

Knowledge Series-7

How it is relevant for CA Final Exams- Since it resolve

Quest- Which Act shall prevail IBC or PMLA

Quest-Clarifies Sec 41 of PMLA

JSW's Bhushan Power acquisition in deep freeze as ED refuses to relent

JSW Steel, looking to acquire bankrupt [Bhushan Power](#) and Steel Ltd (BPSL), might have a longish wait.

The National Company Law Appellate Tribunal (NCLAT) had directed the government's [Enforcement Directorate](#) (ED) to revoke the properties the latter had attached of Bhushan. The ED had done so on the reasoning that these were proceeds from criminal acts.

The ED is learnt to have told the tribunal and the Union ministry of corporate affairs (MCA) that doing so will first require amending the Prevention of Money Laundering Act (PMLA).

"The probe agency, under Section 41 of PMLA, cannot revoke any action taken under the said law, unless the Supreme Court intervenes," said a senior ED official in the know.

Section 41 says: "No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an adjudicating authority or the appellate tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

Last month, the ED had provisionally attached assets worth Rs 4,025 crore, including land and machinery, of the BPSL's plant in Orissa, in connection with a money laundering case involving alleged diversion of 'bank loans.

The probe agency says insolvency proceedings come under civil law and that cannot override criminal law proceedings. An official also cited a Delhi court order which says the anti-money laundering law prevails over Insolvency and Bankruptcy Code (IBC) proceedings.

The tribunal has put on hold the Rs 19,700-crore payout offer of JSW Steel for acquiring the debt-ridden firm. However, it has said the ED actions would undermine the IBC.