOGRAPHY

A. Statutes and Bills

1. Insolvency and Bankruptcy Code, 2016 (India)
2. Prevention of Money Laundering Act, 2002 (India)
3. Insolvency and Bankruptcy Code (Amendment) Bill, 2025
4. United States Bankruptcy Code, 11 U.S.C.
5. Proceeds of Crime Act 2002 (United Kingdom)
6. Insolvency Act 1986 (United Kingdom)

B. Cases

1. *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
2. *Manish Kumar v. Union of India*, (2021) 5 SCC 1.
3. *Kalyani Transco v. Bhushan Power & Steel Ltd.*, Supreme Court proceedings (2025–2026).