

## Redeemable Preference Shareholders Are Not Financial Creditors Under IBC: Supreme Court

Authors: **Vasanth Rajasekaran\*** and **Harshvardhan Korada\*\***

### Introduction

In a recent case titled ***EPC Constructions India Ltd. v. Matix Fertilizers & Chemicals Ltd.***, 2025 SCC OnLine SC 2293, the Supreme Court has held that holders of cumulative redeemable preference shares ("**CRPS**") are not '*financial creditors*' under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and cannot therefore, initiate the corporate insolvency resolution process ("**CIRP**") under Section 7 of IBC.

### Brief Facts

EPC Constructions India Limited ("**EPCC**"/ "**Appellant**") executed engineering and construction contracts with Matix Fertilizers and Chemicals Limited ("**Matix**"/ "**Respondent**") for establishing a fertilizer complex in West Bengal. According to the Appellant, under the above-mentioned contract, a sum of INR 572.72 crores became due and payable by Matrix to the Appellant. To help Matix draw further credit and complete the project, the parties agreed to convert dues up to INR 400 crores into CRPS of Matix. Matix allotted CRPS worth INR 250 crores to EPCC, redeemable at par at the end of three years or earlier at the company's discretion. The shares carried an 8% cumulative dividend.

CIRP under the IBC was initiated against the Appellant on 20.04.2018. Its liquidator demanded redemption of INR 310 crores (on account of CRPS) and other dues. Matix denied this liability. EPCC initiated proceedings under Section 7 of the IBC, claiming itself to be a '*financial creditor*'.

The National Company Law Tribunal ("**NCLT**") dismissed the Section 7 petition. It held that preference shares can be redeemed only out of profits or out of the proceeds of a fresh issue of shares as under Section 55 of the Companies Act, 2013. Since Matix had incurred losses and had not raised fresh equity, the CRPS had not become redeemable in law. The NCLT also held that non-redemption did not convert the preference shareholder into a creditor. The National Company Law Appellate Tribunal ("**NCLAT**") affirmed this view. It observed that once preference shares were issued, the earlier receivables stood extinguished. The shares formed part of the company's capital, and in the absence of profits or a qualifying fresh issue, no liability to redeem had arisen. Consequently, no debt was due and payable, and the Section 7 application could not be maintained.

### Observations

The issue before the Supreme Court was whether the NCLT and NCLAT had rightly rejected the Section 7 application on the ground that the Appellant, having accepted CRPS, was not a financial creditor under the IBC.

The Supreme Court noted that, once the Appellant accepted 8% CRPS pursuant to its own Board Resolution dated 30.07.2015, the relationship with the Respondent changed

from that of a creditor to that of a preference shareholder. The Apex Court emphasised that "*preference shares are part of the company's share capital and the amounts paid up on them are not loans*". The Apex Court noted that the primary difference between the "debt" and "preference share" is that the dividend on a preference share is not payable unless profits are available for distribution, whereas the debt holder's interest entitlement is not subject to this constraint. Therefore, the amount invested cannot be treated as a debt.

Relying on Section 3(37) of the IBC read with Sections 2(84), 43 and 55 of the Companies Act, the Supreme Court held that preference share capital is expressly classified as share capital. The statutory scheme clearly treats preference shareholders as members with preferential rights, not creditors with enforceable repayment rights.

The Supreme Court then referred to A. Ramaiya's Guide to the Companies Act, which states that: "*Preference shareholders are only shareholders and not in the position of creditors... An unredeemed preference shareholder does not become a creditor*". It also relied on ***Lalchand Surana v. Hyderabad Vanaspathy Ltd.***<sup>1</sup>, where it was held that the holders of redeemable preference shares do not and cannot become creditors of the company in case their shares are not redeemed at the appropriate time.

The Supreme Court also observed that since preference shares are not amounts disbursed "*against the consideration for the time value of money*", they do not fall within Section 5(8). The Apex Court also referred to ***Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram***<sup>2</sup>, and observed that the payment received for shares cannot be a debt, not to speak of financial debt.

Coming to the requirement of default, the Apex Court applied the standard laid down in ***Innoventive Industries Ltd. v. ICICI Bank***<sup>3</sup>, which held that default arises only when a debt that is legally due and payable is not paid. In the present case, since CRPS could be redeemed only out of profits or fresh issue proceeds, and neither were available, the redemption amount had not become "*due and payable*". Therefore, there was no default under Section 3(12).

The Supreme Court held that a preference shareholder does not acquire the status of a financial creditor merely because the redemption period has expired. As the CRPS had not become due for redemption in law, and the Appellant did not satisfy the definition of a financial creditor, a petition under Section 7 of the IBC was not maintainable.

## Comment

The Supreme Court's pronouncement in ***EPC Constructions India Ltd. (supra)*** draws a clear line between what is a "*debt*" and what is "*equity*" in the eyes of company law. The Apex Court was quite firm that holders of redeemable preference shares cannot, merely by the colour of accounting entries or commercial convenience, metamorphose

---

<sup>1</sup> *Lalchand Surana v. Hyderabad Vanaspathy Ltd.* [1988 SCC OnLine AP 290].

<sup>2</sup> *Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram* [(2020) 10 SCC 538].

<sup>3</sup> *Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 407].

into lenders for the purpose of the IBC. They continue to be investors, and their bargain is an equity-risk bargain unless and until the shares are redeemed in the manner laid down under the Companies Act, 2013.

What the judgment really does is prevent an unfortunate tendency of parties attempting to dress up failed investments as "*financial debt*" so as to ride on the machinery of the IBC for enforcement. The Apex Court declined to allow this backdoor route, and rightly so. If such claims were permitted, the entire purpose of maintaining a distinct corporate capital structure would be diluted, and there would be an incentive for shareholders to circumvent the statutory regime governing redemption of preference shares.

Another important point the Apex Court touched, perhaps understatedly, is that the "*commercial effect of a borrowing*" under Section 5(8)(f) of the IBC is not a catch-all to be stretched in every direction. It covers transactions that have the real substance of borrowings, not merely those which, in hindsight or for convenience, parties may attempt to fit into the mould of a financial debt.

\* **Vasanth Rajasekaran** is the Founder and Head of Trinity Chambers, Delhi.

\*\* **Harshvardhan Korada** is a Counsel at Trinity Chambers, Delhi.

For any query, help or assistance, please reach out at [info@trinitychambers.in](mailto:info@trinitychambers.in) or visit us at [www.trinitychambers.in](http://www.trinitychambers.in).

## Authors



**Vasanth Rajasekaran**  
Founder & Head  
[vasanth@trinitychambers.in](mailto:vasanth@trinitychambers.in)



**Harshvardhan Korada**  
Counsel  
[harshvardhan@trinitychambers.in](mailto:harshvardhan@trinitychambers.in)