

# Restructuring & Insolvency

## Monthly Newsletter

**May 2025**

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# STATUTORY UPDATES

## Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025 dated February 03, 2025

- The IBBI (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2025 (**CIRP Amendment Regulations**) have been introduced to streamline the resolution processes relating to real estate projects and mandates as under.
  - Handing over the possession under Regulation 4E
    - Where an allottee has completed his part of the performance under the agreement and has requested for possession of its unit, the Resolution Professional (**RP**) shall, with the approval of 66% of the members of the Committee of Creditors (**CoC**), hand over the possession of such unit to the allottee.
  - Appointment of facilitators under Regulation 16C and Regulation 16D
    - In order to ensure effective participation of the creditors in a class, the IBBI has proposed for appointment of an insolvency professional, apart from the RP and the authorised representative of such class, as a facilitator. The role of such facilitator will be to facilitate communication between the creditors and the authorised representative, providing information and clarification and improve the overall presentation and communication of the class.
  - Participation of competent authority under Regulation 18(4)
    - The members of CoC may invite competent authorities such as NOIDA, HUDA, etc. to the CoC meetings for their inputs on land related issues, which shall enhance the feasibility and viability of the resolution plans and also develop confidence amongst the homebuyers.
  - Report on status of development rights and permissions relating to the project under Regulation 30C
    - In order to enable the CoC to take informed decisions, the RP shall, within 60 days for the Insolvency Commencement Date (**ICD**), prepare such report for consideration of the CoC.
  - Relaxation for submission of resolution plans under Regulation 36A(4)(iv)
    - Where the resolution applicant is an association or a group of homebuyers, the amended regulations empowers the CoC to relax certain parameters for evaluation of its resolution plan such as the eligibility criteria, conditions regarding refundable deposit, etc.
  - Monitoring committee for implementation of a Resolution Plan under Regulation 38(4)
    - The CIRP Amendment Regulations state that the CoC should consider setting up a monitoring committee comprising of an insolvency professional, representative(s) from

the CoC and the representative(s) of the resolution applicant, to oversee the implementation of an approved Resolution Plan and such monitoring committee must submit quarterly reports regarding the implementation of the approved Resolution Plan with the CoC.

- MSME registration details under Schedule I – Form G
  - o In order to encourage wider participation, the RP shall be required to disclose registration status of the Corporate Debtor as an MSME while publishing Form G.

## **Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2025 and Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2025 dated January 28, 2025.**

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- Both, IBBI (Liquidation Process) Regulations, 2016 (**Liquidation Regulations**) as well as IBBI (Voluntary Liquidation Process) Regulations, 2016 (**VL Regulations**) have been amended by the IBBI to address the immediate challenges and enhance the efficiency the respective processes.
- By way of IBBI (Voluntary Liquidation Process) (Amendment) Regulations, 2025 (**VL Amendment Regulations**), the IBBI has made the following changes in the existing regulations.
  - Corporate Voluntary Liquidation Account under Regulation 39(1)
    - o In order to expeditiously process the claims and for the purposes of overall fund management, the IBBI has proposed to continue to manage the Corporate Voluntary Liquidation Account in a separate account with a scheduled bank.
  - Filing of forms under Regulation 41A
    - o The Liquidator shall now be mandatorily required to submit details relating to the Voluntary Liquidation process in the electronic forms available on IBBI's portal. Non – filing or delayed filing of such forms shall attract serious consequences such as a fine of INR 500 per form per calendar month, as notified by the IBBI.
  - Details of Stakeholders under Schedule I, in Form G, Table B
    - o Table B in Form G under the Schedule I will now include the following details of stakeholders entitled to claim undistributed proceeds : (a) Name; (b) Address and Contact details; (c) Identification Number; (d) Amount due; (e) Nature of Amount due; (f) Application provisions of Income Tax Act, 1961 for tax deduction; (g) Amount of tax to be deducted; (f) Reason for undistributed proceeds.
  - Realisation of uncalled or unpaid capital
    - o In order to avoid delays, the IBBI has amended the VL Regulations so as to allow completion of the process even if there is uncalled capital as there are adequate safeguards already in the regulations to protect the creditors.
- By way of IBBI (Liquidation Process) (Amendment) Regulations, 2025 (**Liquidation Amendment Regulations**), the IBBI has made the following alterations in the existing regulations.
  - Auction Process under Clause 12A – 12E of Schedule I
    - o The timeline to participate in the auction process has been increased from 14 days to 30 days to facilitate wider participation in the auction.
    - o The amended Liquidation Process Regulations mandate that the auction notice published by a Liquidator mentions that the Earnest Money Deposit (**EMD**) shall be forfeited if the prospective bidder is found ineligible during the process.
    - o The prospective bidders must submit all necessary documents including declaration of eligibility under Section 29A of the IBC on the electronic platform or as mentioned in the auction notice.
    - o The Liquidator should verify the eligibility of the highest bidder within 3 days and consult with the Stakeholders Consultation Committee (**SCC**) regarding the same.
    - o If the H1 bidder is found to be ineligible by the Liquidator, the H2 bidder may be considered in consultation with the SCC.
  - Submission of Form H under Regulation 45(3)(a)
    - o In order to improve accountability, the amended Regulations now mandate the Liquidator to file final report with Form H even in cases where scheme of compromise or arrangement under Section 230 of the Companies Act, 2013 is approved.
  - Corporate Liquidation Account under Regulation 46(1)



- With the objective of expeditious claim processing and overall fund management, the IBBI has proposed to continue to manage the Corporate Liquidation Account in a separate account with a scheduled bank.
- Filing of forms under Regulation 47B
  - The Liquidator shall now be mandatorily required to submit details related to the Liquidation process in the electronic forms available on IBBI's portal. Non – filing or delayed filing of such forms shall attract serious consequences such as a fine of INR 500 per form per calendar month, as notified by the IBBI.
- Details of Stakeholders under Schedule II, in Form I, Table B
  - Table B in Form I under the Schedule II of Liquidation Regulations will now include the following details of stakeholders entitled to claim undistributed proceeds : (a) Name; (b) Address and Contact details; (c) Identification Number; (d) Amount due; (e) Nature of Amount due; (f) Application provisions of Income Tax Act, 1961 for tax deduction; (g) Amount of tax to be deducted; (f) Reason for undistributed proceeds.

## Discussion Paper on streamlining Processes under the IBC: Reforms for Enhanced Efficiency and Outcomes dated February 04, 2025

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- By way of this discussion paper, the IBBI aims to streamline the processes envisaged under the IBC and has proposed the following amendments.
  - In order to avoid accumulation of costs and to prevent misuse of moratorium under Section 14(1)(d), the IBBI has proposed that the CoC will maintain continuous oversight and regularly review the operational expenses being undertaken by the Corporate Debtor, especially with regards to the leased property of the Corporate Debtor.
  - Section 14 (2) of the IBC provides for uninterrupted supply of essential goods or services to the Corporate Debtor during the CIRP period. The IBBI has proposed to provide for a more comprehensive example of essential services in Regulation 32 so as to correctly apply the protection of moratorium to such services.
  - In order to capitalise on the collective strength of companies with intertwined operations, the IBBI has proposed to introduce a mechanism for coordination of CIRP of intertwined entities, which shall provide for:
    - Provisions for joint hearing
    - Appointment of a common RP
    - Information sharing protocols
    - Coordinated timelines
  - The IBBI has proposed to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**CIRP Regulations**) so as to mandate presentation of all resolution plans received by the RP before the CoC, regardless of their compliance status, to ensure transparency and informed decision making by the CoC.
  - In order to provide comprehensive information about the Corporate Debtor to the RP at the commencement of the CIRP and avoid any information gaps and delays, the IBBI has proposed to mandate submission of Statement of Affairs (including financial statements, overview of employee/ workmen, records of Corporate Debtor) by the Corporate Debtor in response to an application filed seeking initiation of CIRP.
  - In order to avoid any uncertainty and to ensure finality of the resolution process, the IBBI has proposed to amend the CIRP Regulations to explicitly state that no modifications can be sought once a resolution plan is approved under Section 31 of the IBC and all the conditions must be built into the Resolution Plan before approval.
  - In order to incentivise the interim finance providers and to help them assess and monitor the investment risk and operational performance of the Corporate Debtor, the IBBI has proposed to invite the interim finance providers to the CoC meetings of the Corporate Debtor as observes with no voting rights.
  - In order to ensure transparency and effective treatment of avoidance transactions, the IBBI has proposed the following amendments in the CIRP Regulations.
    - Enhanced disclosure requirements in the Information Memorandum.
    - Avoidance transactions disclosed in the Information Memorandum must be incorporated in the final resolution plan submitted for the Corporate Debtor.
    - Avoidance transactions not disclosed under the Information Memorandum cannot be transferred under the Resolution Plan.

- The IBBI has proposed to **amend Regulation 36B** of the CIRP Regulations to allow the RP, with the approval of the CoC to invite resolution plans concurrently for both, the Corporate Debtor as a whole and for specific businesses or assets of the Corporate Debtor so as to reduce timelines and encourage wider participation.
- In order to expedite the implementation of resolution plan and maximise the value of assets of the Corporate Debtor, the IBBI proposes to introduce a **two-stage approval process for resolution plans by the Adjudicating Authority** where the financial bid and basic implementation framework may be approved early. It is proposed that the inter-se disputes, distribution matters and other related aspects maybe dealt with by the Adjudicating Authority at the later stage.
- In order to streamline the process, the IBBI has proposed to amend IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (**PG Regulations**) to **mandate submission of report by the RP to the Adjudicating Authority regarding non – submission of resolution plan for personal guarantor**. Basis this report, the Adjudicating Authority may terminate the resolution process, which shall enable the creditor or the debtor to file for bankruptcy.
- Basis the suggestions made by the Insolvency Law Committee and looking at the resolution statistics for sale as a going concern and to provide for faster resolution, the IBBI has proposed to **omit the provisions relating to sale as a going concern in Liquidation Process Regulations**.



# RECENT JUDGMENTS

## Kalyani Transco V/s. M/s Bhushan Power and Steel Ltd & Ors. – Supreme Court

Judgment dated May 02, 2025 [Civil Appeal No. 1808 of 2020 with 2192-2193 of 2020, 3784 of 2020, 2225 of 2020, 3020 of 2020, 668 of 2021 and 6390 of 2021]

### Background facts

- These batch of appeals arises from a common Impugned Order dated February 17, 2020 passed by the NCLAT, New Delhi approving the Resolution Plan submitted by JSW in the CIRP of Bhushan Power and Steel Ltd. (**BPSL**) and consequently, rejecting the objections raised by the erstwhile promoters and Operational Creditors of the Corporate Debtor.
- Briefly, CIRP in respect of BPSL was initiated vide Order dated July 26, 2017. Later, pursuant to discussion held in the 19<sup>th</sup> CoC meeting, the Resolution Plan submitted by JSW in the CIRP of BPSL was approved by its CoC.
- The RP filed an application under Section 30(6) of the IBC seeking approval of Resolution Plan submitted by JSW, which was objected by the erstwhile promoters, etc. During the pendency of these proceedings, the Enforcement Directorate (**ED**) also registered a case against BPSL under the Prevention of Money Laundering Act, 2002 (**PMLA**).
- Vide Order dated September 05, 2019, the NCLT dismissed the application filed by the erstwhile promoters and approved the Resolution Plan submitted by JSW subject to certain conditions mentioned in the said order.
- JSW being the SRA challenged some of the conditions mentioned in the plan approval order and filed an Appeal under Section 61 of the IBC before the NCLAT. Notably, after the approval of the Resolution Plan by the NCLT, the ED passed an order (PAO) on October 10, 2019 attaching the assets of BPSL under PMLA. The said PAO was also challenged by JSW before the NCLAT. The CoC of BPSL also challenged the PAO before the Hon'ble Supreme Court, wherein the said PAO was stayed.
- Several other appeals also came to be filed before the NCLAT challenging the plan approval Order. However, the NCLAT approved the resolution plan submitted by JSW, allowed the Appeal filed by JSW subject to the modifications/clarifications made by it in its impugned judgment and dismissed the Appeals filed by the erstwhile promoters, Operational Creditors, etc.
- The Impugned Order passed by the NCLAT approving the Resolution Plan for JSW was then challenged by the erstwhile promoters and certain Operational Creditors before the Supreme Court on the following grounds:
  - Non – compliance with the provisions of IBC.

- Failure of the RP to fulfil its statutory obligations.
- Approval of the Resolution Plan by the CoC without exercising due diligence thereby compromising the interests of operational creditors.
- Delay in implementation of the Resolution Plan by JSW on one pretext or the other.
- The counsel appearing for JSW argued that Appeals filed by the ex-promoters and Operational Creditors are not maintainable under Section 62 of the IBC as they are not aggrieved persons. Even otherwise, it was argued by JSW that the Resolution Plan is in compliance with the provisions of the IBC and that JSW is committed to resolution of BPSL.
- The counsel appearing for the CoC of BPSL argued that the Resolution Plan of JSW has been approved by the CoC in its commercial wisdom and keeping in mind the best interests of the Corporate Debtor.

### Issues at hand

- Whether the Resolution Plan approved by the CoC of BPSL is in compliance with the provisions of IBC read with the CIRP Regulations?
- Whether the timelines under Section 12 of the IBC are mandatory and have been met?
- Whether the NCLAT has the power of judicial review over the decision taken by a statutory authority under the PMLA?

### The decision of the Court

- The Supreme Court allowed the appeals filed by the Operational Creditors and the ex-promoters with the following observations.
  - The Supreme Court observed that if a Resolution Plan does not comply with such mandatory requirements under the IBC and such plan is approved by the CoC, it could not be said that the CoC had exercised its commercial wisdom while approving such Resolution Plan.
  - Notably, the Effective Date as per the approved Resolution Plan was the date not exceeding 30 days from the date of the NCLT Order. However, the Effective Date under the Resolution Plan was extended by the lenders. Such extension of time frustrates the very object of the IBC.
  - Further, the Resolution Plan submitted by JSW was implemented with respect to the Financial Creditors in March, 2021 and that in respect of its Operational Creditors in March, 2022, which is in clear contravention of Section 30(2) of the IBC.
  - Furthermore, it is incumbent upon the RP to verify and certify the contents of affidavit submitted by a resolution applicant under Section 29A of the IBC, which was not done by the RP in the present case and resulted in material irregularity under the provisions of IBC.
  - In fact, as per Section 12 of the IBC (as on the date of the approval of the Resolution) the CIRP for the Corporate Debtor was to be completed within 270 days. However, the same was completed beyond the stipulated period without any extension from the NCLT and results in violation of the provisions of the IBC.
  - In view of the above stated irregularities as well as the Application submitted by the RP seeking approval of the Resolution Plan of JSW under Section 31 being hit by Section 12 of IBC, the Supreme Court observed that the NCLT had committed grave error of law in approving the said plan vide its order dated September 05, 2019.
  - In so far as the Appeals before the NCLAT are concerned, the Supreme Court observed that the NCLAT erred in entertaining and allowing the appeal filed by JSW against the approval of its own resolution plan by the NCLT as JSW is not an Aggrieved Person in terms of Section 61 of the IBC and the grounds under Section 61(3) of the IBC were not met in the said Appeal.
- Further, while placing reliance on the judgement passed by the Supreme Court in *Embassy Property Developments Private Limited vs. State of Karnataka & Ors.*, (2020) 13 SCC 308, the Supreme Court observed that neither the NCLT nor the NCLAT is vested with the powers of judicial review over the decision taken by the Government or Statutory Authority in relation to a matter which is in the realm of Public Law and therefore, the findings made by the NCLAT regarding the PAO could not have been made and were set aside by the Supreme Court.
- While passing this judgement, the Supreme Court reiterated that the role of the RP is not only that of an administrator or facilitator but also of an invigilator to ensure that the CIRP is completed in a time bound manner for maximisation of value of assets in order to balance the interest of the stakeholders and that there is compliance of all the mandatory provisions of the IBC during the course of entire proceedings. The Supreme Court also observed that the CoC had failed to exercise its commercial wisdom while approving the Resolution Plan of the JSW, which was in absolute contravention of the mandatory provisions of IBC and CIRP Regulations and has failed to protect the interest of the Creditors.

#### HSA **Viewpoint**

This judgement reinforces the objectives of time bound resolution for maximisation of the value of the assets of the Corporate Debtor and clarifies that the supremacy of the commercial wisdom of the CoC is also within the four corners of the IBC.

- With the abovementioned findings, the Supreme Court rejected the Resolution Plan approved for BPSL and directed the NCLT to initiate liquidation proceedings for BPSL.

## Vishnoo Mittal Vs. Shakti Trading Company – Supreme Court

Judgement dated March 17, 2025 [Criminal Appeal No. 1287 of 2025]

### Background facts

- This appeal has been preferred by the director of M/s Xalta Food and Beverages Pvt Ltd. against the Order passed by the High Court rejecting its plea for quashing of notice under Section 138 of the Negotiable Instruments Act, 1881 (**NI Act**) and consequently dismissing its Petition.
- Briefly, the Appellant (in its capacity as the director) drew 11 cheques totalling to INR 11.17 Lakhs approximately in favour of M/s Shakti Trading Company. These cheques were however, dishonoured on July 07, 2018. Subsequently, on July 25, 2018, CIRP in respect of M/s Xalta Food and Beverages Pvt Ltd. came to be initiated and moratorium under Section 14 of the IBC was imposed.
- Thereafter, on August 06, 2018, M/s Shakti Trading Company issued legal notice under Section 138 of the Negotiable Instruments Act, 1881 (**NI Act**) and a complaint was filed before the appropriate Court. Accordingly, vide Order dated September 07, 2018, the Court issued summons to the Appellant under Section 138 of the NI Act.
- On receiving the summons, the Appellant moved before the High Court under Section 482 of CrPC challenging the summons and prayed for quashing of the Section 138 notice in view of moratorium under Section 14 of the IBC. The High court however, rejected the Appellant's plead and dismissed the Petition.
- The Appellant filed an SLP before the Supreme Court challenging the order passed by the High Court. The Appellant argued that although the cheques were drawn prior to the moratorium, notice under Section 138 of the NI Act was issued only post imposition of moratorium under Section 14 and could not have been issued.

### Issue at hand

- Whether a director of the Corporate Debtor is entitled to protection of moratorium under Section 14 of the IBC from measures in pursuance of Section 138 of the NI Act?

### Decision of the Court

- Pertinently, the cheques were issued on behalf of the Corporate Debtor i.e. M/s Xalta Food and Beverages Pvt Ltd. by the Appellant in its capacity as the director.
- While placing reliance on *Jugesh Sehgal Vs. Shamsher Singh Gogi*, (2009) 14 SCC 683, the Supreme Court noted that return of the cheques dishonoured simpliciter does not create an offence under Section 138 NI Act. Rather, as per clause (c) of the proviso to Section 138 of NI Act, a cause of action arises only when demand notice is served and payment is not made pursuant to such demand notice within the stipulated period of 15 days.
- The Supreme Court while distinguishing the facts of the present case with *P. Mohan Raj v. Shah Brothers Ispat Pvt. Ltd.* (2021) 6 SCC 258, allowed the Appeal and set aside the order passed by the High Court and quashed the complaint filed against the respondent.
- The Supreme Court observed that in the present case, the moratorium was imposed on July 25, 2018 and management of the Corporate Debtor was taken over by the interim resolution professional as per section 17 of the IBC. Thereafter, the Appellant did not have the capacity to fulfil the demand raised by the respondent by way of the notice issued under clause (c) of the proviso to Section 138 NI Act, as he was suspended from his position as the director of the corporate debtor.
- Therefore, since the powers of the board of directors were to be exercised by the IRP and all the bank accounts of the Corporate Debtor were operating under the instructions of the IRP, it was not possible for the Appellant to fulfil the demand raised under Section 138 of the NI Act.
- Therefore, the Supreme Court, while allowing the Appeal set aside the Order passed by the High Court and observed that the High Court ought to have quashed the notice issued under Section 138 of the NI Act by exercising powers under Section 482 of the CrPC.

HSA

#### **Viewpoint**

This judgment settles the dust around liability of a director under Section 138 of the NI Act during the operation of moratorium under Section 14 of the IBC when the cause of action under Section 138 of the NI Act arises.



# Electrosteel Steel Ltd v. Ispat Carrier Pvt Ltd – Supreme Court

Judgment dated April 21, 2025 [Civil Appeal No. 2896 of 2024]

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## Background facts

- This Appeal has been preferred by the Appellant challenging the order passed by the High Court observing that an arbitral award cannot be challenged by the Appellant on its execution stage when no appeal under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) was filed by the Appellant.
- Briefly, the Appellant and Ispat Carrier Pvt. Ltd. i.e. the Respondent were undergoing arbitration proceedings before the West Bengal Micro, Small and Medium Facilitation Council (**Facilitation Council**) for an amount of INR 1.59 Crores approximately. However, on July 21, 2017, CIRP came to be initiated in respect of the Appellant.
- Pursuant to the process envisaged under the IBC, a Resolution Plan submitted by Vedanta Limited was approved by the NCLT on April 17, 2018 wherein all the claims of operational creditors were settled at nil value. However, claim of the Respondent was not included in the resolution plan as approved by the committee of creditors.
- On lifting of the moratorium under Section 14, the Facilitation Council resumed arbitral proceedings. Notably, the Appellant did not contest these arbitral proceedings. Subsequently, an arbitral award was passed in favour of the Respondents on July 06, 2018 directing the Appellant to pay a sum of INR 1.59 Crores along with interest to the Respondent in terms of Section 16 of the MSME Act.
- The Appellant did not challenge the arbitral award under Section 34 of the Arbitration Act. As a consequence, the Respondent instituted execution proceeding before the executing court.
- It is only at this stage of execution of the award, that the Appellant filed a Petition contending that the arbitral award was a nullity and hence not executable as the claim of the Respondent was already settled at nil as per the resolution plan and, therefore, nothing was payable to the Respondent.
- The executing court however, dismissed the Petition of the Appellant and directed it to comply with the arbitral award within fifteen days.
- The High Court was of the opinion that the plea of nullity *qua* an arbitral award can be raised in an execution proceeding only under Section 47 of the CPC. However, the scope of such interference by the High Court would be very narrow. Accordingly, the High Court rejected the contention of the Appellant and observed that the arbitral award cannot be questioned at the stage of execution without challenging the award under Section 34 of the Arbitration Act.
- It was also observed by the High Court that the Facilitation Council did not lose its jurisdiction to proceed and pronounce the arbitral award on approval of the resolution plan by the NCLT under Section 31 of IBC. And accordingly, the High court dismissed the Petition filed by the Appellant.
- The Appellant challenged the order passed by the High Court before the Supreme Court on the basis of the Clean Slate theory, as upheld in a catena of judgements. The Appellant also relied on its approved Resolution Plan which stated that upon approval of the resolution plan by the NCLT under Section 31 of the IBC, on and from the effective date all pending proceedings relating to the winding up of the company i.e. the corporate debtor shall stand irrevocably and unconditionally abated in perpetuity and claims in connection with all violation or breach of any agreement by the Corporate Debtor shall be settled at nil value at par with operational creditors. Further, the approved Resolution Plan also stated that all claims arising out of litigations, arbitrations, claims, etc shall be settled at nil.

## Issue at hand

- Whether the Appellant could have challenged the arbitral award at the execution stage without appealing under Section 34 of the Arbitration Act?
- Whether the Appellant was entitled to pay in terms of the arbitral award despite approval of a resolution plan and settlement of claims of all Operational Creditors for the Corporate Debtor?

## Decision of the Court

- The Supreme Court while relying on the *Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*, (2020) 8 SCC 531 and *Ghanashyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. & Ors.* (2021) 9 SCC 657 re-affirmed the clean slate theory and observed that all dues including statutory dues owed to the central government, any state government or any local authority, if not a part of the approved resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the Resolution Plan was approved by the NCLT shall be maintainable.

- The Supreme Court further observed that the High Court was not justified in rejecting the Petition filed by the Appellant as the objection to execution of an arbitral award under Section 47 CPC is not dependent on filing of a Petition under Section 34 of the Arbitration Act.
- While allowing the Appeal filed by the Appellant, the Supreme Court observed that lifting of moratorium does not revive the claim of the Respondent and no person, after the approval of resolution plan for the Corporate Debtor will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the approved resolution plan.

## Rakesh Bhanot v. M/s Gurdas Agro Pvt Ltd – Spreme Court

Judgment dated April 01, 2025 [Criminal Appeal No. 1607 of 2025 along with other connected appeals]

### Background facts

- This Appeal has been preferred by the Appellant against the Order passed by the High Court rejecting petition under Section 482 of CrPC filed by the Appellant seeking adjournment of proceedings under Section 138 of the NI Act on the ground of operation of interim moratorium under Section 96 of the IBC.
- Briefly, M/s Gurdas Agro Private Limited i.e. the Respondent filed complaint under Section 138 of NI Act, against the Appellant in its capacity as the director of M/s Arjun Mall Retail Holdings Private Ltd before the Trial Court for dishonour of cheques. During the pendency of the proceedings under Section 138 of the NI Act, the Appellant filed an application under Section 94 of the IBC before the NCLT for initiation of personal insolvency proceedings against the Appellant. On filing of Petition under Section 94 of the IBC, the interim moratorium under Section 96 of the IBC was kicked in. Accordingly, the Appellant filed an application before the Trial Court seeking adjournment of the proceedings under Section 138 of the NI Act. This application was however, rejected by the Trial Court.
- This order of rejection was challenged by the Appellant before the High Court of Punjab and Haryana, which was also dismissed.
- The Appellant thereafter filed the present Appeal before the Supreme Court and argued that the moratorium under Section 96 of the IBC should be broadly interpreted to include proceedings under Section 138 of the NI Act as these arise from non-payment of a debt.
- On the other hand, the Respondent argued that the moratorium was intended only for civil recovery actions and not for penal proceedings, which serve public interest and upholds the integrity of negotiable instruments.

### Issue at hand

- Whether interim moratorium under Section 96 of the IBC covers the criminal proceedings under Section 138 of the NI Act against its personal guarantors/directors?

### Decision of the Court

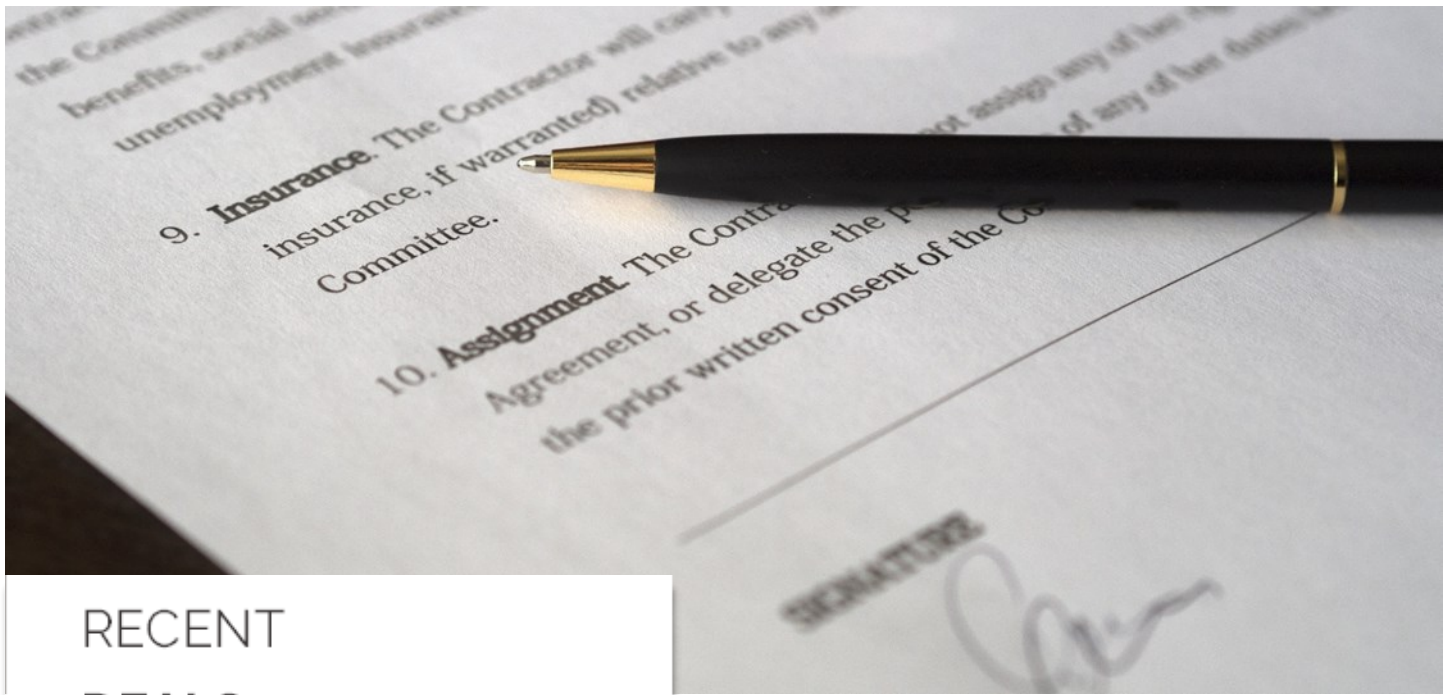
- The Supreme Court on examining the legislative intent of Sections 94, 96, and 101 of the IBC, held that the interim moratorium under Section 96 is aimed at protecting the guarantors civil recovery actions during the pendency of the insolvency resolution process. However, such moratorium is not aimed at insulating them from criminal liability including liability under section 138 of the NI Act.
- The Supreme Court observed that the object of moratorium is not to stall criminal proceedings or any other proceedings which are unrelated to the recovery of the debt. The Supreme Court emphasised that the term “any legal action or proceedings” does not mean “every legal action or proceedings” and must be interpreted to mean only proceedings concerning recovery of debt.
- The Supreme Court while distinguishing between actions for debt recovery and prosecution under Section 138 of the NI Act observed that while the action for recovery of debt may be stayed during the moratorium under the IBC, the proceedings under Section 138 are penal in nature and are aimed at maintaining commercial discipline.
- The Supreme Court while relying on *P. Mohanraj vs. Shah Brothers Ispat Private Limited*, (2021) 6 SCC 258 reaffirmed that the moratorium under the IBC does not extend to criminal prosecutions and observed that the statutory liability under Section 138 of the NI Act continues to bind natural persons irrespective of any moratorium.
- The Supreme Court emphasised that the object of the IBC is to facilitate resolution of financial distress, not to provide a refuge from personal criminal liability and further clarified that even if the underlying debt is extinguished or restructured through insolvency proceedings, the personal criminal liability of signatories or directors under Section 138 of the NI Act persists. Accordingly, the Supreme Court rejected the Appeal filed by the Appellant.

#### HSA Viewpoint

This judgement rightly protects the interests of the resolution applicant and reaffirms the clean slate theory upheld by the Supreme Court in various judgements.

#### HSA Viewpoint

This judgment provides clarity on the interplay between insolvency proceedings and proceedings under the NI Act and ensures integrity of commercial transactions.



## RECENT DEALS

### Resolution of Pancard Clubs Limited

- The NCLT, Mumbai bench (**NCLT**) vide Order dated April 25, 2025 has approved the Resolution Plan submitted by Chemhub Tradelink Pvt Ltd (**SRA**), for Pancard Clubs Ltd (**Corporate Debtor**), undergoing CIRP in terms of Order dated September 09, 2022 passed by the NCLT.
- Pertinently, the Corporate Debtor is involved in the travel and hospitality business.
- Pursuant to the initiation of CIRP, the RP made Public Announcement in Form A on September 12, 2022 inviting claims from the creditors of the Corporate Debtor and on collation and verification of the claims received, constituted the CoC of the Corporate Debtor on October 02, 2022.
- Thereafter, the RP published Form – G inviting Expression of Interest (**EOI**) from the prospective resolution applicants (**PRAs**) on November 08, 2022. Later, in view of extension of timelines, a Corrigendum to Form G dated November 23, 2022 was published indicating the last date to submission EOI as December 07, 2022 and the Resolution Plan as January 31, 2023 (extended till February 20, 2023).
- Pursuant thereto, the RP received four resolution plans from the following PRAs.
  - Consortium of Vijay K. Oswal, M/s Shanti Hospitality and Kantadevi V. Oswal (**Oswal Consortium**)
  - Ashdan Properties Private Limited (**Ashdan**)
  - Chemhub Tradelink Private Limited (**Chemhub/ SRA**)
  - RKG Fund I, a scheme of RKG Trust (**RKG**)
- After detailed deliberation, discussions and rounds of revisions, the resolution plans submitted by Oswal Consortium, Ashdan and Chemhub were put to vote simultaneously on the 15<sup>th</sup> CoC meeting held on August 17, 2023 (adjourned to August 18, 2023). Since RKG failed to submit its revised resolution plan in the stipulated timelines, its resolution plan was not considered by the CoC.
- Thereafter, on November 30, 2023, the Resolution Plan submitted by Chemhub came to be approved by the CoC for the Corporate Debtor.
- Consequently, a Letter of Intent (**LOI**) was issued by the RP to the SRA, which was unconditionally accepted, and a performance security of INR 1 Crore was given by the SRA.
- The Resolution Plan proposes a total financial outlay of INR 707 Crores as against the admitted debt of INR 6144.46 Crores. Notably, a sum of INR 697 Crores is proposed to be paid to the creditors of the Corporate Debtor in full and final settlement of the debt of the Corporate Debtor, as detailed hereinunder.

- The plan proposes to pay the CIRP Cost at actuals. However, a sum of INR 10 Crores have been marked by the SRA for such Cost.
- A sum of INR 1 Crore as against the admitted claims of INR 3.35 Crores of the Operational Creditors (Workmen and Employees) of the Corporate Debtor.
- A sum of INR 1 Crore as against the admitted claims of INR 1693.88 Crores of the Operational Creditors (other than Workmen and Employees) of the Corporate Debtor.
- A sum of INR 68 Crores as against the admitted claims of 4437.23 Crores of the Financial Creditors of the Corporate Debtor.
- The Resolution Plan also provides for an Entitlement Amount of INR 150 Crores and Sharing Amount of INR 522 Crores to the Assenting Financial Creditors of the Corporate Debtor.
- Notably, the average Fair Value of the Corporate Debtor was determined as INR 459.66 Crores and the average Liquidation Value of the Corporate Debtor was determined as INR 346.51 Crores.
- Pertinently, avoidance transactions under Sections 45 and 66 have been reported by the RP to the NCLT, however, no orders have been passed as yet on these applications.
- In terms of the resolution plan, the RP shall supervise the implementation of the Resolution Plan and file status of its implementation before the NCLT from time to time.
- The NCLT observed that the Resolution Plan meets the requirements of Sections 29A and 30(2) of the IBC and Regulations 37, 38, 38(1A) and 39(4) of the CIRP Regulations. Accordingly, the NCLT approved the Resolution Plan submitted by the SRA.

## Resolution of GVK Gautami Power Limited

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- The NCLT, Hyderabad Bench (**NCLT**) vide Order dated March 06, 2025 has approved the resolution plan submitted by M/s Radha Selters Pvt Ltd (**SRA**), in the CIRP of GVK Gautami Power Ltd (**Corporate Debtor**), as unanimously approved by the CoC.
- Pertinently, the Corporate Debtor is engaged in the infrastructure industry.
- The CIRP in respect of the Corporate Debtor came to be initiated on October 20, 2023 and a RP was appointed to manage the affairs of the Corporate Debtor.
- Pursuant thereto, the RP made Public Announcement in Form A on October 26, 2023 inviting claims from the creditors of the Corporate Debtor. After collating and verifying the claims received, the RP constituted the CoC for the Corporate Debtor on November 10, 2023.
- The RP published Form – G on December 19, 2023 in terms of which, the last date for submission of EOI was January 18, 2024. Later, the CoC decided to publish fresh Form G, which was published by the RP on April 07, 2024. Pursuant thereto, the RP received resolution plans from M/s Radha Smelters Pvt Ltd, M/s Sherisha Technologies Pvt Ltd and M/s Orissa Metaliks Pvt Ltd.
- After detailed discussions and deliberations, all the resolution plans were put to vote and the resolution plan submitted by M/s Radha Smelters Pvt Ltd came to be approved by the CoC on September 23, 2024.
- Accordingly, the RP issued a LOI dated October 08, 2024 which was duly acknowledged by the SRA on October 10, 2024. In compliance of Regulation 39 (4A) of the CIRP Regulations, the SRA has furnished the Performance Bank Guarantee to the tune of INR 29.98 Crores.
- The approved Resolution Plan proposes a sum of INR 206.90 Crores as against the admitted claims of INR 2759.66 Crores, as detailed hereinunder.
  - CIRP Costs to be paid at actuals by the SRA. Pertinently, a sum of INR 10 Lakhs have been marked by the SRA for meeting the CIRP Costs.
  - A sum of INR 199.90 Crores as against the admitted claims of INR 2759.57 Crores of the assenting secured financial creditors of the Corporate Debtor.
  - A sum of INR 7 Crores has been allotted by the SRA towards payment of EPFO, Gratuity dues, etc.
- The SRA proposes to implement the approved resolution plan within a period of 90 days from its approval.
- The approved Resolution Plan provides for constitution of a Monitoring Committee comprising of the RP, a representative of the CoC and a representative of the SRA to oversee the implementation of the Resolution Plan from the date of its approval till the final payment as per the resolution plan.
- Notably, the Fair Value of the Corporate Debtor was determined as INR 417.41 Crores and the Liquidation Value of the Corporate Debtor was determined as INR 265.03 Crores.



- The NCLT, after taking note of the compliances under Section 29A and Section 30 (2) of the IBC, Regulation 38 and 39 of the CIRP Regulations, approved the Resolution Plan submitted by the SRA for the Corporate Debtor.



# COMPANIES ADMITTED TO INSOLVENCY AND LIQUIDATION PROCESS IN THE MONTH OF APRIL 2025

## Companies admitted to insolvency

#	Name of Corporate Debtor	NCLT Bench	Business Activity
1	VS Realtech Pvt Ltd	New Delhi	The Company is involved in the Real Estate business.
2	Prafful Overseas Pvt Ltd	New Delhi	The Company is involved in the business of the manufacturing, suppling, etc of nylon filament yarn.
3	New Bombay Paper Mills Pvt Ltd	Mumbai	The Company is involved in the business of manufacturing of paper stock lots, etc.
4	Marg Ltd	Chennai	The Company is involved in the business of the providing infrastructure services.
5	Malyalam Vehicles India Pvt Ltd	Kochi	The Company is involved in the automotive industry.
6	Greenseed Agro Bio Labs Pvt Ltd	Kochi	The Company is involved in the agriculture industry.
7	Tirupati Polyplast Irrigation Systems Pvt Ltd	Mumbai	The Company is involved in the business of manufacturing of irrigation systems, etc.
8	Bhattad Brothers Realty Pvt Ltd	Mumbai	The Company is involved in the Real Estate business.
9	Om Shakthi Travels Pvt Ltd	Chennai	The Company is involved in the business of car rentals.
10	Srinithi Enterprises Pvt Ltd	Chennai	The Company is involved in the business of food and beverages.
11	Best & Crompton Engineering Projects Ltd	Chennai	The Company is involved in the business of manufacturing and selling industrial pumps and castings for industrial and automobile applications.
12	SDF Industries Ltd	Kochi	The Company is involved in the business of manufacturing, selling and bottling of Indian Made Foreign Liquor.
13	Sai Maatarini Tollways Ltd	Hyderabad	The Company is involved in the infrastructure and utilities business.
14	SLS Power Corporation Ltd	Amravati	The Company is involved in the energy and power industry.
15	Yosmite Engineering Pvt Ltd	Chennai	The Company is involved in the Machinery and Equipment industry.
16	Redwoods Infrastructure Pvt Ltd	Bengaluru	The Company is involved in the Real Estate business.
17	EGT Entertainment Pvt Ltd	Guwahati	The Company is involved in the Hospitality business.
18	J H V Sugar Ltd	Kolkata	The Company is involved in the business of food production.
19	S R Timber Products Pvt Ltd	Kolkata	The Company is involved in the business of trading of timber and manufacturing of associated products.
20	Jasmine Commodities Pvt Ltd	Kolkata	The Company is involved in the agriculture sector.
21	Surabhi Hospitals Pvt Ltd	Mumbai	The Company is involved in the healthcare business.
22	Rivaaz Trade Ventures Pvt Ltd	Mumbai	The Company is involved in the financial services industry.
23	Bochem Healthcare Pvt Ltd	Indore	The Company is involved in the healthcare business.

24	Accurarch Acrylics Pvt Ltd	Kochi	The Company is involved in the infrastructure business.
25	Camson Seeds Ltd	Bengaluru	The Company is involved in the agriculture sector.
26	New Haven Engineering Co Pvt Ltd	Mumbai	The Company is involved in the automotive business.
27	Shri Badri Kedar Papers Pvt Ltd	Allahabad	The Company is involved in the manufacturing business.
28	Kumarakom Aqua Serene Pvt Ltd	Kochi	The Company is involved in the Hospitality business.
29	Eurocoin Ceremaics Pvt Ltd	Ahmedabad	The Company is involved in the business of manufacturing of ceramic products.
30	Sterne India Pvt Ltd	Bengaluru	The Company is involved in the e-commerce business.
31	Epitome Residency Pvt Ltd	Mumbai	The Company is involved in the Real Estate business.
32	Patel Wood Products Ltd	New Delhi	The Company is involved in the business of manufacturing of wooden products.
33	Dahisar Traders Pvt Ltd	Kolkata	The Company is engaged in the Home & Lifestyle Industry.
34	Bombay Rayon Clothing Ltd	Mumbai	The Company is involved in the textile business.
35	Essel Ahmedabad Godhara Toll Roads Ltd	Mumbai	The Company is involved in the business of Civil Engineering.
36	JRA Infrastructure Ltd	Ahmedabad	The Company is involved in the infrastructure and utilities industry.
37	A F Enterprises Ltd	Ahmedabad	The Company is involved in the investment business.
38	Dr. Smiths Biotech Pvt Ltd	Mumbai	The Company is involved in the business of manufacturing of goods.
39	Supermak Foil Pvt Ltd	Ahmedabad	The company is involved in the business of pharmaceutical packaging business.
40	Sawant Logistics Services Pvt Ltd	Mumbai	The company is involved in the transport and logistics industry.
41	Avesthagen Ltd	Bengaluru	The Company is involved in the pharmaceutical business.
42	SS Realtech Pvt Ltd	New Delhi	The Company is involved in the construction business.
43	Button Industries Pvt Ltd	Ahmedabad	The Company is involved in production, processing, etc of meat, fish, vegetables, etc.

## CONTRIBUTIONS BY:

Abhirup Dasgupta | Partner

Ishaan Duggal | Associate Partner

Ruchi Goyal | Senior Associate

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