

# WCC WATCH

Your Monthly Digest to Stay Ahead in the Evolving Realm of White Collar Crime



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***The Unbreachable Shoreline***, our cover story this month navigates the murky waters where a government allocation, secured through a tainted process, transforms into "Proceeds of Crime" under the PMLA. The Delhi High Court's recent ruling affirms that the financial gains from such a flawed initial right firmly establish the predicate for a money laundering charge.

Shifting focus, our in-depth analyses dissect critical rulings across corporate and criminal law: the Supreme Court affirmed the supremacy of the PMLA appellate route even when the underlying criminal case is dropped, reinforcing statutory mechanisms. Elsewhere, the Bombay High Court firmly declared that the IBC moratorium shields the company, but not its directors, from personal penal liability under cheque dishonour laws, while the Gujarat High Court confirmed the mandatory nature of the 20% deposit pending appeal under Section 148 NI Act.

Further procedural clarity emerges from the Supreme Court, which mandated comprehensive tech integration to tackle the crushing backlog of cheque bounce cases, restating that the NI Act's intent is compensation, not mere punishment. In our case law updates, we examine the Chhattisgarh High Court's stance that minor procedural deviations don't void an ED arrest, contrasting this with the Allahabad High Court's skepticism over the method of ED summons service. Meanwhile, the Orissa High Court echoed the principle that insolvency proceedings do not extinguish a director's Section 138 liability, and the Kerala High Court upheld a Special Court's power to order further investigation despite the CBI filing a final report. Finally, do note the upcoming training opportunities in tax strategy and commercial dispute resolution that we have curated for you this month.

This edition also discusses a powerful move to deepen India's integration with the global economy and significantly enhance the ease of cross-border trade and payments. The Reserve Bank of India (RBI) has enacted significant amendments to its core **Foreign Exchange Management Act (FEMA)** regulations. Breaking from conventional norms, these strategic updates are meticulously designed to inject greater flexibility into trade financing and decisively streamline export-related transactions.

Let's dive in!

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# COVER STORY

## The Tainted Foundation: Decoding How a Fraudulent Allocation Letter Became the 'Proceeds of Crime' Under PMLA



“subsequent coal extraction, commercial exploitation, and profit generation by PIL are the direct economic manifestations of that tainted right, squarely fitting the definition of proceeds under Section 2(1)(u)

Can an improperly secured government allocation, obtained through deception, become the foundation for a money laundering charge years later? This question strikes at the heart of how financial crime legislation treats the "fruits of a poisonous tree."

In a significant development, the Delhi High Court division bench has decisively ruled in *Directorate Of Enforcement Versus M/S. Hi-Tech Mercantile India Pvt Ltd & Ors. & Ors.* that a coal block allocation secured via misrepresentation or fraud, which subsequently generated financial benefits, squarely constitutes an offence of money laundering under the PMLA.

This ruling directly overturned a 2022 decision by a single judge that had previously held the coal allocation itself could not be considered "proceeds of crime" per se. The central issue before the division bench was the ED's authority to attach assets and proceed against PIL based on gains derived from a coal block allocation made in 2003, despite earlier legal complications. This article will delve into the crucial legal principles regarding what constitutes "property," when "proceeds of crime" are generated, and how the allocation document itself became the crucial link to satisfying the stringent requirements of the PMLA offence. What truly constitutes "property" in the labyrinthine world of modern finance, and at what precise moment do the gains from a fraudulent acquisition become the indelible mark of "proceeds of crime"? These are not mere academic questions; they are the fault lines upon which the battle against economic crime is won or lost, particularly under the...



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# PIVOTAL ISSUES

## Statutory Supremacy Triumphs: JSW Steel and the Compulsory Route Through the PMLA Tribunal



*bank accounts are indeed "property" under Section 2(1)(v) PMLA*



In the intricate landscape of corporate legal battles, one question often looms large: When does a bona fide business transaction become entangled in the web of alleged criminal proceeds, and what recourse does an entity have when a state agency targets its assets? The Supreme Court of India recently addressed such a high-stakes scenario in *Jsw Steel Limited Etc. Versus Deputy Director, Directorate Of Enforcement Etc.*, refusing to quash ongoing proceedings initiated by the Directorate of Enforcement (ED) against JSW Steel Limited under the Prevention of Money Laundering Act (PMLA), thereby firmly underscoring the supremacy of statutory appellate mechanisms in PMLA cases.

Can a company, once cleared of the main criminal charge, still face the heavy hand of the law under the PMLA? This complex question lies at the heart of the Court's decision. The legal challenge mounted by JSW Steel rested on a fundamental argument: that with the CBI having dropped the charges against the company in the underlying illegal mining case—the "scheduled offence"—the entire prosecution was founded on 'mere apprehension'. Citing the landmark decision in *Vijay Madanlal Choudhary and Others v. Union of India and Others*, JSW Steel contended that the absence of a 'live scheduled offence' should nullify the PMLA proceedings, as there could be no 'proceeds of crime' and, consequently, no offence under Section 3 PMLA (which defines the offence of money laundering). Beyond the scheduled offence, the narrative shifted to the nature of the alleged money laundering itself. The Enforcement Directorate (ED)'s complaint was not based on the original crime, but on the...



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# PIVOTAL ISSUES

## Moratorium's Edge: Decoding Where the IBC Shield Ends and Section 138 Accountability Begins



“What is dissolved is only the company, not the personal penal liability of the accused covered under Section 141 of the NI Act,

When a company faces the grim reality of insolvency, entering the protective embrace of the CIRP under the IBC, its financial obligations are temporarily suspended, and its corporate life is put on hold. But does this corporate catastrophe, a mechanism designed for financial restructuring and revival, simultaneously serve as a silent acquittal for the natural persons—the directors—who signed the cheques that ultimately bounced? Does the shield of the IBC moratorium, meant for the corporate entity, extend its formidable protection to individuals facing criminal charges for dishonour of cheques under Section 138 of the NI Act? In a crucial ruling addressing this very nexus, the High Court of Bombay, Nagpur Bench, comprising Justice M.M. Nerlikar, delivered an unequivocal answer: the prior initiation of IBC proceedings, including subsequent liquidation, does not bar criminal prosecution of directors under Section 138 of the Negotiable Instruments Act.

This definitive pronouncement, emerging from the case of Ortho Relief Hospital and Research v. M/s. Anand Distilleries, through its Directors & Anr., stemmed from a dispute where the petitioner's complaint under Section 138 was dismissed by the trial court solely due to the respondent company having been admitted into CIRP and eventually liquidated. The petitioner had argued the distinct nature of the IBC and NI Act proceedings, emphasizing the penal character of the latter, while the respondent countered that the cause of action arose post-moratorium and was thus untenable, heavily relying on earlier rulings suggesting a bar to the NI Act proceedings post-CIRP initiation. The High Court's...



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# PIVOTAL ISSUES

## Judicial Discretion and Mandatory Deposit under Section 148 of the NI Act: A Closer Look



*The scales of justice have tipped: the Appellate Court's discretion now bows before the mandatory minimum quantum, delivering swift relief to the aggrieved complainant.*



The evolution of cheque dishonour laws under the NI Act, has increasingly prioritized compensatory justice for the complainant, moving away from purely punitive measures. A pivotal tool in this legislative endeavor is Section 148, empowering Appellate Courts to order a minimum 20% deposit pending appeal. The critical jurisdictional question recently addressed by Justice R. T. Vachhani of the High Court of Gujarat, in the matter of Mahadev Enterprise Thro Pruthvi Sanjaybhai Solanki & Anr. vs. State of Gujarat & Anr., was whether a first appellate court could validly exercise this power subsequently to the initial order suspending the sentence, thereby reinforcing the mandatory nature of this compensatory requirement.

The High Court primarily held that the condition imposed by the first appellate court to deposit 20% of the compensation amount awarded by the trial court while suspending the sentence under Section 389 of the CrPC is sustainable and does not warrant interference. The Court also affirmed that this condition could be imposed subsequently to the initial order suspending the sentence. The ruling thus upheld the normal rule of mandatory minimum deposit pending appeal. The factual matrix of the case involved a petitioner who was aggrieved and dissatisfied with an order of conviction and sentence passed by the trial court for an offence. The petitioner filed a criminal appeal and simultaneously moved an application for the suspension of the sentence. The first appellate court initially allowed the suspension of the sentence but subsequently directed the petitioner to deposit 20% of the compensation amount awarded by the trial court, leading to the filing and challenging...



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# PIVOTAL ISSUES

## From Backlog to Breakthrough: SC's Comprehensive Mandate for Tech Integration in Cheque Dishonour Cases



“  
legislative intent  
behind criminalising  
cheque dishonour is  
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retribution, but rather  
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payment of money

”

The Supreme Court of India's decision in *Sanjabij Tari v. Kishore S. Borcar and Anr.* has been hailed as a pivotal moment for procedural reform, primarily addressing the massive and debilitating backlog of cheque bouncing cases under Section 138 of the Negotiable Instruments (NI) Act, 1881. The Court clearly articulated that the legislative intent behind criminalising cheque dishonour is not punitive retribution, but rather to ensure the payment of money and uphold the credibility of cheques as a reliable substitute for cash payment. With Section 138 cases consuming an overwhelming portion nearly 50% in certain jurisdictions of the judicial system's time, this judgment provided a necessary systemic overhaul.

The core of the legal contention was an appeal challenging a High Court's decision to acquit the accused, which had erroneously set aside the concurrent convictions by the lower courts. The dispute centered on a dishonoured cheque issued following a loan transaction. The High Court had overturned the conviction primarily by questioning the financial capacity of the complainant to advance the loan, effectively accepting the defense that the cheque was merely a signed blank instrument. This approach was held to be fundamentally flawed. The apex court firmly reiterated the long-standing principle that once the accused admits the execution of the cheque, the statutory presumptions under Section 118 and Section 139 of the NI Act immediately arise. While this presumption is rebuttable, the initial burden of proof to show that the cheque was not in discharge of any debt or liability falls squarely on the accused. The Supreme Court explicitly set aside a contrary judicial view that cash...

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# SIGNIFICANT CASE LAWS

## Chhattisgarh High Court Dismisses Plea to Quash ED Arrest in Liquor Scam; Cites Procedural Lapses Aren't Illegalities

The Chhattisgarh High Court, in the case of Chaitanya Baghel vs. Directorate of Enforcement refused to quash the arrest and consequential criminal proceedings initiated against the petitioner, Chaitanya Baghel, for his alleged involvement in the Chhattisgarh Liquor Scam under the Prevention of Money Laundering Act, 2002 (PMLA), holding that while procedural deviations—such as the non-issuance of summons under Section 50 of PMLA and potential unsanctioned "further investigation"—were irregularities, they did not amount to illegality sufficient to vitiate the arrest or the proceedings. The petitioner had challenged his arrest on grounds including non-issuance of summons, baseless allegations of non-cooperation, mechanical grounds of arrest, a substantial delay in the arrest after initial seizure of material, and illegal "further investigation" without judicial sanction. The court, through Justice Arvind Kumar Verma, ultimately held that the arrest was not founded solely on the refuted ground of non-cooperation but on the subjective satisfaction of the Investigating Officer based on available material, which involved disputed factual questions unsuitable for writ jurisdiction.

The Court's rationale focused on the distinction between illegality and irregularity). Specifically, it held that Section 50 (summons) is not a pre-condition for arrest under Section 19 of PMLA, meaning non-issuance of a summons was merely a procedural lapse. Furthermore, regarding the "further investigation" without court permission in a complaint case, the Court, while acknowledging the procedural requirement for judicial sanction, ruled that this deviation, though an irregularity, did not inherently render the arrest or entire proceedings void ab initio.



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# SIGNIFICANT CASE LAWS

## Allahabad HC Questions Legality of ED Clerk Serving Summons in PMLA Case; Flags Improper Notice Service

The Allahabad High Court (Lucknow Bench), in the case of *Rajeev Nayan Mishra @ Rajeev Nayan vs. Directorate Of Enforcement Govt. Of India Lko. Zonal Office Lko.*, granted anticipatory bail to the accused in a money-laundering case linked to the UP Police recruitment paper leak, holding that the Enforcement Directorate's (ED) alleged service of summons by an Upper Division Clerk (UDC) was improper and raised serious doubts about the validity of the ED's claim that the applicant had failed to cooperate. The case arose from an ECIR filed under the PMLA against the applicant, who was not initially named in the FIR but was later implicated based on custodial statements, after which he was arrested and his statement was recorded while he was in jail. The ED opposed anticipatory bail, arguing the applicant failed to appear despite repeated summons after his release from custody, but the Court noted that the first summons was issued while he was still in jail and found the subsequent service of summons to be highly defective.

Justice Subhash Vidyarthi expressed strong doubts over the ED's procedure, noting glaring discrepancies in the service report and the accompanying photograph—which failed to show the summons pasted on the wall and lacked witness signatures—thus undermining the claim of non-cooperation. The Court questioned whether the duty of serving summons could be officially assigned to a UDC and criticized the ED clerk for not utilizing modern technology (like smartphones with timestamp and geographical coordinates) to properly record the service. Considering that the applicant had already spent over seven months in custody and was on bail in the scheduled offense, the Court allowed the anticipatory bail plea, reasoning that the serious doubts over the proper service of summons negated the ED's primary ground for opposing bail, which was non-cooperation.



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# SIGNIFICANT CASE LAWS

## Cheque Dishonour Liability Under S. 138 Survives Company's Insolvency, Holds Orissa High Court

The Orissa High Court, in the case of Syed Najam Ahmed vs. State of Odisha & Anr., held that directors of a company cannot be absolved of their personal penal liability for the offence of cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), merely because the company has been declared insolvent and a Resolution Professional was appointed under the Insolvency and Bankruptcy Code, 2016 (IBC). The petitioner, the Managing Director of Zenith Mining Pvt. Ltd., was prosecuted after a ₹1 crore cheque issued on behalf of the company to repay a friendly loan was dishonoured. The petitioner sought discharge, arguing that the company's insolvency and the appointment of a Resolution Professional under the IBC mandated the complainant to approach the Resolution Professional, rendering the criminal prosecution invalid.

Justice Chittaranjan Dash upheld the trial court's dismissal of the discharge application by relying on the Supreme Court's precedent in Ajay Kumar Radheshyam Goenka v. Tourism Finance Corporation of India Ltd., which established that the scope and nature of proceedings under the NI Act and the IBC are distinct. The rationale is that the moratorium under Section 14 of the IBC does not extend to criminal proceedings, such as those under Section 138 of the NI Act. Furthermore, the personal penal liability of the directors/signatories under Section 141 of the NI Act remains independent of the company's financial status or dissolution, meaning the IBC proceedings do not affect the parallel criminal prosecution against the directors.

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# SIGNIFICANT CASE LAWS

## Gujarat HC Denies Relief to Former SEZ Officers Facing Forgery, Corruption Charges in Illegal Import Scam

The Gujarat High Court, in the case of Chirala Sesha Srinivas, Inspector of Central Excise, & Anr. vs. State of Gujarat & Anr., refused to quash the forgery, cheating, and corruption charges against two former Kandla Special Economic Zone (KASEZ) officials, holding that the petitioners could not bypass the statutory bar against revision of interlocutory orders under Section 19(3)(c) of the Prevention of Corruption Act, 1988 (PC Act) by invoking the High Court's extraordinary writ jurisdiction under Article 226 of the Constitution of India. The petitioners, former Officers on Special Duty (OSD) at KASEZ, were implicated in a CBI charge sheet under IPC sections (including 120B, 420, 467, 471) and PC Act provisions, based primarily on a joint inspection report they submitted regarding a company allegedly diverting duty-free imported metal scrap into the open market. After their discharge applications under Section 227 of the Cr.P.C. were dismissed by the trial court, they initially filed a Criminal Revision Application and subsequently sought to convert it into a Special Criminal Application under Article 226.

Justice JC Doshi noted that the petitioners, by attempting to convert their revision plea, were "fully conscious" of the express bar contained in Section 19(3)(c) of the PC Act against entertaining revisions or granting stays against interlocutory orders. The Court's rationale, drawing upon the Supreme Court's ruling in Satya Narayan Sharma v. State of Rajasthan, was that what could not be achieved under the revisional jurisdiction (Sections 397 and 401 Cr.P.C.) due to a statutory embargo cannot be permitted to be attained sub silentio through the writ jurisdiction (Article 226/227), thereby preventing the interdiction of proceedings before the Special Court. The Court also dismissed the argument of departmental exoneration as a ground for quashing, as it had not been properly pleaded.



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# SIGNIFICANT CASE LAWS

## Kerala High Court Upholds Special Court's Power to Mandate Further Probe Post-Final Report Submission

The Kerala High Court, in the case of Abdul Rasheed @ Dr A R Babu vs. Central Bureau of Investigation, upheld the power of a Special Court to direct further investigation even after the CBI had filed a final report concluding that no offence was made out against certain public servants (bank officials). The case involved an alleged Rs. 15 crore loan fraud against the State Bank of India by Heera Constructions Company Pvt. Ltd. (HCCPL) and its directors. While the CBI's final report excluded bank officials from the array of the accused, citing "gross negligence and dereliction of duty" but no mens rea or quid pro quo under the Prevention of Corruption Act, the Special Judge (CBI/SPE), Thiruvananthapuram, rejected the report and ordered further investigation into the officials' possible criminal involvement.

The rationale of Justice A. Badharudeen was that the Special Court was justified in finding serious doubt regarding the role of the bank officials, particularly because the CBI's own report acknowledged serious procedural lapses (like the absence of an escrow account, repeated loan extensions, and unauthorized sale of secured assets). The High Court held that the CBI had prematurely given a clean chit without examining these key aspects, and the investigating officer's conclusion—that the officials' actions amounted merely to negligence or dereliction of duty—"could not be justified." Thus, the Special Court's order for a thorough, effective further investigation was found to be a valid exercise of its supervisory power to ensure a proper probe.



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# REGULATORY UPDATE:

RBI Amends FEMA: A Major Boost for Export Repatriation and Trade Flexibility



## भारतीय रिज़र्व बैंक RESERVE BANK OF INDIA

In a powerful move to deepen India's integration with the global economy and significantly enhance the **ease of cross-border trade and payments**, the Reserve Bank of India (RBI) has enacted significant amendments to its core **Foreign Exchange Management Act (FEMA)** regulations. Breaking from conventional norms, these strategic updates are meticulously designed to inject greater flexibility into trade financing and decisively streamline export-related transactions. The comprehensive reforms focus on two critical pillars: a crucial extension of the timelines for repatriating export proceeds, offering exporters vital breathing room, and the proactive facilitation of lending in Indian Rupees (INR) to neighboring countries, reinforcing regional financial linkages and trade. This regulatory shift signals the RBI's determined commitment to creating a future-ready, competitive foreign exchange framework.

This **Regulatory Update**, issued on October 6, 2025, signals the RBI's objective to align the foreign exchange framework with the evolving needs of external trade. The most prominent change relates to the period within which exporters must utilize or repatriate their foreign currency earnings. The RBI has amended the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2015, creating a new, more flexible regime for specific accounts. Crucially, the amendment clarifies that foreign currency accounts opened in...

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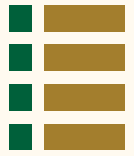
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