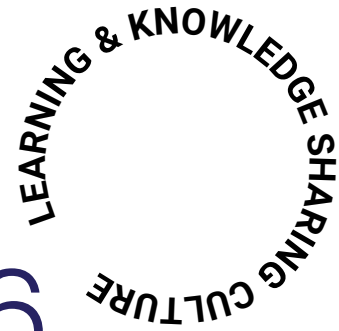




**VARDHAN**  
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# FEBRUARY 2026 NEWSLETTER



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## **COURTESY**

Live Law

Bar & Bench

Supreme Court & High Court Websites

NCLAT, NCLT Websites

### **SUBSEQUENT PURCHASERS CANNOT RESIST/OBSTRUCT ENFORCEMENT OF ARBITRAL AWARD**

Case: R. Savithri Naidu vs. The Cotton Corporation of India Ltd. & Anr.

Case Details: Civil Appeal No. of 2026

[Special Leave Petition (Civil) No. 19779 of 2024]

Coram: Justices Pankaj Mithal and S.V.N. Bhatti

The Supreme Court has held that a person who purchases property from a judgment-debtor after the arbitral award or after commencement of the underlying proceedings cannot resist execution of the award against such property. The Court reiterated that a transferee pendente lite steps into the shoes of the judgment-debtor and acquires the property subject to the rights of the decree-holder. Consequently, such purchasers have no independent locus to obstruct attachment or execution proceedings initiated for satisfaction of the award.

Emphasizing the doctrine of lis pendens and the bar under Order XXI Rule 102 of the CPC, the Court clarified that transfers effected after the institution of proceedings or after the award cannot defeat enforcement. A post-award purchaser takes the property subject to the arbitral liability, particularly where the transfer appears designed to frustrate recovery.

To access the full text, click [here](#).

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### **HIGH COURTS CANNOT INVALIDATE EARLIER ARBITRATION WHILE APPOINTING SUBSTITUTE ARBITRATOR**

Case: Ankhim Holdings Pt. Ltd. & Anr. vs. Zaveri Construction Pt. Ltd.

Case Details: Civil Appeal No. 779 of 2026, Arising out of SLP (C) No. 11667/2024 | Supreme Court  
Coram: Justices JB Pardiwala and KV Viswanathan

The Supreme Court has held that while exercising powers to appoint a substitute arbitrator under Section 15(2) of the Arbitration Act, a High Court cannot declare prior arbitral proceedings as a nullity. The Court set aside a Bombay High Court order which, while appointing a substitute arbitrator, had invalidated hearings and orders passed earlier on the ground that they took place during the moratorium period under the IBC. The Supreme Court clarified that the jurisdiction at the stage of substitution is limited to facilitating continuation of the arbitral process and does not extend to adjudicating the legality or validity of earlier proceedings. Referencing *Official Trustee v. Sachindra Nath Chatterjee*, the bench underscored that since the High Court wasn't vested with a jurisdiction to hear the objection to the arbitration proceedings, it was impermissible for it to decide upon the same at the stage of substitution of an arbitrator.

Emphasising the principle of minimal judicial interference in arbitration, the Court observed that questions concerning the validity of prior proceedings must be raised before the arbitral tribunal or in appropriate challenge proceedings, and not decided by the court while appointing a substitute arbitrator.

To access the full text, click [here](#).

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### **SUBSTITUTION OF ARBITRATOR NOT MANDATORY UPON EXPIRY OF TRIBUNAL'S MANDATE**

Case: Viva Highways Ltd. vs. Madhya Pradesh Road Development Corporation Ltd. & Anr.

Case Details: Civil Appeal No. of 2026  
[Special Leave Petition (Civil) No. 38327 of 2025] |  
Supreme Court  
Coram: Justices Sanjay Kumar and Alok Aradhe

The Supreme Court has clarified that termination of an arbitral tribunal's mandate under Section 29A of the Arbitration and Conciliation Act does not automatically require appointment of a substitute arbitrator. Setting aside a Madhya Pradesh High Court order that had directed substitution solely on expiry of the timeline, the Court held that the statute confers discretion on the court either to extend the mandate of the existing tribunal or to substitute the arbitrator while granting such extension. The power under Section 29A(6) is therefore enabling and not mandatory.

The controversy arose from the High Court's reliance on Mohan Lal Fatehpuria v. Bharat Textiles, where the Supreme Court had observed that Section 29A(6) "empowers and obligates" the Court to substitute an arbitrator. Distinguishing Mohan Lal Fatehpuria with the facts of this case, the Court held that the High Court erred in proceeding under Section 29A (6) for substitution of an arbitrator, when no material was put in the record to justify the undue delay on account of an arbitrator.

The decision also draws support from C. Velusamy v. K. Indhera, where a coordinate Bench had already clarified that Mohan Lal Fatehpuria does not mandate substitution as an inevitable consequence of mandate expiry.

Emphasising the objective of ensuring continuity and efficiency in arbitral proceedings, the Court observed that substitution should not be ordered mechanically, particularly where the delay is not attributable to the tribunal or where continuation

of the same tribunal would better serve the interests of justice.

To access the full text, click [here](#).

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**PRECEDENT OPERATES IN REM WHILE RES JUDICATA OPERATES IN PERSONAM | PARTY ACCEPTING COURT-APPOINTED ARBITRATOR CANNOT LATER CHALLENGE ARBITRATION CLAUSE**

Case: M/s Eminent Colonizers Pt. Ltd. vs. Rajasthan Housing Board & Ors.

Case Details: Civil Appeal No. 754 of 2026 [Arising Out of SLP (Civil) No. 8299 of 2021] | Supreme Court

Coram: Justices J.B. Pardiwala and K.V. Viswanathan

The Supreme Court has held that under the pre-2015 amendment regime of the Arbitration Act, a party which has accepted a court order appointing an arbitrator under Section 11 cannot subsequently challenge the existence or validity of the arbitration clause before the arbitral tribunal or in proceedings to set aside the award. The Court held that there is a clear conceptual distinction between 'precedent' and 'res judicata', ruled that an earlier Section 11 order appointing an arbitrator, passed in the pre-2015 regime, operates as res judicata on the existence and validity of the arbitration agreement and cannot be reopened in later proceedings after the order appointing the Arbitrator attains finality with no challenge being thrown. It reiterated that prior to the 2015 amendments, the appointing court was required to decide on the existence and validity of the arbitration agreement, and such determination attained finality. Having consented to the Section

11 appointment and participated in the process, a party is therefore precluded from reopening the issue at a later stage. It was impermissible to challenge the existence and validity of the arbitration clause before the arbitral tribunal or a court under Section 34, after having accepted a Section 11 order appointing an arbitrator, as held in SBP & Co. vs. Patel Engineering Ltd. & Anr., (2005) 8 SCC 618.

To access the full text, click [here](#).

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**DELAYED ARBITRAL AWARD NOT INVALID IF COURT SUBSEQUENTLY EXTENDS TRIBUNAL'S MANDATE**

Case: C. Velusamy vs. K. Indhera

Case Details: Civil Appeal Nos. of 2026 [Arising out of SLP (C) Nos. 6551 of 2025] | Supreme Court

Coram: Justices PS Narasimha and Atul S. Chandurkar

The Supreme Court has held that an arbitral award rendered after expiry of the tribunal's mandate under Section 29A of the Arbitration Act is not automatically void if the court subsequently grants an extension of time. Clarifying the scope of Section 29A, the Court ruled that courts retain the power to extend the mandate even after the statutory period has lapsed and even after the award has been delivered. Consequently, such an award cannot be treated as a nullity merely because it was made beyond the prescribed timeline.

The Court emphasised that Section 29A does not impose a threshold bar on entertaining extension applications post-expiry and that termination of mandate is not absolute in character as held in Rohan Builders (India) Pt. Ltd. vs. Berger Paints India Ltd. (2024). An award delivered beyond time

occupies a state of unenforceability until validated through judicial extension, thereby preserving the arbitral process from collapsing due to procedural delay while ensuring court supervision over timelines.

To access the full text, click [here](#).

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**FORGERY ALLEGATIONS TARGETING ARBITRATION CLAUSE RENDER DISPUTE NON-ARBITRABLE**

Case: Rajia Begum vs. Barnali Mukherjee

Case Details: Civil Appeal Nos. of 2026 [Arising out of SLP (C) Nos. 6031 of 2021] | Supreme Court

Coram: Justices PS Narasimha and Alok Aradhe

The Supreme Court has held that where the arbitration agreement itself is alleged to be forged or fabricated, the dispute cannot be referred to arbitration. The Court emphasised that arbitration is fundamentally premised on consent, and when the very existence of the contract containing the arbitration clause is seriously disputed, the matter assumes a jurisdictional character that must be decided by a civil court. In such circumstances, parties cannot be compelled to arbitrate until the issue of validity of the agreement is first determined.

Reaffirming its earlier jurisprudence on fraud and arbitrability, the Court clarified that while mere allegations of fraud may not bar arbitration, allegations that strike at the root of the arbitration agreement such as forgery or fabrication render the dispute non-arbitrable because they undermine the very foundation of arbitral jurisdiction.

To access the full text, click [here](#).

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**MERE FINANCIAL INTEREST DOES NOT JUSTIFY  
IMPLEADING NON-SIGNATORY IN ARBITRATION**

Case: Indian Institute of Technology (IIT) Mandi vs. Central Public Works Department & Anr.

Case Details: CWP No.9200 of 2025 | High Court of Himachal Pradesh

Coram: Justice Ajay Mohan Goel

The court has held that a party cannot be impleaded in arbitral proceedings merely because it may ultimately bear financial liability arising out of the dispute. Upholding the arbitral tribunal's refusal to implead, the Court observed that arbitration is founded on consent and privity of contract, not on downstream financial consequences. Since IIT Mandi was not a signatory to the construction contract containing the arbitration clause and had not participated in its negotiation, performance, or termination, it could not be compelled to join the arbitration proceedings.

The Court further noted that the Memorandum of Understanding between IIT Mandi and CPWD was a separate and independent agreement, and the arbitration arose solely out of the contract between CPWD and the contractor. Financial interest or reimbursement obligations under a distinct arrangement do not amount to consent to arbitrate. Allowing impleadment on such grounds would dilute the consensual nature of arbitration and undermine party autonomy.

To access the full text, click [here](#).

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**ACCEPTANCE OF COURT-APPOINTED ARBITRATOR  
BARS LATER CHALLENGE TO ARBITRATION CLAUSE  
UNDER PRE-2015 LAW**

*Case: M/s Eminent Colonizers Pt. Ltd. vs. Rajasthan Housing Board & Ors.*

*Case Details: Civil Appeal Nos. of 753 of 2026 [Arising out of SLP (C) Nos. 8299 of 2021] | Supreme Court*

*Coram: Justices J.B. Pardiwala and K.V. Viswanathan*

The Supreme Court has held that under the pre-2015 amendment framework of the Arbitration Act, a party that consents to or accepts a court order appointing an arbitrator under Section 11 cannot subsequently challenge the existence or validity of the arbitration clause. The Court reiterated that under the earlier regime, the appointing court was required to conclusively determine the validity of the arbitration agreement, and such determination attained finality. Having acquiesced to the appointment and participated in the arbitral process, a party is precluded from reopening the issue either before the arbitral tribunal or in proceedings to set aside the award.

The ruling underscores the distinction between the pre-2015 position where courts exercised a determinative role at the Section 11 stage and the post-2015 regime, which limits courts largely to a prima facie examination of the existence of an arbitration agreement. Permitting belated challenges after acceptance of the appointment would undermine finality and disrupt the arbitral process.

To access the full text, click [here](#).

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### NON-SIGNATORY DEVELOPER CAN BE IMPEADED IN ARBITRATION IF CONDUCT DEMONSTRATES INTENT TO BE BOUND

Case: M/s Saisudhir Energy Ltd. vs. M/s NTPC Vidyut Vyapar Nigam Ltd. & Anr.

Case Details: Civil Appeal Nos. 12892-12893 of 2024 with Civil Appeal Nos. 12894-12895 of 2024 | Supreme Court

Coram: Justices P.S. Narasimha and Atul S Chandurkar

The Supreme Court has held that while exercising appellate jurisdiction under Section 37 of the Arbitration Act, courts cannot recompute or reassess damages determined by a Section 34 court unless the latter's decision is shown to be arbitrary, perverse, or in excess of jurisdiction. The Court emphasised that Section 37 confers a narrowly circumscribed appellate power, primarily to examine whether the Section 34 court acted within statutory limits, and not to undertake an independent evaluation of the merits or quantum of compensation.

Setting aside the High Court's interference with the damages quantified by the Section 34 court, the Supreme Court reiterated that appellate courts cannot substitute their own assessment merely because another view on compensation is possible. Recalculation of damages would amount to impermissible re-appreciation of the award and would undermine the finality of arbitral adjudication, which the statute seeks to protect.

To access the full text, click [here](#).

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### ARBITRATOR'S MANDATE ENDS ON EXPIRY OF STATUTORY TIMELINE; SUBSTITUTE TRIBUNAL

### MUST CONTINUE PROCEEDINGS AFTER EXTENSION

Case: Mohan Lal Fatehpuria vs. Bharat Textiles & Ors.

Case Details: AP-COM/245/2024 IA No: GA/1/2022 | Supreme Court

Coram: Justices Sanjay Kumar and Alok Aradhe

The court has held that Section 42 of the Arbitration Act which typically bars other courts from entertaining subsequent applications once a Part I application has been filed does not apply if the parties have already designated the "seat" of arbitration before any application under Part I is filed.

Section 42 generally provides that once a court is approached first under Part I (e.g., for appointment of an arbitrator or interim relief), that court alone has jurisdiction over all related applications arising from the arbitration agreement. However, the Calcutta High Court clarified that where the contract expressly fixes the seat of arbitration before any application is filed, the courts having jurisdiction at that chosen seat will have exclusive jurisdiction over all subsequent matters, including applications under Sections 34 and 36, even if an earlier application was filed elsewhere before the first Part I application.

The court referred to the Supreme Court's judgment in BGS SGS SOMA JV, from which three principles were culled out. Firstly, in case no seat is chosen by the parties, the court where the first application is filed will have exclusive jurisdiction. Secondly, where the seat is chosen after the first application is filed, still Section 42 applies and the court where the first application is filed retains the exclusive jurisdiction. Lastly, in case the seat is chosen before the first application is filed, the

courts exercising jurisdiction over such a seat alone will have jurisdiction, irrespective of the fact where the first application was filed.

To access the full text, click [here](#).

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**DISMISSAL OF SECTION 34 APPLICATION ON TECHNICAL GROUNDS CONSTITUTES “REFUSAL TO SET ASIDE” ARBITRAL AWARD AND IS APPEALABLE UNDER SECTION 37(1)(c)**

Case: Primemover Mobility Technologies Pt. Ltd. vs. Sanmarg Infra Tech Pt. Ltd.

Case Details: FAO (COMM) 310/2025 | High Court of Delhi

Coram: Justice Navin Chawla and Rajneesh Kumar Gupta

The court has ruled that when a court dismisses a petition under Section 34 of the Arbitration Act on purely technical grounds, such dismissal amounts to a “refusal to set aside” the arbitral award and is therefore appealable under Section 37(1)(c) of the Act. The Court emphasised that the legislature adopted a substantive approach in defining “refusal to set aside,” and a judicial order that keeps an award intact even if on procedural or technical reasoning carries the same practical consequence as a refusal on merits.

In the underlying case, the trial court declined to entertain the Section 34 petition on the basis that it was filed before an improperly constituted tribunal, without going into the merits of the challenge. The court held that such a dismissal, while couched in technical terms, ultimately preserves the award and therefore triggers the right to appeal under Section 37(1)(c).

To access the full text, click [here](#).

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**REFERENCE TO ARBITRATION REQUIRES INDEPENDENT APPLICATION, CANNOT BE INFERRED FROM PLEA TO REJECT PLAINT**

Case: Jagannath Heights Pt. Ltd. vs. Sammaan Capital Ltd.

Case Details: IA NO. GA-COM/2/2025 In CS-COM/801/2024 | High Court of Calcutta

Coram: Justice Aniruddha Roy

The court has held that the existence of an arbitration clause does not, by itself, justify rejection of a plea or automatic reference of the dispute to arbitration. The court rejected an application seeking stay of a commercial suit on the basis of an arbitration agreement, observing that a judicial determination is required to examine whether the subject matter of the suit is actually covered by the arbitration clause and whether the statutory conditions for reference under Section 8 of the Arbitration Act are satisfied.

Emphasising that civil court jurisdiction cannot be ousted mechanically, the Court clarified that the plea for arbitration must be raised at the threshold and must demonstrate that the dispute is arbitrable in nature. A mere contractual stipulation providing for arbitration cannot be used to stifle a properly instituted suit where the cause of action falls outside the scope of the arbitration agreement or involves issues unsuitable for arbitration.

To access the full text, click [here](#).

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**NON-SIGNATORY CANNOT BE IMPEADED IN ARBITRATION ABSENT CONTRACTUAL PRIVITY**

Case: M/s Ramacivil India Construction Pt. Ltd. vs. Central Public Works Department

Case Details: ARB.P. 1787/2025 | High Court of Delhi

Coram: Justice Harish Vaidyanathan Shankar

The court has held that a non-signatory entity cannot be impleaded in arbitration proceedings merely because it is the ultimate beneficiary or funding authority of the project. Setting aside orders that had permitted impleadment of IIM Jammu in an arbitration arising from a construction contract, the Court emphasised that arbitration is founded on consent and privity of contract. Since the arbitration clause existed only in the agreement between the contractor and the Central Public Works Department (CPWD), and no contractual relationship existed with IIM Jammu, its impleadment was legally unsustainable.

The Court rejected the argument that supervisory involvement, funding of the project, or institutional interest could justify participation in arbitration. It observed that allowing impleadment on the basis of beneficiary status would undermine party autonomy and potentially draw numerous non-signatories into arbitral proceedings. The dispute was therefore directed to continue only between the contracting parties bound by the arbitration agreement.

To access the full text, click [here](#).

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### **IBC ALLOWS SIMULTANEOUS INSOLVENCY PROCEEDINGS AGAINST BORROWER AND GUARANTOR FOR SAME DEBT**

Case: ICICI Bank Ltd. vs. ERA Infrastructure (India) Ltd.

Case Details: Civil Appeal No. 6094 of 2019 | Supreme Court

Coram: Justices Dipankar Datta and Augustine George Masih

The Supreme Court has held that the IBC 2016 does not bar initiation of parallel CIRP against both the principal debtor and the corporate guarantor for the same debt. Reaffirming the principle of co-extensive liability under the Indian Contract Act, the Court observed that a financial creditor is entitled to proceed simultaneously against both entities under Section 7 of the IBC, as the liability of the guarantor is equal to that of the borrower. The Court clarified that the Code does not compel creditors to elect between the debtor and the guarantor, nor does it restrict concurrent proceedings before the adjudicating authority.

Rejecting concerns of double recovery, the Court noted that the insolvency framework contains safeguards requiring creditors to update their claims upon receiving payments from any source. Importantly, the Court declared that the contrary NCLAT ruling in Vishnu Kumar Agarwal is no longer good law, and that the binding precedent is BRS Ventures Investments Ltd., which had already settled the issue.

To access the full text, click [here](#).

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### **DEFUNCT SCHEME OF ARRANGEMENT UNDER COMPANIES ACT CANNOT HALT INSOLVENCY PROCEEDINGS**

Case: Omkara Assets Reconstruction Pt. Ltd. vs. Amit Chaturvedi and Ors.

Case Details: Civil Appeal No. 11417 of 2023 | Supreme Court

Coram: Justices Sanjay Kumar and K Vinod Chandran

The Supreme Court has held that a non-operative or defunct Scheme of Arrangement under the Companies Act cannot be relied upon to stall or keep in abeyance CIRP proceedings under the IBC 2016. Setting aside an NCLAT order that had deferred insolvency proceedings on this basis, the Court clarified that once the statutory requirements for initiation of CIRP under Section 7 are satisfied, insolvency proceedings must continue notwithstanding parallel company law proceedings relating to an arrangement scheme that has become redundant or unimplemented.

The Court emphasised the primacy of the IBC as a comprehensive insolvency framework and observed that allowing defunct restructuring schemes to impede CIRP would defeat the time-bound resolution mechanism envisaged under the Code. It further underscored that inoperative or non-compliant schemes cannot override creditor rights or delay insolvency proceedings, particularly in light of the overriding effect of the IBC over inconsistent laws.

To access the full text, click [here](#).

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### **LANDOWNERS NOT RESPONSIBLE FOR DEVELOPER'S CONSTRUCTION DELAY ABSENT CONTRACTUAL OBLIGATION**

Case: Sriganesh Chandrasekaran & Ors. vs. M/s Unishire Homes LLP & Ors.

Case Details: Civil Appeal Nos. 10527-10528 of 2024 | Supreme Court

Coram: Justices PS Narasimha and Alok Aradhe

The Supreme Court has held that landowners cannot be held liable for delay in construction or delivery of flats merely because they authorised a developer to develop and sell units on their land under a Joint Development Agreement. Dismissing appeals filed by homebuyers, the Court affirmed that where the obligation to construct, obtain approvals, enter into sale agreements, and hand over possession rests exclusively with the developer, liability for delay compensation cannot be fastened on landowners. The Court found that the developer had full control over construction and had indemnified the landowners against liabilities arising from construction-related acts or omissions, and that the delay was not attributable to any fault of the landowners.

Rejecting the argument that execution of a General Power of Attorney created a principal-agent relationship making landowners vicariously liable, the Court emphasised that liability in joint development projects must flow from the contractual allocation of responsibilities. While landowners and developers may be jointly required to execute conveyances and transfer title to purchasers, delay compensation for construction default is payable only by the party responsible for performance of construction obligations.

To access the full text, click [here](#).

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**PREFERENCE SHAREHOLDERS ARE INVESTORS, NOT FINANCIAL CREDITORS UNDER IBC**

*Case: EPC Constructions India Ltd. vs. M/s Matix Fertilizers and Chemicals Ltd.*

*Case Details: Civil Appeal No. 11077 2025 | Supreme Court*

*Coram: Judicial Member Vinay Goel*

The Supreme Court has held that holders of cumulative redeemable preference shares are investors forming part of the company's share capital and do not qualify as "financial creditors" under the IBC 2016. The Court clarified that amounts paid towards preference shares are not loans and therefore do not constitute "financial debt" under Section 5(8) of the IBC. Consequently, non-redemption of such shares, even after the due date, does not amount to a default enabling initiation of insolvency proceedings under Section 7.

Emphasising the distinction between equity and debt, the Court observed that preference shareholders remain members of the company with rights governed by company law, including redemption subject to statutory conditions under the Companies Act. Since financial debt requires disbursement against consideration for the time value of money a feature absent in preference share capital such investors cannot invoke insolvency remedies as creditors.

To access the full text, click [here](#).

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**CORPORATE DEBTOR'S FINANCIAL CAPACITY IRRELEVANT AT SECTION 7 ADMISSION STAGE**

*Case: Power Trust (Promoter of Hiranmaye Energy Ltd.) vs. Bhuvan Madan (Interim Resolution Professional of Hiranmaye Energy Ltd.) & Ors.*

Case Details: Civil Appeal No. 2211 of 2024 |  
Supreme Court

Coram: Chief Justice Surya Kant and Justices  
Joymalya Bagchi and Vipul M. Pancholi

The Supreme Court has held that while considering an application under Section 7 of the IBC, the adjudicating authority is not required to examine the corporate debtor's ability or inability to pay the debt. Relying on *Innoventive Industries Ltd. v. ICICI Bank* and *M. Suresh Kumar Reddy v. Canara Bank*, the Court clarified that the jurisdiction of the NCLT at the admission stage is confined strictly to determining whether a financial debt exists and whether a default has occurred. Once these jurisdictional facts are established, the insolvency application must be admitted, and considerations such as the debtor's financial health, solvency, or capacity to repay are legally irrelevant.

Reaffirming the scheme of the IBC as a creditor-in-control, time-bound resolution mechanism, the Court observed that expanding the inquiry into the debtor's repayment capability would convert the admission stage into a mini-trial, defeating the objective of swift insolvency resolution.

To access the full text, click [here](#).

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### **IBC CANNOT DETERMINE CONTROL OVER TELECOM SPECTRUM CLASSIFIED AS COMMUNITY RESOURCE**

Case: *State Bank of India vs. Union of India & Ors.*

Case Details: Civil Appeal No. 1810/2021 |  
Supreme Court

Coram: Justices PS Narasimha and Atul Chandurkar

The Supreme Court has held that the IBC 2016 does not empower adjudicating authorities to decide

questions of control over telecom spectrum, which is a community resource regulated by statute, even if such questions arise in the context of CIRP. In a dispute involving ₹62,000 crore worth of dues by Bharat Sanchar Nigam Ltd. (BSNL), the Court observed that issues relating to ownership, assignment, and control of telecom spectrum fall squarely within the regulatory domain of the TRAI and the Department of Telecommunications (DoT), and cannot be adjudicated as part of an insolvency resolution process. Accordingly, the Supreme Court clarified that the NCLT/NCLAT cannot usurp the statutory roles of sectoral regulators when determining resource control rights in insolvency proceedings.

The Court emphasised that while the Code is a comprehensive mechanism for insolvency resolution, it does not override specific statutory frameworks governing community resources such as spectrum, mining leases, or civil aviation slots. Issues of allocation, entitlement, licence terms, and control rights associated with such resources must be finally determined under the respective statutory regimes, and not as a collateral matter in IBC proceedings.

To access the full text, click [here](#).

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### **RESOLUTION PROFESSIONAL'S ACTIONS BASED ON COMMERCIAL WISDOM OF COC CANNOT BE INTERFERED WITH ABSENT MATERIAL IRREGULARITY UNDER SECTION 61(3)(ii) OF THE IBC**

Case: *Torrent Power Ltd. vs. Ashish Arjunker Rathi & Ors.*

Case Details: Civil Appeal No. 11746-11747 of  
2024 | Supreme Court

Coram: Justices B.V. Nagarathna and R  
Mahadevan

The Supreme Court reaffirmed the settled position that the commercial wisdom of the CoC in approving a resolution plan under the IBC 2016 is paramount and not open to judicial review, except on the limited statutory grounds expressly provided under Sections 61 and 62 of the Code. The Court held that an unsuccessful resolution applicant cannot seek to convert commercial dissatisfaction into a legal grievance by alleging “material irregularity” in the conduct of the CIRP unless such irregularity is demonstrably rooted in procedural illegality.

The dispute arose from the approval of a resolution plan submitted by Sarda Energy and Minerals Ltd. in respect of SKS Power Generation (Chhattisgarh) Ltd., which was approved by the CoC with a 100% voting share. Torrent Power Ltd., being an unsuccessful bidder, challenged the approval on the ground that the Resolution Professional had permitted impermissible modifications in the successful resolution plan after submission, thereby vitiating the process.

Rejecting the challenge, the Supreme Court held that where the Resolution Professional acts strictly in furtherance of decisions taken by the CoC, such conduct cannot be characterised as “material irregularity” within the meaning of Section 61(3)(ii) of the IBC. Judicial review in insolvency matters is narrow, supervisory, and confined to statutory non-compliance. It does not extend to re-evaluating financial terms, commercial viability, or comparative merits of competing bids.

The Court further observed that concurrent findings of the NCLT and NCLAT, absent perversity or violation of mandatory statutory provisions, warrant no interference under Section 62 of the

Code. Finding no substantive post-submission alteration that altered the financial essence of the resolution plan, the appeals were dismissed and the approval of the resolution plan was upheld.

To access the full text, click [here](#).

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### **NCLAT REAFFIRMS PROJECT-SPECIFIC CIRP AS THE NORM IN REAL ESTATE INSOLVENCY**

Case: Catalyst Trusteeship Ltd. vs. Ecstasy Realty Pt. Ltd.

Case Details: Civil Appeal No. 7424 of 2025 | Supreme Court

Coram: Justices Sanjay Kumar and K. Vinod Chandran

The Supreme Court clarified that a petition under Section 7 of the IBC must be admitted by the Adjudicating Authority once it is established that a financial debt exists and there has been a default, and that ongoing negotiations or informal restructuring discussions cannot be allowed to defeat such a petition in the absence of contractual compliance with the modification procedures prescribed in the underlying contract in this case, the Debenture Trust Deed (DTD).

The appellant, Catalyst Trusteeship Ltd., sought initiation of the CIRP against Ecstasy Realty Pt. Ltd. on the ground of default in repayment of non-convertible debentures issued by the respondent. The NCLT and NCLAT had refused admission of the Section 7 petition on the basis that there was an informal restructuring arrangement and an 18-month moratorium in place arising from email exchanges with one debenture holder, and had treated the petition as a recovery tool rather than a legitimate insolvency resolution mechanism.

On appeal, the Supreme Court held that any modification of the rights and obligations under the DTD, including moratorium or restructuring, required the consensus of all relevant parties and adherence to the contractual processes expressly set out in the DTD, and that emails exchanged with a single debenture holder could not bind the debenture trustee or other holders. The Court further relied on the settled principle that the Adjudicating Authority must objectively satisfy itself of the existence of debt and default for admission of a Section 7 petition, and that it was perverse for the tribunals to have ignored the binding terms of the DTD and reinterpreted them based on assumptions unsupported by the record. Consequently, the Supreme Court set aside the orders of the NCLT and NCLAT, restored the Section 7 petition to the file of the NCLT, directed that it be admitted, and that further steps in the CIRP be taken in accordance with law, reinforcing that informal negotiations without contractual compliance cannot be used to defeat a statutory insolvency remedy.

To access the full text, click [here](#).

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**ATTACHMENT ORDERS UNDER THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 CANNOT BE CHALLENGED BEFORE IBC TRIBUNALS; IBC DOES NOT PROVIDE A BACKDOOR TO REVIEW SOVEREIGN ACTIONS**

Case: S. Rajendran vs. The Deputy Commissioner of Income Tax (Benami Prohibition) & Ors.

Case Details: Civil Appeal Nos. 7140/2022, 6971/2025 & Others | Supreme Court

Coram: Justice PS Narasimha and Atul S. Chandurkar

The Supreme Court held that the legality and validity of provisional attachment orders passed under the Prohibition of Benami Property Transactions Act, 1988 cannot be challenged before the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) by invoking jurisdiction under the Insolvency and Bankruptcy Code, 2016 (IBC), as the Benami Act constitutes a self-contained statutory regime with its own adjudicatory and appellate mechanisms, and the insolvency tribunals lack jurisdiction to sit in judicial review over sovereign or quasi-judicial actions taken under public law statutes. The dispute arose in the course of insolvency proceedings in respect of a corporate debtor whose assets were provisionally attached under the Benami Act on the basis of concealed ownership and transfers in demonetised currency, following which the liquidator contended that the Section 14 moratorium under the IBC and the overriding non-obstante clause in Section 238 IBC barred such attachment and rendered the orders amenable to challenge before insolvency fora; both the NCLT and NCLAT declined jurisdiction, holding that challenges must be pursued under the statutory scheme of the Benami Act.

Affirming the concurrent findings, the Supreme Court clarified that the moratorium under Section 14 IBC does not shelter sovereign confiscatory proceedings, that property held benami does not form part of the liquidation estate under Section 36 IBC as the corporate debtor lacks beneficial ownership, and that Section 60(5) IBC cannot be invoked to bypass or dilute the specific statutory remedies provided in the Benami Act, observing that invoking IBC jurisdiction in such matters amounted to an abuse of process, and accordingly dismissed all the appeals with exemplary costs of Rs. 5 lakhs per appeal.

To access the full text, click [here](#).

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**CONTRACTUAL CLAUSES LIKE “AS IS WHERE IS” AND “WHATEVER THERE IS” CANNOT PRESERVE OR REVIVE MUNICIPAL CHARGE WHEN SUCH CHARGE IS EXTINGUISHED UNDER SECTIONS 53 AND 238 OF THE IBC**

Case: Mamta Binani & Anr. vs. Kolkata Municipal Corporation & Ors.

Case Details: WPO 2435 of 2022 | High Court of Calcutta

Coram: Justice Rai Chattopadhyay

The court held that where a property is sold in a liquidation process under the IBC 2016, contractual auction terms such as “as is where is” and “whatever there is” cannot override the statutory scheme of the Code to resurrect or enforce a municipal charge that has stood subordinated or extinguished in accordance with Sections 53 and 238 of the IBC.

In this matter, the petitioners had acquired an office space and car parking spaces via an e-auction conducted by the liquidator of Nicco Corporation Limited (in liquidation) through a registered conveyance deed dated 26.09.2019, paying valuable consideration therefor; prior to and at the time of sale, there were no quantified or crystallised municipal dues declared or lodged with the liquidator. Subsequently, the Kolkata Municipal Corporation issued notices under Sections 184 and 185 of the Kolkata Municipal Corporation Act, 1980 proposing retrospective revaluation and attempting to fasten property tax liabilities for periods predating the petitioners’ title, which were impugned by them by way of writ petition.

The Court explained that once liquidation commences, all claims against the corporate debtor (including municipal dues) must be asserted through the liquidation process before the liquidator and resolved in accordance with the waterfall mechanism under Section 53 IBC; failure to lodge such a claim means that no enforceable encumbrance existed at the time of sale, and any retrospective demand cannot be imposed on the purchasers. It was held that the IBC’s non-obstante clause under Section 238 gives the Code overriding effect over inconsistent municipal laws, and any purported liability arising outside the IBC framework cannot be enforced against an auction purchaser particularly when no claim was admitted in liquidation and no quantified dues existed at the time of sale. Consequently, the High Court set aside the impugned notices and assessment insofar as they sought to impose liability for pre-purchase periods, clarifying that municipal dues can only be recovered in compliance with the IBC mechanism and not by reference to contractual clauses that cannot elevate or preserve an extinguished municipal charge.

To access the full text, click [here](#).

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**MERE PENDENCY OF COUNTERCLAIM FOR DAMAGES DOES NOT BAR FINANCIAL CREDITOR FROM INVOKING INSOLVENCY PROCEEDINGS UNDER IBC**

Case: B. Prashanth Hegde vs. State Bank of India & Anr.

Case Details: Civil Appeal No. 477 of 2022 | Supreme Court

Coram: Justices P.S. Narasimha and Manoj Misra

The Supreme Court clarified that the mere pendency

of a counter-claim or claim for damages by the borrower before the DRT does not efface the financial debt nor suspend the occurrence of default for the purposes of initiating proceedings under Section 7 of the IBC 2016. The appellant contended that since proceedings were pending before the DRT and a counter-claim had been raised against the bank, the insolvency petition ought not to have been admitted and that limitation should be computed differently. Rejecting the contention, the Court held that limitation under Section 7 of the IBC is governed by Article 137 of the Limitation Act, 1963 and runs from the date of default, and not from the date of internal NPA classification or pendency of recovery proceedings.

It was further observed that a counter-claim before the DRT is an independent adjudicatory exercise and does not by itself negate the liability arising from a financial debt nor postpone default unless the debt itself stands legally extinguished or adjudicated in favour of the borrower.

To access the full text, click [here](#).

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**SHAREHOLDER CLASS ACTIONS UNDER COMPANIES ACT, 2013 ARE MAINTAINABLE NOT ONLY FOR CONTINUING WRONGS BUT ALSO FOR PAST TRANSACTIONS IF THEY AFFECT MULTIPLE MEMBERS**

Case: Ankit Jain and Ors. vs. Jindal Poly Films Ltd. and Ors.

Case Details: IA(CA)-132/2024 in CP No. 58/245/PB/2024 | NCLAT, New Delhi

Coram: Mr. Justice(Retd) Ramalingam Sudhakar (President) and Mr. Ravindra Chaturvedi (Technical Member)

The tribunal clarified that a shareholder class action

petition under Section 245 of the Companies Act, 2013 is maintainable not only for continuing acts or ongoing wrongs but also in respect of alleged past transactions or actions, provided the relief claimed is for the protection of the interests of a class or group of members and the allegations demonstrate a common injury to multiple shareholders capable of collective adjudication.

In the matter before it, the petitioners, a group of minority shareholders, filed a class action alleging that certain past corporate actions and transactions undertaken by the company and its directors had caused prejudice to a broader class of shareholders in violation of statutory duties, and sought remedial orders including reversal of transactions, damages, and directions for future compliance. The respondents contended that since the transactions in question were completed in the past and were not ongoing, the class action was not maintainable.

Rejecting this contention, the Tribunal held that the statutory language of Section 245 does not limit the class action remedy to continuing wrongs alone; what matters is whether the impugned conduct, whether past or ongoing, has caused or is likely to cause prejudice to a class of members, and whether the grievances raised are common to the class as a whole.

The Tribunal observed that class proceedings are a procedural mechanism to aggregate common issues of fact or law and that rigid temporal limitations confining maintainability only to continuing breaches would defeat the very purpose of collective redress envisioned by the statute.

To access the full text, click [here](#).

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**ACKNOWLEDGEMENT OF DEBT IN BALANCE SHEETS AND SIGNED LETTERS EXTENDS LIMITATION UNDER SECTION 18 OF THE LIMITATION ACT; NON-COMPLIANCE WITH ICAI GUIDANCE NOTE DOES NOT INVALIDATE ACKNOWLEDGEMENT**

Case: Vishal Singh vs. The Nainital Bank Ltd.

Case Details: Comp. App. (AT) (Ins) No. 1522 of 2024 | NCLAT, New Delhi

Coram: Justice Mohammad Faiz Alam Khan (Member Judicial) and Mr. Naresh Salecha (Member Technical)

The tribunal dismissed the appeal filed by the Promoter and Suspended Director of the Corporate Debtor challenging admission of a Section 7 application on the ground of limitation, holding that acknowledgements of debt reflected in the Corporate Debtor's balance sheets for the financial years 2019–2021, along with specific written acknowledgement letters dated 31.12.2021 signed by the suspended directors and personal guarantors, validly extended limitation under Section 18 of the Limitation Act.

The Appellant contended that the date of default was 23.10.2018 and that the application filed in July 2023 was time-barred even after exclusion of the Covid period, further arguing that the balance sheets did not comply with Clause 8.3.1.2 of the ICAI Guidance Note on Revised Schedule VI and therefore could not constitute valid acknowledgement. Rejecting these submissions, the Tribunal observed that the disbursement of loan and default were undisputed, that the Corporate Debtor had consistently admitted liability under "Short Term Borrowings" and "Long Term Borrowings" in its audited financial statements, and that the acknowledgement letters dated 31.12.2021 unequivocally admitted liability in writing, thereby

extending the period of limitation.

The Tribunal further held that alleged non-classification of borrowings in strict conformity with ICAI guidance notes could not invalidate an otherwise clear and conscious acknowledgement of debt, particularly when the balance sheets were prepared and signed by the Corporate Debtor itself. Holding that the Section 7 petition was within limitation on the strength of such acknowledgements and the benefit of the Supreme Court's suo motu extension of limitation, the NCLAT found no infirmity in the admission order and dismissed the appeal as devoid of merit.

To access the full text, click [here](#).

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**COMMITTEE OF CREDITORS IS NOT A JURISTIC PERSON BUT CAN LITIGATE IN IBC DISPUTES THROUGH AUTHORIZED REPRESENTATIVES**

Case: CoC of Think and Learn Pt. Ltd. vs. Riju Ravindran and Ors.

Case Details: CA (AT) (CH) (Ins) No. 475/2025 | NCLAT, Chennai

Coram: Justice N Seshasayee, Member (Judicial) and Jatindranath Swain, Member (Technical)

The tribunal clarified that while a Committee of Creditors (CoC) under the IBC is not a juristic person capable of being a "party" in its own right, it is nevertheless competent to be represented in adjudicatory proceedings and to engage in litigation through duly authorised representatives such as a Resolution Professional or an authorised nominee acting on its behalf.

In the matter before it, the issue arose as to whether the CoC could be impleaded or could file appeals/objections in insolvency proceedings when

it was not a juristic person in the strict legal sense; the respondents contended that only parties with separate legal personality can litigate, and that since the CoC was a collective of financial creditors, it could not be treated as a party before the National Company Law Tribunal.

Rejecting this premise, the Tribunal observed that the legal architecture of the IBC contemplates adjudication of rights and liabilities involving financial creditors collectively, and that the CoC plays a determinative role in the conduct of insolvency resolution processes, including decisions regarding approval of resolution plans, challenges to valuation, and prosecution of appeals. The NCLAT held that practical and substantive justice demands that the CoC be permitted to litigate through designated functionaries because it is the CoC not the individual financial creditors which takes binding decisions on commercial and financial matters in insolvency proceedings, and that restricting the CoC from representation would frustrate the very purpose of collective creditor action envisaged by the statute.

To access the full text, click [here](#).

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