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## **PMLA V IBC: Validity of Property Attachment during Moratorium**

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### **ABSTRACT:**

In a clash between two significant laws, the PMLA (Prevention of Money Laundering Act) and the IBC (Insolvency and Bankruptcy Code), the validity of property attachment during a moratorium is being questioned. The PMLA, which aims to curb money laundering and seizure of assets, has sometimes clashed with the IBC's objective of insolvency resolution. This clash has led to confusion and legal disputes surrounding the attachment of properties of defaulting companies that are undergoing resolution proceedings.

The moratorium period provides a breathing space for companies to restructure and revive themselves. However, questions arise as to whether the attachment of properties under the PMLA during this period is valid or goes against the spirit of the IBC. It is a complex issue that requires a careful examination of the legal provisions and the intention behind both the PMLA and the IBC.

Keywords: PMLA, IBC, Laundering, Moratorium.

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### **Understanding property attachment during the moratorium period:**

During the moratorium period, companies that are undergoing resolution proceedings are protected from legal actions and enforcement of claims by creditors. This protection allows them to focus on restructuring and reviving their businesses. However, the attachment of properties under the PMLA during this period raises concerns regarding the extent to which the moratorium protects the assets of defaulting companies.

The PMLA empowers investigative agencies to attach properties suspected to be involved in money laundering activities. This provision aims to prevent the dissipation of assets and ensure the recovery of illicitly obtained funds. However, when such properties belong to companies undergoing resolution, the clash between the PMLA and the IBC arises.

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### **Comparison of PMLA and IBC provisions regarding property attachment:**

To understand the clash between the PMLA and the IBC, it is crucial to examine the provisions of both laws regarding property attachment. The PMLA grants investigative agencies the power to attach properties based on reasonable belief of money laundering activities. On the other hand, the IBC provides for a moratorium period during which no legal action can be taken against a defaulting company.

While the PMLA aims to prevent money laundering and seize assets, the IBC focuses on the resolution and revival of defaulting companies. The conflict arises when the attachment of properties under the PMLA hampers the resolution process and goes against the protection provided by the moratorium under the IBC.

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### **Legal validity of property attachment during the moratorium:**

The legal validity of property attachment during the moratorium is a subject of debate among legal experts and stakeholders. The PMLA does not explicitly exempt properties of defaulting companies from attachment during the moratorium period. However, the IBC's objective of insolvency resolution and the protection offered by the moratorium raise questions about the validity of such attachments.

Some argue that the attachment of properties during the moratorium undermines the purpose of the IBC and hampers the revival of defaulting companies. Others contend that the PMLA's objective of preventing money laundering and recovering illicit funds justifies the attachment of properties, even during the moratorium period.

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### **Recent court rulings on property attachment during the moratorium:**

Several court rulings have shed light on the issue of property attachment during the moratorium. In some cases, courts have upheld the validity of property attachment under the PMLA, stating that the objectives of the PMLA cannot be compromised. However, other courts have recognized the need to balance the objectives of both laws and have questioned the attachment of properties during the moratorium.

These conflicting judgments highlight the complexity of the issue and the need for a clear and consistent interpretation of the laws. The lack of clarity regarding the validity of property attachment during the moratorium has led to legal disputes and delays in the resolution process.

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### **Impact of property attachment on stakeholders:**

The attachment of properties during the moratorium period has significant implications for various stakeholders. Creditors, who are already facing financial losses due to the defaulting company's insolvency, may have to wait longer to recover their dues if the resolution process is hindered by property attachment. Similarly, employees and other stakeholders may suffer from delays in the revival of the company.

Furthermore, the uncertainty surrounding the validity of property attachment during the moratorium can affect investor confidence and discourage potential buyers or investors from participating in the resolution process. This, in turn, can hamper the successful resolution and revival of defaulting companies.

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### **Challenges and controversies surrounding property attachment during the moratorium:**

The clash between the PMLA and the IBC regarding property attachment during the moratorium has given rise to several challenges and controversies. One of the primary challenges is the lack of clarity in the legal provisions, which has led to inconsistent interpretations and conflicting court rulings. This lack of clarity hampers the resolution process and creates confusion for all stakeholders involved.

Additionally, the clash between the two laws raises questions about the hierarchy and priority of objectives. While the PMLA aims to prevent money laundering and seize assets, the IBC focuses on the resolution and revival of defaulting companies. Balancing these objectives and ensuring a fair and efficient resolution process is a complex task.

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### **Recommendations for improving the clarity and consistency of property attachment regulations:**

To address the challenges and controversies surrounding property attachment during the moratorium, it is essential to improve the clarity and consistency of regulations. One way to achieve this is by amending the laws to explicitly exempt properties of defaulting companies from attachment during the moratorium period. This would provide a clear and consistent interpretation of the laws and avoid legal disputes.

Additionally, stakeholders and legal experts should engage in dialogue and discussions to develop guidelines and best practices for property attachment during the moratorium. This collaborative approach can help in striking a balance between the objectives of the PMLA and the IBC and ensure a fair and efficient resolution process.

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### **Case studies highlighting the implications of property attachment during the moratorium:**

Examining case studies can provide valuable insights into the implications of property attachment during the moratorium period. By analyzing real-life scenarios, we can understand the challenges faced by defaulting companies, creditors, and other stakeholders in the resolution process.

Case studies can shed light on the impact of property attachment on the timeline of the resolution process, the ability of defaulting companies to attract investors, and the overall success rate of resolution proceedings. These insights can inform policymakers and stakeholders in developing effective strategies and regulations to address the clash between the PMLA and the IBC.

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### **Conclusion:**

The clash between the PMLA and the IBC regarding property attachment during the moratorium is a complex issue that requires careful examination and consideration. While the PMLA aims to prevent money laundering and seizure of assets, the IBC focuses on insolvency resolution and revival of defaulting companies.

The ongoing debate surrounding the validity of property attachment during the moratorium highlights the need for clarity and consistency in the interpretation of the laws. Stakeholders and legal experts must engage in dialogue and develop guidelines to strike a balance between the objectives of both laws and ensure a fair and efficient resolution process.

By understanding the implications of property attachment on stakeholders and analyzing case studies, we can gain valuable insights into the challenges faced by defaulting companies, creditors, and other stakeholders during the resolution process. This knowledge can inform policymakers and stakeholders

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in developing effective strategies and regulations to address the clash between the PMLA and the IBC and pave the way for a more transparent and efficient insolvency resolution process.