



NCLT & IBC Committee, PHDCCI

Newsletter

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Issue #1

A. Harmonising IBC and PMLA for Enhanced Resolution Outcomes: Insights from the IBBI Circular dated 04.11.2025

INTRODUCTION

The IBBI circular dated 04.11.2025 and titled "Undertaking by IPs before Special Courts under PMLA" has introduced a structured mechanism for restitution of assets attached by the Enforcement Directorate marking an important step towards harmonising the relationship between the IBC and the PMLA. For years, insolvency proceedings have been impeded by pre-existing or parallel attachments under PMLA, often leaving valuable corporate assets outside the reach of resolution professionals and creditors. This created a persistent tension and contrast between the two special acts. While the IBC prioritises value maximisation and continuity of the corporate debtor, the PMLA seeks to secure proceeds of crime and prevent money laundering.

The circular creates a principled framework under which insolvency professionals may approach the PMLA Special Court for restitution of attached assets, without disturbing the underlying criminal process or the rights of enforcement agencies.

JUDICIAL PRECEDENTS PRIOR TO THE CIRCULAR

Directorate of Enforcement v. Axis Bank [Delhi High Court, 2019]

In Directorate of Enforcement v. Axis Bank, the Delhi High Court held that the IBC and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would not have superiority over the PMLA. In this case, the ED preferred an appeal against the order of the adjudicating authority that in order to give weightage to the claims of third-party financial institutions, the PMLA had to take a back seat. Allowing the appeal, the Court reasoned that both the statutes operate in different spheres and, in order to seek release of a property that had been attached under the PMLA, third parties could approach the adjudicating authority to keep their interest. However, this judgment had been made prior to the insertion of section 32A to the IBC.



Manish Kumar v. Union of India [Supreme Court, 2021]

In *Manish Kumar v. Union of India*, the Supreme Court upheld the validity of section 32A of the IBC and held that it validly protects the corporate debtor's assets and its new management from liability for past offences, enabling a clean slate after resolution, while ensuring that individuals responsible for the wrongdoing remain liable.

Kiran Shah v. Enforcement Directorate [NCLAT, 2022]

The Hon'ble NCLAT in *Kiran Shah v. Enforcement Directorate* was faced with the issue of whether the NCLT had jurisdiction to set aside a Provisional Attachment Order (PAO) issued by the Enforcement Directorate under the Prevention of Money Laundering Act, particularly when the attachment continued during CIRP.

The NCLAT unequivocally held that the NCLT does not have jurisdiction to annul, set aside, or interfere with attachment orders passed by authorities under the PMLA. Relying heavily on the Supreme Court's ruling in *Embassy Property Developments Private Limited vs. State of Karnataka & Ors.*, the Appellate Tribunal emphasized that questions arising under a special public-law statute like the PMLA fall squarely within the exclusive jurisdiction of the PMLA adjudicatory machinery, and cannot be brought before the NCLT by invoking section 60(5) of the IBC. The NCLAT affirmed that the NCLT is not a court of judicial review and cannot sit in appeal over decisions of another statutory authority.

The Tribunal further accepted the reasoning of the Madras High Court in *Deputy Director, ED v. Asset Reconstruction Company (India) Ltd.*, which held that the IBC moratorium does not bar proceedings under the PMLA, as both statutes operate in distinct fields and attachment under PMLA being a special penal mechanism, continues notwithstanding IBC proceedings.

The NCLAT also explained that in the event any person is aggrieved by the order of an 'adjudicating authority' under the PMLA, then it is open to him to prefer an Appeal before the Appellate Tribunal, PMLA by resorting to the relevant provision(s) of the Prevention of Money Laundering Act, 2002.

Kalyani Transco v. BPSL [Supreme Court, 2025]

On 17.02.2020, the Hon'ble NCLAT in *JSW Steel v. Mahender Kumar Khandelwal* held that once a resolution plan has been approved under the IBC, Section 32A(1) and (2) of the Code bars the Enforcement Directorate or any other investigative agency from attaching the corporate debtor's assets. After approval of the plan, all criminal investigations against the corporate debtor stand abated, and therefore no attachment can lawfully continue or be initiated. Therefore, the attachment of assets of the corporate debtor by the Directorate of Enforcement was declared illegal and without jurisdiction. The NCLAT's judgment, after being overturned by the judgment of the Supreme Court dated 02.05.2025, was ultimately upheld by the Hon'ble Supreme Court in *Kalyani Transco v. Bhushan Power & Steel Ltd.* vide the judgment dated 26.09.2025.

It is also pertinent to note that the Supreme Court vide order dated 11.12.2024 disposed of Civil Appeal Nos. 14503 – 14504 of 2024 and directed the ED to handover the control of the properties of the Corporate Debtor i.e. BPSL to the SRA i.e. JSW owing to the fact that the attachment order had been passed subsequent to the approval of the Resolution Plan. However, it was clarified that this Court had not expressed any opinion on the interpretation of Section 32A of the IBC or on the powers of the ED to attach the property of the BPSL which was

EXCEPTION CARVED BY THE CIRCULAR

The Circular released by the IBBI on 04.11.2025 has paved the way for restitution of assets which have been subjected to attachment by the ED during CIRP or liquidation, with the intent to maximize the corporate debtor's value, ultimately benefiting the Committee of Creditors or the Successful Resolution Applicant.

For the first time, a formal mechanism has been introduced allowing the Insolvency Professional to approach the Special Court under Sections 8(7) and 8(8) of the PMLA for release of attached assets to increase the Corporate Debtor's value during insolvency. Importantly, the Circular does not limit the mechanism to assets attached after commencement of the CIRP but is also applicable to attachments predating the insolvency commencement. The circular also requires the Insolvency Professional to furnish an undertaking ensuring that restituted assets will not be diverted in any manner that benefits persons under investigation or those falling within Section 32A(2)(i) of IBC i.e. a promoter or a person in the management or control of the corporate debtor or a related party of such a person, or Section 32A(2)(ii) of IBC i.e. a person against whom there is reason to believe that they abetted or conspired in the commission of any offence committed by the Corporate Debtor prior to commencement of CIRP.

Another defining feature of this framework is that the obligations contained in the undertaking remain effective until the resolution plan is approved or the corporate debtor is dissolved. This ensures that during every stage of CIRP or liquidation, restituted assets remain protected from misuse and are deployed solely for the benefit of the creditors or the resolution applicant.

This mechanism has far-reaching implications in terms of harmonising the IBC and the PMLA, two statutes that have frequently collided in practice and in the courts. The circular now offers a clear administrative bridge i.e. it respects the ED's attachment powers but simultaneously allows for the restitution of assets attached by ED for insolvency purposes through judicially supervised restitution.

B. The Intersection of Artificial Intelligence and the Legal Profession

INTRODUCTION

India's legislative background vis a vis data and privacy laws

The Information Technology Act, 2000 ("IT Act"), came into force on 17th November 2000 and marks the first dedicated legislation aimed at regulating the cyber framework in India. The most notable feature of the IT Act was its introduction of provisions dealing with cyber-crimes and providing legal recognition to digital signatures and records.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data) Rules, 2011, set out rules for body corporates handling, storing or transferring personal information and mandated privacy disclosures and consent requirement. It also laid down the framework governing cross-border transfer of personal data.

The Information Technology (Intermediaries Guidelines) Rules, 2011, were introduced to regulate how intermediaries i.e. persons or entities storing or transferring information on behalf of another person and mandated such intermediaries to exercise due diligence while discharging their duties.

The three above-mentioned statutes collectively formed the foundational framework for regulating India's digital ecosystem at a time when the country's technology laws were still in their nascent stage.

Artificial Intelligence ("AI") is the most notable innovation in the technology industry of this decade and has permeated virtually every sector and the legal profession is no exception. From research and drafting to contract analysis, due diligence, and predictive insights, AI tools are reshaping how lawyers manage information-heavy tasks. This article delves into the impact of AI on the legal profession amidst the present legal framework governing AI and also discusses the new Digital Personal Data Protection Act, 2023 ("DPDP Act") that have been operationalized post the notification of the Data Protection Rules, 2025 on 13th November.

Present framework regulating AI in India

The DPDP Act, enacted on 11th August 2023, marks India's first comprehensive statute dedicated to governing the processing of digital personal data. After the notification of the Digital Personal Data Protection Rules, 2025 on 13th November 2025, the regulatory architecture has now been operationalized.

The Act mandates the processing of digital personal data in a manner that protects individuals' personal data while allowing its processing for lawful purposes. The Act limits the scope of processing of personal data to scenarios where the data principal (person to whom the data belongs) has given their consent, or for legitimate uses, such as the processing of personal data required to make a purchase at a pharmacy (Sections 4 and 7).

The Act further imposes obligations on data fiduciaries, such as ensuring data accuracy when used for consequential decisions, deleting data upon withdrawal of consent or fulfilment of purpose, notifying personal data breaches to both affected individuals and the Data Protection Board and failure to adhere to the mandates can attract penalties of up to Rs. 250 crores (Section 8).

The Act also brings an amendment to the IT Act, 2000, by omitting Section 43A of the IT Act which required body corporates to compensate the affected persons in case of any data breach which indicates a shift to a penalty-based enforcement regime.

In addition to the DPDP Act, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, serves as a replacement for the Information Technology (Intermediaries Guidelines) Rules, 2011, and establishes a detailed due-diligence framework for intermediaries (particularly social media platforms) to ensure accountability and responsible content governance. These rules require intermediaries to act on unlawful content upon receiving actual knowledge through a court order or government direction, maintain grievance redressal mechanisms, and comply with heightened obligations if classified as significant social media intermediaries.

Impact of the DPDP Act on AI

Since the DPDP Act governs the “processing” of digital personal data, which is defined by Section 2(x) as “a wholly or partly automated operation or set of operations performed on digital personal data”, its scope will certainly extend to any AI-driven handling of personal data as all Generative-AI modules utilize these processes in some form or the other.

In light of the expansive meaning attributed to “processing”, it is very likely that the DPDP Act would also cover situations in which personal data is gathered and utilised for building, training, or refining AI models. Thus, the rights granted to data principals and the restrictions on data retention would inevitably apply to such AI-related processing activities.

Regulation of AI beyond India

Presently the only comprehensive legislation directly regulating AI is the EU AI Act, published in the EU Official Journal on 12th July, 2024.

The Act’s jurisdiction is not limited to the EU but extends to any provider that deploys or makes an AI system or general-purpose AI model available in the EU market must comply with the applicable rules, irrespective of whether the provider is based within the EU or operates from outside the EU.

The Act divides AI systems into four categories based on their associated risk factor, being Unacceptable risk, High risk, Limited risk and Low/minimal risk. Based on these factors, the AI systems are subjected to varying levels of data governance regulations.

Application of AI tools in the legal realm

In a recent study conducted by VALS, a generative-AI benchmarking company, it was revealed that AI systems can perform at or above human levels on many routine legal research tasks. It found that while AI excels at tasks such as summarizing material, identifying cases by common names, and answering direct, single-jurisdiction questions, its performance drops significantly when faced with complex, multi-jurisdictional research. Lawyers materially outperformed AI on 50-state surveys, highlighting that current models still struggle with jurisdictional nuance, divergent rules, and exhaustive comparative analysis.

Presently there are a numerous AI tools available that are specifically designed for lawyers such as Lucio, Jurisphere, Clio, Legora and many more. These tools not only aid in research but also make drafting tasks a lot more convenient. Furthermore, an AI Startup called “Harvey AI” is being implemented by lawyers internationally as well as in India for its ability to review contracts and automate due diligence.

It is evident that AI cannot be a substitute for lawyers anytime soon, however, they are increasingly being viewed as a capable ally to lawyers, enabling legal practitioners to streamline the more routine and time-consuming aspects of legal work. By accelerating research, enhancing drafting efficiency, improving contract review, and automating document-heavy processes such as due diligence, these tools free up the time of lawyers to focus on higher-order analytical, strategic, and advocacy-driven tasks that require human judgment.

Despite their benefits, AI systems pose significant privacy challenges because they often rely on large and diverse datasets which can often include personal information. These systems also use complex and often opaque algorithms to collect, infer, store, and analyse that data. The automation and scale of AI processing can make it difficult for individuals to know when and how their personal data is being used, undermining meaningful consent and control. This especially becomes relevant for lawyers and the sensitive information handled by them on a regular basis.

CONCLUSION

Overall, the evolving global and domestic regulatory frameworks reflect an increasing recognition that AI will play a significant role in the practice of law, but only within a structured, accountable and rights-protective environment. The EU AI Act's risk-based model and India's DPDP Act through its comprehensive rules on consent, data governance and automated processing together create clear guardrails for how legal-tech AI systems must operate. Against this backdrop, the growing adoption of specialised AI tools by law firms demonstrates that AI is becoming an integral part of legal workflows, particularly for research, drafting and document-intensive tasks. While it still begs the old question that can lawyers eventually be replaced by AI, it seems that the present situation can be viewed as one of harmony between lawyers and AI with the latter being dedicated to streamline the workflow of the former.

C. Practical Implications of the Second Amendment to IBBI's Liquidation Regulations – Compliance, Challenges & Opportunities

INTRODUCTION – The Paradigm Shift in Liquidation Process

The Insolvency and Bankruptcy Board of India (IBBI), through its (Liquidation Process) (Second Amendment) Regulations, 2025, has effected a significant shift in the domain of corporate liquidation. The most notable change, as provided in the comparison table below, is the omission of Regulation 32A, which provided a structured framework for the "Sale of the Corporate Debtor as a Going Concern," along with the removal of specific clauses (e) and (f) from Regulation 32.

This amendment, effective from October 14, 2025, and applicable prospectively, marks a departure from a regime that actively encouraged the preservation of corporate entities during liquidation.

The Table of Amendment Comparison:

Regulation/Clause	Original Provision (Liquidation Process Regulations, 2016)	Amendment / Change in Second Amendment Regulations, 2025
Regulation 31A(1)(f)	<p>31 (1) The liquidator shall constitute a consultation committee, comprising of all creditors of the corporate debtor,</p> <p>within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters relating to:-</p> <p>a)</p> <p>b)</p> <p>—</p> <p>f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern</p> <p>—</p>	<p>Deleted:</p> <p>Clause (f): review of marketing strategy in case of failure of sale of corporate debtor as a going concern</p>
Regulation 32 (Sale of Assets)	<p>32.Sale of Assets, etc.</p> <p>The liquidator may sell-</p> <p>(a) an asset on a standalone basis;</p> <p>(b) the assets in a slump sale;</p> <p>(c) a set of assets collectively;</p> <p>(d) the assets in parcels;</p> <p>(e) the corporate debtor as a going concern; or</p> <p>(f) the business(s) of the corporate debtor as a going concern:</p> <p>Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (f) unless the security interest therein has been relinquished to the liquidation estate.]</p>	<p>Deleted:</p> <p>(e) the corporate debtor as a going concern; or</p> <p>(f) the business(s) of the corporate debtor as a going concern:</p> <p>Amendment to proviso:</p> <p>Provided that where an asset is subject to security interest, it shall not be sold under any of the clauses (a) to (d) unless the security interest therein has been relinquished to the liquidation estate.]</p>
Regulation 32A (Sale as a Going Concern)	<p>32A. Sale as a going concern. (1) Where the committee of creditors has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the corporate debtor, he shall endeavour to first sell under the said clauses.</p> <p>—</p> <p>(5) Where the liquidator is of the opinion that it is viable to run the corporate debtor as a going concern, he shall consult the consultation committee and only on its advice he shall run the affairs of the corporate debtor as a going concern to the extent approved.</p>	<p>Entire Regulation 32A has been omitted</p>

The Jurisprudence

The now-omitted Regulation 32A did not operate in a vacuum; it laid down a procedure for the sale of a corporate entity as a going concern to fully effectuate the text of (e) & (f) of Regulation 32 and its legislative intent was to further the objective of the Insolvency and Bankruptcy Code (IBC), 2016: value maximization and preservation of corporate entities.

The Procedure and Its Challenges

Regulation 32A provided a roadmap, mandating that the liquidator must “endeavour to first sell” the corporate debtor as a going concern if it would maximize value.

In *Sarda Mines Pvt. Ltd. v. Shailendra Ajmera Liquidator of Kwalitiy Ltd.* (2022), the NCLT strictly enforced the 90-day payment timeline as given in 32A (4), for the successful bidder, signifying the time-bound nature of the process and the limited discretion of the Adjudicating Authority to waive contractual and regulatory terms like interest for delayed payments.

In *Haravtar Singh Arora v. Navneet Gupta, Liquidator and Anr.* (2024), the NCLAT dismissed a challenge to the sale of a corporate debtor as a going concern, holding that objections based on technicalities (like a leased property or the 90-day timeline in Regulation 32A(4)) would not easily invalidate a properly conducted process once set in motion.

The Conceptual Boundary of a “Going Concern”

In the matter of *Mr. Ravindra Chaturvedi, Liquidator of Excel Glasses Ltd.* (2024), The NCLT, Kochi Bench, defined the essential characteristics of a sale under Regulation 32A, relying on an IBBI note:

“‘Going Concern’ means all the assets, tangibles or intangibles and resources needed to continue to operate independently a business activity...”

The Primacy of Revival Over Liquidation

The National Company Law Appellate Tribunal (NCLAT) in *Mohan Gems & Jewels Pvt. Ltd. v. Vijay Verma and Anr.* (2021) applied this principle. The Tribunal, relying on Supreme Court precedents like *Swiss Ribbons* and *ArcelorMittal*, held:

"It is seen that the Hon'ble Apex Court in a catena of Judgements has time and again observed that 'Liquidation' should be the last resort... and even in Liquidation, the Liquidator can sell the business of the 'Corporate Debtor' as a 'going concern'."

The Tribunal dismissed an application for a going concern sale of a corporate debtor whose key assets had already been sold, stating that selling a “skeleton of the Corporate Debtor” bereft of assets and employees would not serve the regulation's purpose.

NCLT Ahmedabad on Going-Concern Sale

The judgment of *Nitin Jain (Liquidator of PSL) v. Lucky Holdings* from the NCLT, Ahmedabad, granted the application filed by the Liquidator of PSL Limited, approving the sale of the corporate debtor as a going concern to Lucky Holdings Private Limited.

The Tribunal held that “the reliefs and concessions on the parallel line of an approved resolution plan can be granted” to a successful bidder in a going-concern sale.

While exercising its authority to grant these reliefs, the Bench simultaneously elaborated on the restrained role of the adjudicating authority, noting the guideline that “the NCLT, as Adjudicating Authority under IBC, should interfere at bare minimum in the framework envisaged under the IBC, 2016.”

This principle was applied in a separate, dismissed application by Jindal Tubular (India) Ltd., where the Tribunal found no merit in its claims to halt the auction.

The 2025 Amendment Key Changes:

I. Deletion of Regulation 31A(1)(f): which provided for review of marketing strategy in case of failure of sale of corporate debtor as a going concern.

II. Amendment to Regulation 32: Clauses (e) "sale of the corporate debtor as a going concern" and (f) "sale of the business of the corporate debtor as a going concern" have been omitted. The proviso now only references clauses (a) to (d)

III. Deletion of Regulation 32A: The entire process, including the 90-day period and the mandate to "first sell" as a going concern, has been removed. The amendment applies only to cases where "liquidation by sale as going concern has not commenced," providing clarity and preventing disruption of ongoing processes.

Practical Implications For Liquidators:

The mandatory obligation to prioritize a "going concern" sale has been removed. Liquidators now have increased flexibility to select the most viable sale method from the outset, such as a slump sale or asset parcel, as outlined in Regulation 32. This grants them greater discretion to maximize value based on the specific circumstances of the corporate debtor.

For the Consultation Committee:

The deletion of Regulation 31A(1)(f) removes the specific requirement for the Consultation Committee to advise on the "review of marketing strategy in case of failure of sale of corporate debtor as a going concern." Consequently, this, advisory obligation is no longer enshrined in the regulatory framework, altering the committee's prescribed responsibilities.

CONCLUSION

The Second Amendment of 2025 represents a significant recalibration by omitting a mandated approach. The sale of the corporate debtor itself as a going concern, formerly under Regulation 32(e), has been completely removed as a distinct liquidation option. While the economic outcome of preserving a business unit can still be achieved through a slump sale of its assets, the specific option to transfer the corporate shell is no longer available.

NCLT & IBC Committee Leadership

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- **Mr. Abhishek Anand**, Co-Chair
- **Ms. Ranjana Roy Gawai**, Co-Chair
- **Mr. Harish Taneja**, Co-Chair
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