

Indian Insolvency Yearly Roundup 2024

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In recent years, Indian courts and tribunals have delivered several landmark judgments that have significantly shaped the interpretation and implementation of the Insolvency and Bankruptcy Code, 2016 (IBC). These decisions have addressed critical issues, clarified procedural nuances, and reinforced the objectives of the IBC to ensure time-bound resolution and maximisation of value for stakeholders. This compilation highlights ten of the most significant judgments rendered in 2024, providing insights into their implications for insolvency law and practice in India.

1. *State Bank of India v. The Consortium of Murari Lal Jalan and Florian Fritsch*

Civil Appeal Nos.: 5023 and 5024 of 2024

Date of Judgment: 07.11.2024

Citation: 2024 INSC 852

The failure to implement an approved resolution plan within the prescribed timelines results in liquidation of the corporate debtor, as timely resolution is fundamental to the IBC.

Background

This case arose from the CIRP of Jet Airways (India) Limited ("**Jet Airways**"), one of India's largest airline companies. Following Jet Airways' insolvency admission in 2019, a resolution plan was approved by the National Company Law Tribunal, Mumbai Bench ("**NCLT**") with the Consortium of Murari Lal Jalan and Florian Fritsch as the Successful Resolution Applicant ("**SRA**").

The approved resolution plan required the SRA to infuse funds in a time-bound manner for the revival of the company. Despite multiple extensions granted by the National Company Law Tribunal ("**NCLT**"), and the National Company Law Appellate Tribunal ("**NCLAT**"), the SRA failed to implement the plan. As a result, the State Bank of India ("**SBI**"), the lead financial creditor, challenged the NCLAT's March 2024 order, which allowed the adjustment of a Performance Bank Guarantee (PBG) of ₹150 crores against the SRA's first tranche payment of ₹350 crores. The Supreme Court intervened to address the delays, enforceability of the resolution plan, and the appropriate remedy for non-compliance.

Key Issues

1. Could the SRA adjust the PBG towards its payment obligations under the resolution plan?
2. Does non-implementation of a resolution plan by the SRA necessarily lead to the liquidation of the corporate debtor?
3. How critical is adherence to timelines for implementing a resolution plan under the IBC?

Findings of the Supreme Court

Adjustment of PBG

The Supreme Court ruled against the adjustment of the PBG towards the first tranche payment. It held that:

- (i) The resolution plan explicitly required the infusion of fresh funds within 180 days of the "effective date" (initially set as the 90th day post-compliance with conditions precedent). The SRA, despite multiple extensions, failed to meet this requirement.
- (ii) The terms of the resolution plan and Regulation 36B(4A) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, mandated that the PBG must remain alive until the plan's full implementation. Adjustment or forfeiture of the PBG was permissible only under specific circumstances, which were not satisfied in this case.
- (iii) The SRA's failure to fulfil its obligations constituted a breach of the plan, disallowing any adjustment of the PBG.

Non-Implementation of Resolution Plan and Liquidation

The Supreme Court held that non-implementation of the resolution plan is a serious default under the IBC and inevitably leads to liquidation under Section 33(3). It noted that:

- (i) The SRA's delays resulted in non-payment of CIRP costs, including critical dues owed to airports and service providers, and failure to settle provident fund and gratuity liabilities within the stipulated timelines.
- (ii) The IBC aims for timely resolution to preserve the corporate debtor's value. Prolonged delays, as seen in this case (over five years since the CIRP began), erode creditor confidence and diminish the corporate debtor's assets.
- (iii) The creditors were entitled to invoke the PBG, and the liquidation of Jet Airways was the only viable remedy to protect the interests of stakeholders.

Timely Implementation of Resolution Plans

The Supreme Court emphasised that time and speed are the essence of the IBC. It relied on the preamble of the IBC and the Bankruptcy Law Reforms Committee Report (2015) to stress upon the importance of minimising delays in insolvency resolution. Accordingly, the Apex Court opined that the powers of NCLT and NCLAT to extend timelines under the IBC must be exercised judiciously and not mechanically. Unwarranted extensions weaken the framework and incentivise non-compliance by resolution applicants. The extraordinary delay in this case compelled the Supreme Court to exercise its powers under Article 142 of the Constitution, ordering for liquidation as a last resort to prevent further erosion of Jet Airways' value.

Recommendations by the Supreme Court

The Supreme Court made several recommendations to reform the IBC and address systemic deficiencies in the insolvency process. These recommendations include:

1. The CoC must provide clear and reasoned explanations for approving or rejecting resolution plans to assist adjudicating authorities in understanding the rationale behind their commercial decisions.
2. The Central Government and IBBI should establish a committee to ensure strict enforcement of the CoC Guidelines issued on 06.08.2024.
3. Resolution applicants must take proactive responsibility for corporate revival beyond fulfilling transactional obligations. They should act as custodians of the corporate debtor's future.
4. Creditors must facilitate plan implementation by avoiding unnecessary demands or procedural hurdles for the SRA.
5. The IBC should include provisions for a monitoring committee to oversee the smooth handover of the corporate debtor to the SRA after plan approval.
6. NCLTs and NCLATs must avoid frequent relaxations of resolution plans, as such interventions delay implementation and contradict the intent of the IBC.

2. *Bharti Airtel Limited v. Vijaykumar V. Iyer*

Civil Appeal Nos. 3088 and 3089 of 2020

Date of Judgment: 03.01.2024

Citation: [2024] 1 S.C.R. 140; 2024 INSC 15

A statutory set off or insolvency set off is not applicable to Corporate Insolvency Resolution Process proceedings under the Insolvency and Bankruptcy Code, 2016.

Background

Disputes arose in context of eight spectrum trading agreements entered into by Bharti Airtel Limited and Bharti Hexacom Limited ("**Airtel Entities**") with Aircel Limited and Dishnet Wireless Limited ("**Aircel Entities**") for the purchase of spectrum rights in the 2300 MHz band. The agreements required the Department of Telecommunications ("**DoT**") to approve the transactions, contingent on bank guarantees being furnished by Aircel Entities. Unable to furnish the guarantees, Aircel Entities requested Airtel Entities to provide them on their behalf, with provisions for adjustment from the payable consideration.

Subsequently, when the Aircel Entities entered the Corporate Insolvency Resolution Process ("**CIRP**"), disputes arose between the Resolution Professional ("**RP**") of Aircel Entities, and Airtel Entities regarding Airtel's claim of set-off for various amounts. The RP rejected Airtel's set-off claims, leading to a series of legal challenges before the Adjudicating Authority (NCLT), the National Company Law Appellate Tribunal ("**NCLAT**"), and eventually the Supreme Court.

Issues

The Supreme Court dealt with the following issues in the present matter:

1. Whether the provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**" / "**Code**") permit statutory or insolvency set-off during the CIRP?
2. The applicability of the concept of "*mutual dealings*" under Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 to the CIRP stage.
3. The extent to which contractual or equitable set-off claims are permissible during the CIRP, especially in light of the moratorium under Section 14 of the IBC.

Findings of the Supreme Court

IBC as a Complete Code and Non-Applicability of Liquidation Regulations During CIRP

The Supreme Court held that the IBC is a complete code and that the provisions applicable to liquidation proceedings (for *e.g.*, Regulation 29 of the Liquidation Process Regulations) do not extend to the CIRP. Specifically, the concept of insolvency set-off or mutual dealings under Regulation 29 does not apply during CIRP as the IBC explicitly distinguishes between rehabilitation-focused CIRP and liquidation proceedings. The Apex Court noted that the overarching objectives of the CIRP focus on revival, whereas liquidation proceedings focus on asset distribution.

Set-Off Claims During CIRP

The Supreme Court emphasised that statutory set-off under Order VIII Rule 6 of the Code of Civil Procedure, 1908 ("**CPC**"), or insolvency set-off as envisaged under Regulation 29, cannot be applied to CIRP. However, it carved out two narrow exceptions:

- (i) Contractual Set-Off: A contractual set-off is permissible if explicitly provided in the agreements and effective prior to the commencement of CIRP.
- (ii) Transactional (Equitable) Set-Off: A transactional set off is allowed only if the claims and counterclaims arise out of the same transaction or are so closely connected that treating them separately would be inequitable.

In both scenarios, the claims must be genuine, ascertained, and free from disputes.

The Supreme Court reiterated that the moratorium under Section 14 of the IBC prohibits the initiation or continuation of legal proceedings for recovery, enforcement of security interests, or alienation of assets of the corporate debtor. The Apex Court rejected Airtel's argument that its set-off claims were self-executing and thus not subject to the moratorium. The Apex Court highlighted that allowing insolvency set-off during CIRP would undermine the principle of *pari passu*, which ensures that all creditors within the same class are treated equitably. Similarly, it noted that the *anti-deprivation* principle prevents creditors from contracting out of the insolvency framework to gain an unfair advantage.

The Supreme Court clarified that the RP has no authority to permit set-off unless it satisfies the narrow exceptions outlined above. Any claims for set-off must be adjudicated within the

resolution framework or by the adjudicating authority, and not through unilateral actions by creditors.

Applying the above principles, the Supreme Court dismissed Airtel's appeal, upholding the NCLAT's decision that disallowed the set-off claims during CIRP. The Apex Court highlighted that the CIRP stage prioritises collective resolution and fair treatment of all creditors, thereby prohibiting practices that would grant individual creditors an undue advantage.

3. *DBS Bank Limited Singapore v. Ruchi Soya Industries Limited*

Civil Appeal No. 9133 of 2019

Date of Judgement: 03.01.2024

Citation: [2024] 1 S.C.R. 114

The Supreme Court has referred to a larger bench, questions pertaining to the interplay between statutory safeguards under Section 30(2)(b)(ii) of the IBC and the commercial decisions of the CoC.

Background

This case arose from the CIRP initiated against Ruchi Soya Industries Limited ("**Ruchi Soya**"), a corporate debtor, under the IBC. DBS Bank Limited Singapore ("**DBS**"), a secured creditor of Ruchi Soya, held exclusive charges over certain immovable and fixed assets of the corporate debtor and had extended financial assistance of ₹243 crores. During the CIRP, a resolution plan proposed by Patanjali Ayurvedic Limited was approved by the Committee of Creditors ("**CoC**") with a majority of vote of 96.95%.

DBS, a dissenting financial creditor, objected to the proposed distribution mechanism, arguing that the plan violated Section 30(2)(b)(ii) of the IBC as amended in 2019. The crux of DBS's argument was that it was entitled to the liquidation value of its exclusive security interest, which was higher than the amount proposed in the resolution plan under a pro-rata distribution. Both the National Company Law Tribunal ("**NCLT**"), and the NCLAT rejected DBS's objections, prompting DBS to appeal before the Supreme Court.

Issues

The Supreme Court dealt with the following issues in the present matter:

1. Whether dissenting financial creditors are entitled to the full liquidation value of their secured interests or are bound by the CoC's distribution mechanism?
2. Whether the 2019 amendment to Section 30(2)(b) applies to pending appeals where the resolution plan was provisionally/ conditionally approved before the amendment?
3. Whether Section 53 of the IBC, dealing with the priority of payments during liquidation, applies to dissenting financial creditors during the CIRP?

Findings of the Supreme Court

Entitlement of Dissenting Financial Creditors Under Section 30(2)(b)(ii) of the IBC

The Supreme Court held that dissenting financial creditors are statutorily entitled to an amount that is not less than the liquidation value of their secured interests under Section 30(2)(b)(ii) of the IBC. However, the Supreme Court clarified that dissenting creditors cannot demand the full value of their security interest. The Apex Court emphasised that this statutory safeguard ensures that dissenting creditors are not prejudiced by the CoC's commercial decisions but it does not entitle them to preferential treatment over other creditors.

Applicability of 2019 Amendment to Section 30 of the IBC

The Supreme Court clarified that the 2019 amendment to Section 30(2)(b) of the IBC, along with the introduction of "Explanation 2" made the amended provision applicable to all pending appeals. As the appeal by DBS was pending before the NCLAT at the time of the amendment's enactment, the Supreme Court held that the amended Section 30(2)(b) applied to the present case, ensuring that dissenting financial creditors are paid their liquidation value.

The Supreme Court further clarified that the reference to Section 53 in Section 30(2)(b)(ii) is intended to determine the minimum payment entitlement of dissenting creditors based on liquidation priorities. However, the Supreme Court rejected the argument that dissenting creditors could enforce their security interests under Section 52 during the CIRP. It held that such enforcement would undermine the resolution process and potentially derail approved resolution plans.

The Apex Court reaffirmed the principle that the commercial wisdom of the CoC is paramount in determining the manner of distribution under a resolution plan. While the CoC enjoys wide discretion, this discretion is subject to the statutory safeguard that dissenting creditors must be paid at least their liquidation value.

Conflict between Precedents

The Supreme Court acknowledged that differing judicial interpretations of Section 30(2)(b)(ii) of the IBC, had created ambiguity regarding the rights of dissenting financial creditors in the resolution process. In ***India Resurgence ARC Private Limited v. Amit Metaliks Limited*** [[2021] 6 SCR 611], the Supreme Court emphasised on the primacy of the commercial wisdom of the CoC in approving a resolution plan. It held that dissenting financial creditors cannot expect to receive treatment different from what is provided for in the approved resolution plan, provided their entitlement under Section 30(2)(b) of the Code is met. The judgment leaned towards granting the CoC broad discretion in structuring payouts under the resolution plan, including those made to dissenting creditors.

In another contrasting decision in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*** [[2019] 16 SCR 275], the Apex Court stressed on the importance of safeguarding the interests of dissenting creditors by mandating strict adherence to the statutory minimum payout specified under Section 30(2)(b)(ii) of the Code. The Supreme Court emphasised that dissenting creditors must receive an amount equal to or greater than the liquidation value of their claims, regardless of the distribution mechanism adopted by the CoC. This interpretation provided a stronger statutory shield to dissenting financial creditors while simultaneously reaffirming the CoC's authority over the resolution process.

The Supreme Court noted that these judgments, while addressing related issues, had taken diverging views. ***Amit Metaliks (supra)*** leaned towards empowering the CoC's discretion, whereas ***Essar Steel (supra)*** placed greater focus on the statutory protections for dissenting creditors. This divergence had led to uncertainty in the application of Section 30(2)(b)(ii) of the Code, especially in cases involving dissenting secured creditors holding significant security interests.

Recognising the need for clarity, the Supreme Court in this case highlighted the importance of reconciling these precedents to establish a unified framework for interpreting the rights of dissenting financial creditors.

To address this, the Supreme Court referred the broader question of the interpretation of Section 30(2)(b)(ii) of the IBC to a larger bench to provide authoritative guidance on:

- (i) The extent of the CoC's discretion in distributing payouts under a resolution plan.
- (ii) The specific entitlements of dissenting financial creditors, particularly in light of their liquidation value.
- (iii) The interplay between statutory safeguards under Section 30(2)(b)(ii) of the IBC and the commercial decisions of the CoC.

In view of the above findings, the Supreme Court upheld the CoC's approval of the resolution plan but directed that DBS be paid at least the liquidation value of its security interest in monetary terms, as mandated by Section 30(2)(b)(ii) of the IBC.

4. *Greater Noida Industrial Development Authority v. Prabhjit Singh Soni*

Civil Appeal Nos. 7590 and 7591 of 2023

Date of Judgment: 12.02.2024

Citation: 2024 INSC 102

The NCLT has the inherent power to recall its approval of a resolution plan if procedural irregularities or misclassifications of creditors undermine statutory compliance.

Background

This case arose out of the CIRP initiated against JNC Construction Private Limited ("**Corporate Debtor**") a lessee of land owned by the Greater Noida Industrial Development Authority ("**GNIDA**"). GNIDA had leased land to the Corporate Debtor for a residential project under a 90-year lease agreement. The lease terms required payment of a premium in instalments. Upon default by the Corporate Debtor in paying instalments, GNIDA submitted a claim of ₹43.4 crores as a financial creditor during the CIRP. However, the Resolution Professional (RP) classified GNIDA as an operational creditor and excluded it from the Committee of Creditors (CoC).

The resolution plan was approved by the CoC and subsequently by the NCLT. GNIDA, aggrieved by its classification as an operational creditor and alleging procedural irregularities, filed applications before the NCLT to recall the approval of the resolution plan under Section 60(5) of the IBC. The applications were dismissed by the NCLT, and the

NCLAT upheld the dismissal. Aggrieved by the decision of the NCLAT, GNIDA approached the Supreme Court.

Issues

The Supreme Court dealt with the following issues:

1. Can the NCLT recall an order approving a resolution plan under Section 31 of the IBC?
2. Was GNIDA's application for recall time-barred?
3. Did the resolution plan comply with the requirements of Section 30(2) of the IBC read with Regulations 37 and 38 of the CIRP Regulations?
4. What relief, if any, could GNIDA be granted?

Findings of the Supreme Court

Inherent Power to Recall Orders Under Section 60(5) and Rule 11

The Supreme Court delved into the scope of the NCLT's inherent powers, clarifying that as a statutory tribunal, the NCLT derives its authority to exercise inherent powers from Rule 11 of the NCLT Rules, 2016. These powers, akin to those of a civil court under Section 151 of the CPC, allow the NCLT to recall orders in exceptional circumstances to secure the ends of justice or prevent abuse of the process of law. The Supreme Court emphasised that these powers do not confer upon the NCLT an unfettered right to review its decisions on merits, but they can be exercised in scenarios such as:

- (i) When an order is passed without jurisdiction.
- (ii) When an order is obtained through fraud or misrepresentation.
- (iii) When there has been a violation of the principles of natural justice, such as when a party has not been afforded a fair opportunity to present its case.

Applying this principle, the Apex Court found merit in GNIDA's contention that it had been excluded from the CoC meetings and that its classification as an operational creditor was incorrect. Since this misclassification had a significant bearing on its rights under the approved resolution plan, the recall application was deemed maintainable.

Timeliness of the Recall Application

The Supreme Court addressed the contention that GNIDA's application to recall the approval order was time-barred. It referred to its earlier rulings on the suspension of limitation periods during the COVID-19 pandemic, as pronounced in ***RE: Cognizance for Extension of Limitation***, [[2021] 2 SCR 640].

The Apex Court observed that GNIDA had acted promptly upon becoming aware of the approval of the resolution plan and had filed its recall application without unreasonable delay. Considering the exceptional circumstances caused by the pandemic and the

procedural complexities involved in CIRP-related cases, the Supreme Court held that GNIDA's application was well within the permissible time frame.

Compliance of the Resolution Plan with Section 30(2) of IBC

The Supreme Court scrutinised the resolution plan to ascertain its compliance with the statutory mandate under Section 30(2) of the IBC. In this regard, the Apex Court reiterated that:

- (i) A resolution plan must not contravene the law;
- (ii) It must ensure that operational creditors receive an amount no less than the liquidation value due to them; and
- (iii) It must balance the rights of all stakeholders while adhering to the principles of equitable distribution.

The Supreme Court noted that GNIDA, as a statutory authority, had a charge over the Corporate Debtor's leased assets, which elevated its claim beyond the ambit of ordinary operational creditors. However, the resolution plan treated GNIDA as an operational creditor and proposed a significantly reduced payout of ₹1.34 crores against its admitted claim of ₹43.4 crores. Moreover, the payment was linked to the sale of constructed units, further diminishing GNIDA's rights. The Apex Court emphasised that such treatment violated the statutory framework of Section 30(2) of the IBC and the CIRP Regulations, which require resolution plans to respect the legal rights and priorities of creditors.

Recognising the procedural and substantive irregularities in the approval process, the Supreme Court set aside the orders of the NCLT and NCLAT, which had dismissed GNIDA's applications. The Apex Court directed that the resolution plan be remanded to the CoC for reconsideration. It ordered the CoC to reassess GNIDA's claims and ensure that the revised resolution plan complies with the requirements of Section 30(2) and the CIRP Regulations.

The Supreme Court clarified that while GNIDA's inclusion in the CoC may not alter the broader commercial decisions of the resolution process, its legitimate claims must be addressed fairly and transparently.

5. *IBBI v. Satyanarayan Bankatlal Malu*

Civil Appeal No. 3851 of 2023

Date of Judgement: 19.04.2024

Citation: 2024 INSC 319

The IBC incorporates Section 435 of the Companies Act as it existed at the time of its enactment, establishing Sessions Courts as Special Courts for trial of IBC offences.

Background

This case centred on the scope of Section 236(1) of the IBC, which provides for the trial of offences under the IBC by a Special Court established under Chapter XXVIII of the Companies Act, 2013. Specifically, the question was whether the Special Court under Section 236(1) referred to the provision as it stood at the time of the enactment of the IBC or as amended by the Companies (Amendment) Act, 2018.

The facts involve a petition initiated by SBM Paper Mills Private Limited under Section 10 of the IBC for initiating its CIRP. During the proceedings, the ex-directors of the corporate debtor, including Satyanarayan Malu, entered into a One-Time Settlement (OTS) with the financial creditor but subsequently failed to comply with its terms. The NCLT, finding this a fit case for prosecution, directed the Insolvency and Bankruptcy Board of India ("**IBBI**") to file a complaint under Section 236 of the IBC for offences under Sections 73(a) and 235A of the IBC.

The IBBI filed the complaint before the Sessions Judge, but the respondents, by way of a writ petition, challenged the jurisdiction of the Sessions Court before the Bombay High Court, citing amendments to the Companies Act, 2013. The High Court allowed the writ petition, quashed the proceedings, and held that the jurisdiction lay with a Magistrate's Court, not a Sessions Court. This decision was appealed before the Supreme Court.

Issues

1. Whether the Special Court referred to in Section 236(1) is to be interpreted in line with Section 435 of the Companies Act, 2013, as it existed at the time of IBC's enactment or as subsequently amended in 2018?
2. Whether Section 236(1) of the IBC incorporated the provisions of Section 435 of the Companies Act as they existed in 2016 or merely referred to them, thereby making subsequent amendments applicable?
3. Whether the High Court was correct in holding that only a Magistrate's Court had jurisdiction to entertain the complaint?

Findings of the Supreme Court

Interpretation of Section 236(1) of the IBC

The Court held that Section 236(1) of the IBC constitutes "*legislation by incorporation*" rather than "*legislation by reference*". This means that the provisions of Section 435 of the Companies Act, 2013, as they existed at the time of the enactment of the IBC in 2016, were incorporated into Section 236(1). Subsequent amendments to Section 435, including the creation of two categories of Special Courts under the Companies (Amendment) Act, 2018, had no bearing on the IBC. The Apex Court noted that the IBC's reference to Special Courts established under Chapter XXVIII of the Companies Act, 2013, was specific and not general.

Jurisdiction of the Special Court

At the time of the IBC's enactment, Section 435 of the Companies Act mandated that Special Courts be presided over by a Sessions Judge or an Additional Sessions Judge. This jurisdictional structure was carried forward into the IBC. The Supreme Court rejected the High Court's reasoning that post-2018 amendments restricted the jurisdiction of Special Courts under the IBC to Magistrates. It observed that the High Court erred in conflating the amended Companies Act provisions with the standalone framework of the IBC.

The Supreme Court quashed the High Court's decision and restored the proceedings before the Sessions Court. It observed that the High Court's order undermined the statutory scheme of the IBC and resulted in procedural delays contrary to the IBC's objectives.

6. *Deccan Value Investors L.P. v. Dinkar Venkatasubramanian*

Civil Appeal No. 2801 of 2020

Date of Order: 06.03.2024

A resolution applicant cannot withdraw or modify its resolution plan after approval by the CoC unless fraud or misrepresentation is conclusively proven. The IBC prioritises certainty and finality in resolution plans to avoid delays and ensure effective resolution.

Background

The case concerned the resolution plan submitted by Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd. ("**Deccan Value**") as successful resolution applicants for Metalyst Forgings Limited ("**Corporate Debtor**"), a company undergoing CIRP under the IBC. The resolution plan was approved by the Committee of Creditors (CoC) with an overwhelming majority. However, Deccan Value sought to withdraw its resolution plan during the pendency of approval before the NCLT, citing alleged misrepresentation, misinformation, and lack of material disclosures by the Resolution Professional (RP). The primary grounds for withdrawal raised by Deccan Value included:

- (i) The revenue of the Corporate Debtor was predominantly derived from trading, contrary to its representation as a manufacturing entity;
- (ii) Allegations of incorrect projections and misleading information in the Mott Macdonald Report;
- (iii) Discrepancies in the financial data and a lack of reliability in the disclosed accounts; and
- (iv) Misrepresentation regarding the availability and location of critical assets, including a 12,500MT press stored on a related entity's premises.

The NCLT and subsequently the NCLAT rejected the withdrawal application, holding that the resolution plan, once approved by the CoC, is binding and cannot be withdrawn unless fraud or misrepresentation is conclusively established. Aggrieved, Deccan Value filed an appeal before the Supreme Court.

Issues

1. Whether a resolution applicant can withdraw or modify its resolution plan after approval by the CoC but before final approval by the Adjudicating Authority under Section 31 of the IBC?
2. Whether the RP failed in its statutory duty to provide complete and accurate information, justifying Deccan Value's withdrawal from the resolution plan?

3. Whether Deccan Value, as a resolution applicant, is bound by the risks inherent in CIRP, including potential inaccuracies or ambiguities in the financial data of a distressed entity?

Findings of the Supreme Court

Prohibition on Withdrawal of Resolution Plan

The Supreme Court reiterated its decision in ***Ebix Singapore Private Limited v. Committee of Creditors of Educomp Solutions Limited [(2022) 2 SCC 401]***, holding that a resolution applicant cannot withdraw or modify its resolution plan after approval by the CoC. The Apex Court emphasised that the resolution plan, once approved by the CoC, is not merely a private contract but a statutory arrangement binding on all stakeholders.

It was observed that permitting withdrawals post-CoC approval would lead to delays, undermine the CIRP's objectives, and erode the sanctity of the IBC framework. Such actions would incentivise frivolous bids and jeopardise the certainty and predictability essential to the insolvency resolution process.

Evaluation of Grounds for Withdrawal

The Supreme Court dismissed the claims of fraud and misrepresentation raised by Deccan Value, holding that the information memorandum, virtual data room, and supporting documents made available by the RP provided sufficient disclosure.

On the issue of the Mott Macdonald Report, the Supreme Court noted that it was commissioned in 2016 by the erstwhile promoters and was accompanied by disclaimers regarding its accuracy and reliability. The resolution applicant was expected to exercise due diligence and evaluate the risks inherent in the distressed company's operations.

Regarding the allegations of inaccuracies in data, the Apex Court held that such discrepancies are inherent in insolvency proceedings and do not constitute grounds for withdrawal unless there is deliberate concealment or misrepresentation by the RP. The Supreme Court placed reliance on the *clean slate* principle, which ensures that the resolution applicant acquires the Corporate Debtor free of past liabilities but assumes the risks associated with its revival and operations. It emphasised that resolution applicants are sophisticated financial and domain experts, well-versed in assessing risks, and cannot later claim ignorance or misrepresentation as grounds for withdrawal.

The Supreme Court clarified that the RP's obligation to provide accurate information is on a "*best effort*" basis, given the constraints and limitations of distressed entities. While the RP must ensure transparency and access to information, it cannot be held liable for every discrepancy or ambiguity, particularly when the resolution applicant has the means to independently verify such data. The Court noted that the RP had fulfilled its statutory obligations in this case and that the resolution applicant's allegations of concealment were unsubstantiated.

In view of the above, the Supreme Court upheld the orders of the NCLT and NCLAT, rejecting Deccan Value's attempt to withdraw its resolution plan. It directed the resolution plan's implementation as approved by the CoC and emphasised that the IBC does not permit post-approval withdrawals except in cases of proven fraud.

7. *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.*

Civil Appeal No. 4565 of 2021

Date of Judgment: 23.07.2024

Citation: 2024 INSC 548

The approval of a resolution plan for a corporate guarantor does not extinguish the liability of the principal borrower under Section 128 of the Indian Contract Act. Simultaneous or separate insolvency proceeding against guarantors is permissible under the IBC.

Background

This case involved the resolution process of Gujarat Hydrocarbon and Power SEZ Ltd. ("**Corporate Debtor**") and its parent company, Assam Company India Ltd. ("**ACIL**"), acting as the corporate guarantor for a loan extended by SREI Infrastructure Finance Ltd. ("**Financial Creditor**"). The Financial Creditor advanced ₹100 crores to the Corporate Debtor, secured by mortgaging leasehold land, pledging shares, and obtaining a corporate guarantee from ACIL. Due to a repayment default, the Financial Creditor invoked the corporate guarantee and initiated proceedings under Section 7 of the IBC, against ACIL.

During the CIRP of ACIL, a resolution plan submitted by BRS Ventures Investments Ltd. ("**Appellant**") was approved, resulting in the Financial Creditor receiving ₹38.87 crores against its admitted claim of ₹241.27 crores. After the resolution plan was implemented, the Financial Creditor filed another Section 7 application against the Corporate Debtor for the balance ₹1,428 crores. The Adjudicating Authority admitted this application, and the NCLAT upheld the admission. Aggrieved by these decisions, BRS Ventures appealed to the Supreme Court.

Issues

1. Whether the approval of a resolution plan for the corporate guarantor extinguishes the liability of the Corporate Debtor for the remaining debt?
2. Whether a financial creditor can initiate insolvency proceedings against both the corporate guarantor and the Corporate Debtor simultaneously or separately under the IBC?
3. Whether the assets of the Corporate Debtor form part of the resolution plan or liquidation estate of its corporate guarantor?
4. Whether the resolution applicant, having paid a portion of the guarantor's liability, can claim subrogation rights over the Corporate Debtor's remaining liability?

Findings of the Supreme Court

Liability of the Corporate Debtor Post-CIRP of the Corporate Guarantor

The Supreme Court reaffirmed that under Section 128 of the Indian Contract Act, 1872, the liability of a corporate guarantor and the principal debtor is co-extensive, meaning the creditor can proceed against either or both to recover the debt. The discharge of the

corporate guarantor's liability under the CIRP does not absolve the Corporate Debtor from its remaining obligations.

The Supreme Court distinguished the contract between the creditor and the principal borrower from that of the creditor and the guarantor. It reiterated that the approval of a resolution plan for the guarantor addresses only the liabilities of the guarantor and does not affect the rights of the creditor against the principal borrower. The Supreme Court observed that the balance debt of ₹1,428 crores remained recoverable from the Corporate Debtor, as the resolution plan of ACIL explicitly settled only the liabilities of the guarantor.

Simultaneous or Separate Proceedings Under the IBC

The Supreme Court held that Section 60(2) and (3) of the IBC expressly allow simultaneous or separate CIRP proceedings against the corporate guarantor and the Corporate Debtor. The Supreme Court emphasised that a creditor's decision to initiate CIRP proceedings against one does not preclude it from pursuing insolvency or recovery against the other. The creditor's rights are independent under the IBC and Indian contract law. The Apex Court clarified that the approval of a resolution plan for one entity does not extinguish the liability of the other unless explicitly stated.

Separation of Assets of Corporate Debtor and Guarantor

The Supreme Court examined Sections 18 and 36 of the IBC to cull out the clear distinction between the assets of a corporate debtor and its corporate guarantor. It ruled that the assets of a subsidiary (*i.e.*, the Corporate Debtor) are separate and cannot form part of the resolution plan or liquidation estate of its holding company (*i.e.*, the corporate guarantor).

The Supreme Court emphasised that a holding company's ownership of shares in a subsidiary does not translate into ownership of the subsidiary's assets. This distinction safeguards the independent legal identity and financial responsibilities of each entity.

Scope of Subrogation Rights for Resolution Applicants

The Supreme Court addressed the Appellant's claim that it was entitled to subrogation rights over the Corporate Debtor's remaining liability under Section 140 of the Indian Contract Act. It held that subrogation rights are limited to the extent of the amount paid by the guarantor (or its resolution applicant) to settle the creditor's claim. In this case, the resolution applicant (BRS Ventures) paid ₹38.87 crores on behalf of ACIL, extinguishing the guarantor's liability. Consequently, the Appellant's subrogation rights were limited to recovering this amount from the Corporate Debtor. The Supreme Court clarified that subrogation does not preclude the financial creditor from pursuing the remaining debt directly against the Corporate Debtor.

Conclusion

In view of the above, the Supreme Court dismissed the appeal and upheld the financial creditor's right to pursue recovery against the Corporate Debtor for the balance debt. The Apex Court ruled that:

- (i) The liability of the Corporate Debtor to repay the remaining loan amount is not extinguished by the approval of a resolution plan for the corporate guarantor.

- (ii) Simultaneous or separate CIRP proceedings can be initiated against both the guarantor and the debtor under the IBC.
- (iii) A holding company and its subsidiary are distinct legal entities, and the assets of the subsidiary cannot be included in the resolution plan of the holding company.
- (iv) Subrogation rights of resolution applicants are limited to the amounts paid by the guarantor to the creditor.

8. *V.S. Palanivel v. P. Sriram, CS, Liquidator*

Civil Appeal Nos. 9059 – 9061 of 2022

Date of Judgment: 28.08.2024

Citation: 2024 INSC 659

The 90-day timeline for depositing the balance sale consideration during liquidation is mandatory under the IBBI Regulations. However, extraordinary circumstances, such as the COVID-19 pandemic, may justify limited deviations to ensure fairness and maximise asset realisation.

Background

This case arose from the liquidation of Sri Lakshmi Hotels Pvt. Ltd. ("**Corporate Debtor**") under the IBC. The appellant, V.S. Palanivel, a former Managing Director and shareholder of the Corporate Debtor, challenged the validity of the liquidation process, focusing on the conduct of the e-auction, the reduction in reserve price, the timeline for payment of balance sale consideration, and adherence to regulations governing liquidation. The case involved an auction conducted during the COVID-19 pandemic, raising unique challenges about statutory timelines and the role of regulatory flexibility.

Issues

1. Was the reduction of the reserve price by 25% in the second auction lawful under the IBBI Liquidation Process Regulations?
2. Could the timeline of 90 days for payment of balance sale consideration by the successful bidder, as mandated by Rule 12 of Schedule I of the IBBI Liquidation Process Regulations, be extended due to the COVID-19 pandemic?

Supreme Court's Findings

Adherence to Auction Regulations

The Supreme Court ruled that the reduction of the reserve price by 25% in the second auction complied with Regulation 33 and Clause 4A of Schedule I of the IBBI Liquidation Process Regulations. The liquidator was permitted to reduce the reserve price by up to 25% after a failed auction. The liquidator's actions aligned with the statutory mandate to maximise the realisation of assets.

The Supreme Court affirmed that the timeline prescribed in Clause 12 of Schedule I, which requires the highest bidder to deposit the balance sale consideration within 90 days, was mandatory. Non-compliance ordinarily results in automatic cancellation of the sale. However, the Supreme Court acknowledged that the COVID-19 pandemic presented extraordinary circumstances, justifying relaxation of timelines in this case.

The Supreme Court emphasised upon the unprecedented disruptions caused by the pandemic. It referred to Regulation 47A of the IBBI Liquidation Process Regulations, introduced to address delays resulting from the pandemic, and the Supreme Court's *suo motu* orders extending statutory timelines. The Apex Court ruled that these provisions applied to the auction process and granted relief to the auction purchaser.

Conclusion

The Supreme Court upheld the validity of the auction and held that:

1. The liquidator acted within the regulatory framework, balancing stakeholder interests and asset realisation objectives.
2. Extraordinary circumstances, such as the COVID-19 pandemic, permit limited deviations from strict statutory timelines.

9. *Avil Menezes (Liquidator) v. Principal Chief Commissioner of Income Tax, Mumbai*

Company Appeal (AT) (Insolvency) No. 258 of 2024

Date of Judgement: 12.07.2024

The unilateral adjustment of tax refunds of corporate debtor against pre-CIRP dues by the Income Tax Department violates IBC provisions. Statutory authorities such as the Income Tax Department must file claims with the liquidator and cannot bypass the equitable distribution framework under Section 53 of the IBC.

Background

This judgment addresses key aspects of the interplay between the IBC, and the Income Tax Act, 1961, particularly during the liquidation process. The primary issue before the NCLAT was whether the Income Tax Department could unilaterally adjust income tax refunds against pre-CIRP dues during the liquidation process of a corporate debtor, *i.e.*, Sunil Hitech Engineers Limited.

The corporate debtor was admitted to CIRP on 10.09.2018, and later into liquidation on 25.06.2019. The liquidator issued a public announcement inviting claims from all creditors. During liquidation, the liquidator identified income tax refunds totalling to ₹5.84 crores (AY 2021–22) and ₹60.79 lakhs (AY 2020–21). These refunds were unilaterally adjusted by the Income Tax Department against pre-CIRP tax dues for AY 2010–11 and AY 2011–12. The liquidator contended that the refunds were part of the liquidation estate under Section 36 of the IBC and should have been distributed equitably among all stakeholders as per Section 53 of the IBC.

Issues

1. Whether the Income Tax Department's action of adjusting refunds contravened the moratorium applicable during liquidation?
2. Whether the Income Tax Department qualifies as a secured creditor with a "*security interest*" under Section 3(31) of the IBC?
3. Whether the unilateral adjustment of tax refunds constitutes a valid set-off under Regulation 29 of the Liquidation Regulations?
4. Whether the Income Tax Department's failure to file claims with the liquidator rendered its action invalid?

Findings of the NCLAT

Moratorium Under Section 33(5)

The NCLAT clarified that the moratorium under Section 33(5) of the IBC bars the institution of new suits or legal proceedings but does not prohibit the continuation of existing proceedings. Thus, the Income Tax Department's ongoing assessment and determination of dues during liquidation were deemed permissible. However, the NCLAT emphasised that while tax assessments could continue, recovery actions, including unilateral adjustments of refunds, were impermissible without following the due process prescribed under the IBC.

Status of the Income Tax Department as a Secured Creditor

The NCLAT rejected the contention that the Income Tax Department qualifies as a secured creditor. Referring to Section 245 of the Income Tax Act, the NCLAT noted that the provision does not create a charge or security interest in favour of the department. The NCLAT distinguished this case from ***State Tax Officer v. Rainbow Papers Ltd. [Civil Appeal No. 1661 of 2020]***, holding that the statutory provisions applicable to value-added tax differ significantly from those governing income tax.

The NCLAT acknowledged that Regulation 29 of the IBBI Liquidation Process Regulations permits the principle of set-off for mutual dealings. However, it held that the unilateral action of the Income Tax Department, without filing claims with the liquidator, violated the statutory framework. The NCLAT relied on the Supreme Court's judgment in ***Sundaresh Bhatt, Liquidator of ABG Shipyard v. Central Board of Indirect Taxes and Customs [Civil Appeal No. 7667 of 2021]***, which established that statutory authorities must adhere to IBC procedures for recovery and cannot act unilaterally.

The NCLAT highlighted that all creditors, including statutory authorities, are required to submit claims to the liquidator in the prescribed format under Regulation 18 of the IBBI Liquidation Process Regulations. The failure of the Income Tax Department to file claims undermined the principle of equitable treatment, as it bypassed the distribution mechanism under Section 53 of the IBC.

The NCLAT remanded the matter to the Adjudicating Authority to reassess the quantum of set-off and determine whether the adjusted amount exceeded the department's entitlement under the IBC framework. If excess adjustments were found, the Income Tax Department was directed to refund the excess to the liquidation estate.

10. Vikash Gautamchand Jain v. Kritish Patel

Company Appeal (AT) (Insolvency) No. 1173 of 2024

Date of Judgement: 20.08.2024

The 120-day timeline for completing a PPIRP under Section 54D of the IBC is not absolute and can be extended in exceptional cases where substantial progress has been made. The IBC's objectives of business revival and continuity demand a flexible approach for MSMEs.

Background

This case marked a pivotal discussion around the procedural timeline for the Pre-Packaged Insolvency Resolution Process ("**PPIRP**") under the IBC, particularly Section 54D. The NCLAT Principal Bench dealt with whether the statutory limit of 120 days for completing a PPIRP is mandatory or allows for judicial discretion in granting an extension. The decision also emphasised the special framework provided for Micro, Small, and Medium Enterprises ("**MSMEs**") under Chapter III-A of the IBC.

The corporate debtor, Kethos Tiles Pvt. Ltd., a registered MSME, filed an application under Section 54C of the IBC for initiating PPIRP, which was admitted by the NCLT on 04.01.2024. Mr. Vikash Gautamchand Jain was appointed as the Resolution Professional (RP) of the corporate debtor.

During the PPIRP, the Committee of Creditors (CoC) convened multiple meetings. In its third meeting on 30.04.2024, the CoC, by a 91.75% vote, resolved to extend the PPIRP timeline by 60 days. The RP filed an application seeking a 60-day extension. However, the Adjudicating Authority rejected the application on 06.06.2024, stating that the maximum timeline of 120 days provided under Section 54D is mandatory and does not permit any extension.

Aggrieved by the rejection, both the RP and the corporate debtor's promoter filed appeals before the NCLAT, challenging the interpretation of Section 54D of the Code as being rigidly mandatory.

Issues

- (i) Is the timeline for completing the PPIRP under Section 54D(1) of the IBC mandatory or directory, allowing for judicial discretion in exceptional cases?
- (ii) Does the Adjudicating Authority have the jurisdiction to extend the timeline beyond 120 days in the interest of maximising asset value and achieving resolution?

Findings of the NCLAT

Flexibility of the 120-Day Timeline

The NCLAT clarified that while Section 54D(1) of the IBC prescribes a 120-day limit for completing the PPIRP, this provision is not meant to automatically terminate the process. Relying on principles from judgments such as ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [(2020) 8 SCC 531]** and ***Surendra Trading Company v. Juggilal Kamlapat Jute Mills Co. Ltd.* [(2017) 16 SCC 143]**, the NCLAT held that

procedural timelines under the IBC, though crucial, can be extended if justified by valid reasons.

Jurisdiction of Adjudicating Authority

The NCLAT emphasised that the statutory scheme under Section 54D(3) requires the RP to file an application for termination of the PPIRP if no resolution plan is approved within the prescribed timeline. However, the Adjudicating Authority retains discretion to extend this period in exceptional cases where substantial progress has been made. The NCLAT observed that the CoC's resolution with a 91.75% majority, coupled with the submission of a revised base resolution plan, constituted sufficient grounds for judicial intervention.

The NCLAT referred to various judgments, including the ***Essar Steel India case [(2020) 8 SCC 531]***, where the Supreme Court had struck down the term "*mandatorily*" in Section 12 of the IBC, allowing extensions in exceptional circumstances. It highlighted that the word "*shall*" in Section 54D of the IBC should not be interpreted as precluding judicial discretion, particularly in light of the IBC's overarching objectives of maximising value and preserving businesses.

Conclusion

The NCLAT set aside the Adjudicating Authority's order and allowed the 60-day extension for the PPIRP of *Kethos Tiles Pvt. Ltd.* (i.e., the corporate debtor). It concluded that:

1. The 120-day timeline under Section 54D of the IBC is not absolute and can be extended by the Adjudicating Authority in exceptional cases.
2. The CoC's overwhelming support for an extension and the presence of a revised resolution plan justified judicial intervention.
3. The PPIRP framework for MSMEs requires a flexible approach to align with its purpose of business revival and continuity.

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