

# NM Docket – where insolvency, enforcement and resolution converge!

Welcome to the first edition of NM Docket, a curated window into India's evolving landscape of insolvency, enforcement and dispute resolution.

Every edition brings together ideas from the frontlines of legal reform and real-world practice. From how the Insolvency Code is reshaping credit markets, to how white-collar enforcement is redefining corporate accountability, to how mediation and arbitration are rewriting the culture of conflict.

The docket isn't about reporting what's happened. It's about decoding what it means for companies, counsels, and everyone navigating India's new era of regulatory vigilance and economic reform.

## ***NOTE from the editor***

Over the past few months, the lines between insolvency, investigation and resolution have begun to blur. A single event like a missed payout, an audit flag, or an internal red flag can trigger a domino that runs through the IBC, PMLA, Companies Act and even criminal laws. What once existed as separate domains is not a single ecosystem of accountability.

This edition of NM Docket captures that intersection. As the legal and commercial landscape grows faster, more digital and more interlinked, our aim is to slow down the noise and focus on what truly matters.

Hope you have a good read. ☺

Let's start with Rapid Wrap! Quick summary of the three most interesting mandates at NM.

## **Rapid Wrap : A Tale of Three Mandates**



So every legal crisis is a story waiting to unfold. In recent weeks, the spotlight has fallen on matters that demanded restraint, precision, and speed...moments where the difference between reaction and readiness defined the outcome.

### ***ACT 1: The Quiet Alarm***

It started with an innocuous email from a concerned employee flagging questionable vendor invoices. The discovery sparked fear and uncertainty. The board faced a choice—ignore and hope, or confront the issue transparently.

History shows regulators increasingly reward transparency and self-reporting, turning a potential disaster into an opportunity to build trust. Prompt internal investigation, comprehensive documentation, and clear communication with regulators became the company's cornerstone defences, steering it away from severe penalties.

The quiet alarm became a defining moment of corporate accountability. A reminder that governance isn't just about what happens in public view, but how crises are handled behind closed doors.

Any **KEY LESSONS** from this mandate? We have a few for you.

- Build a culture where concerns are safely raised and swiftly escalated.
- Transparency and proactive self-reporting often mitigate legal and reputational risk.
- Documentation is the backbone of credible internal investigations.
- Boards must act decisively—hesitation compounds harm.
- Compliance with audit and fraud-reporting obligations is non-negotiable.

### ***ACT II – The Knock Heard Across Agencies***

The initial red flag didn't fade. It multiplied. Soon, multiple regulatory agencies arrived at the company's doorstep: the CBI probing corruption, the SFIO investigating corporate fraud, and the ED tracing potential money laundering.

Facing parallel inquiries from three powerful bodies can disorient even the most prepared organizations. The key lies in understanding each agency's distinct mandate and collaborating internally to maintain consistent, transparent records. Coordination, not confrontation, defines survival in such scrutiny.

### **KEY LESSONS**

- Understand what triggers CBI, SFIO, and ED jurisdiction, and how they intersect.
- Maintain disciplined documentation and train teams to respond under pressure.
- Ensure D&O insurance and indemnity coverage align with multi-agency risks.
- Coordinate investigative responses to avoid inconsistency or overexposure.
- Embed a compliance-first culture long before crises arise.

Multi-agency oversight is no longer rare. It's the new regulatory normal. Readiness, both legal and operational, determines whether scrutiny becomes a setback or a show of resilience.

### ***ACT III – The Race Against the Clock***

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When a dispute suddenly escalates, a threatened termination, a regulatory order, or a looming financial hit takes place, **emergency injunctions** become the last line of defence. These urgent court orders preserve rights, maintain the status quo, and prevent irreparable harm until a full hearing can be held. Yet urgency alone isn't enough. Courts demand precision, clean disclosure, procedural compliance, and credible evidence. In these moments, legal strategy must move at the speed of consequence.

## KEY LESSONS:

- File promptly for interlocutory, ad-interim, or ex parte injunctions before damage occurs.
- Understand the evidentiary thresholds for each and prepare accordingly.
- Avoid pitfalls such as non-disclosure, delay, or jurisdictional error.
- Adhere strictly to court directions — credibility once lost is rarely regained.
- Preparation is the difference between prevention and loss.

This final act in the legal drama illustrates that preparedness is not a reaction; it's a discipline. The ability to act fast, disclose fully, and comply completely is what separates damage control from true protection.

*Now that we've taken you through the above mandates, we want to deep dive into how one can navigate the complex landscape of ED Investigations under PMLA. Consider this your practical roadmap to stay prepared and confident when you're in a spot.*

## THE GUIDE

The Enforcement Directorate (ED) wields extensive investigative powers under the Prevention of Money Laundering Act (PMLA) to enforce India's anti-money laundering laws. Companies and individuals facing an ED probe must negotiate a minefield of complex regulations, procedural nuances, and high-stakes enforcement actions.

This comprehensive guide provides an in-depth roadmap on understanding, preparing for, and responding to ED investigations with confidence and precision.

### 1. Understanding the Enforcement Directorate's Mandate and Powers

#### Scope of Investigation

The ED focuses on offences involving “proceeds of crime” defined broadly to include any property derived or obtained, directly or indirectly, as a result of criminal activity. Investigations track the flow of illicit funds through multiple layers of transactions.

#### Statutory Powers

- Attachment of Property (Section 5): Enables provisional seizure of assets suspected to be linked to money laundering, aiming to prevent dissipation.
- Search and Seizure (Sections 17, 18): Authority to conduct raids, verify books, records, and digital evidence.
- Summons and Statements (Section 50): ED can summon individuals for questioning and record statements that may be admissible as evidence.
- Arrest (Section 19): ED can arrest accused individuals for interrogation and prosecution, balanced by judicial oversight.

- Bail Conditions (Section 45): Individuals accused face stringent non-bailable conditions, needing to prove no risk of tampering or flight.

## Overlaps and Interface with Other Laws

Investigations may intersect with Income Tax Act, Foreign Exchange Management Act (FEMA), SEBI guidelines, and Indian Penal Code offences, requiring coordinated multi-agency responses.

## 2. Key Legal Judgments Shaping ED Investigations

- *Vijay Madanlal Choudhary v. Union of India* (2022): Affirmed ED's powers while emphasizing constitutional validity and procedural boundaries. Courts recognized that ED's Enforcement Case Information Report (ECIR) is distinct from an FIR and not bound by typical CrPC processes, balancing investigative effectiveness with fundamental rights.
- Right Against Self-Incrimination: Supreme Court rulings clarify that recorded statements under Section 50 are not testimonial evidence against the accused's right to silence but may be used as evidence, underscoring the delicate balance between investigation and individual rights.
- Bail Jurisprudence: Section 45 imposes stringent bail conditions to prevent abuse of liberty during sensitive money laundering investigations, necessitating early and effective legal intervention.

## 3. Strategic Legal and Compliance Responses

### Immediate Steps on Receiving an ED Notice

- Engage Expert Counsel: Coordinate with specialized PMLA and white collar crime lawyers to interpret the notice and frame consistent responses.
- Document Review: Conduct an internal audit of relevant transactions, contracts, and communications to assess scope and vulnerabilities.
- Prepare for Statement Recording: Legal counsel should be present during all recorded interrogations to safeguard rights and ensure accurate records.

### Documentation and Record-Keeping

- Maintain detailed and accessible KYC data, customer and transaction records, board meeting minutes, and email correspondence.
- Anticipate retention for at least five years per regulatory mandate.
- Employ digital forensic tools and archiving systems to facilitate data retrieval.

### Handling Summons and Queries

- Provide precise, evidence-supported written answers wherever feasible; avoid speculative or partial disclosures.
- Reserve the right to silence and request legal assistance before answering questions that may risk self-incrimination.
- Keep a complete record of correspondence and interactions with ED officials.

### **Managing Arrests and Legal Custody Risks**

- Identify high-risk individuals and evaluate the need for anticipatory bail applications proactively.
- Counsel should prepare legal memoranda defending client liberty and demonstrating compliance with all procedural safeguards.

### **4. Internal Coordination and Risk Mitigation**

- Develop a cross-functional legal-compliance task force to oversee investigation response, preserve confidentiality, and manage communications.
- Train relevant personnel on ED protocols and statutory rights, enabling them to respond correctly during raids or interrogations.

### **5. Reputational and Business Continuity Planning**

- Implement a proactive media strategy to control narratives and minimize reputational damage.
- Establish contingency plans for rapid asset freeze scenarios to ensure operational viability and client confidence.

### **6. Post-Investigation Considerations**

- Upon closure, evaluate the need for litigation support in courts or tribunals to challenge improper actions or penalty notices.
- Revise AML policies, internal controls, and employee training programs in line with lessons learned.

## **Summary**

Successfully navigating an ED investigation under PMLA requires a meticulous legal and operational strategy grounded in thorough regulatory understanding, tactical document and rights management, and coordinated organizational response. Adoption of best practices reduces exposure, protects key stakeholders, and preserves corporate integrity.

*Now, let's take a moment to introduce you to the two people whose vision and passion breathe life into NM Law Chambers – Neeha Nagpal and Malak Bhatt. Want to know what drives them and why their approach makes all the difference? Keep reading.*



Malak and Neeha share a common drive: a commitment to clarity, integrity, and client-centred advocacy. They believe the law should serve as a powerful tool to solve real-world problems, not just a maze of rules and jargon.

Malak Bhatt leads the firm's practice in Dispute Resolution. With deep experience as an Advocate-on-Record before the Supreme Court, Malak specialises in tackling complex commercial litigation, high-profile investigations, and arbitration. His strategic approach blends global insights with Indian legal nuances, helping clients navigate regulatory and litigation challenges smoothly.

Neeha Nagpal brings a strong focus on Insolvency and Bankruptcy Code (IBC) cases, alongside White Collar Crime. Her expertise spans high-stakes insolvency proceedings, corporate restructuring, and regulatory defense. Neeha's work strikes a balance between rigorous legal analysis and pragmatic solutions, guiding clients through both courtroom battles and negotiated settlements.

### **ARE WE DONE? NOT REALLY.**

There's so much more we want to explore through NM Docket, and we're just getting started.

In our next edition, two weeks from now, we'll bring you a detailed checklist on ED compliance, real-world insights from ongoing PMLA probes, and key takeaways from a high-stakes IBC matter that recently made headlines. We'll also debut a new segment that blends fiction with real-world legal applications, alongside fresh updates on mandates spanning IBC, PMLA, and Arbitration.

Until then, keep reading, keep questioning, and remember—the law is only as alive as the conversations we build around it.