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RECENT JUDGMENTS

In the National Company Law Appellate Tribunal
State Bank of India & Ors. [Appellants] Vs. Manoj Kumar Das & Ors [Respondents]

Company Appeal (AT) (Insolvency) Nos. 419 & 420 of 2026, 440 of 2026 and 551 of 2026, National Company Law Appellate Tribunal, Principal Bench, New Delhi (Decided on 30.06.2026)

Background facts

- The present matter arises from the insolvency proceedings of Jet Airways (India) Limited, which entered the Corporate Insolvency Resolution Process ("CIRP") on 22.06.2019 following the suspension of its operations on 17.04.2019 owing to severe financial distress. Mr. Aashish Chhawchharia was appointed as the Interim Resolution Professional, and the resolution plan was subsequently approved by the National Company Law Tribunal, Mumbai Bench ("NCLT, Mumbai") on 22.06.2021.
- During the implementation of the resolution plan, disputes arose regarding the payment of unpaid provident fund, pension fund and gratuity dues payable to the workmen. By its judgment dated 21.10.2022, the Hon'ble National Company Law Appellate Tribunal ("NCLAT") directed the Successful Resolution Applicant to discharge the outstanding statutory dues payable to the workmen, which direction was subsequently affirmed by the Hon'ble Supreme Court on 30.01.2023.
- As the Successful Resolution Applicant failed to implement the approved resolution plan despite the aforesaid directions, the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution of India, directed the liquidation of the Corporate Debtor by its judgment dated 07.11.2024.
- Pursuant to the aforesaid directions, the NCLT, Mumbai appointed a Liquidator on 26.11.2024 to conduct the liquidation proceedings in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 ("IBC").
- During the liquidation proceedings, the NCLT, Mumbai, by its orders dated 03.02.2026 and 04.02.2026, directed the Liquidator to distribute the liquidation proceeds in accordance with the waterfall mechanism prescribed under Section 53 of the IBC while safeguarding the interests of the workmen and employees claiming priority. By its order dated 04.02.2026, the NCLT, Mumbai further held that provident fund, pension fund and gratuity dues falling outside the liquidation estate were required to be dealt with independently. However, it declined the workmen's request to exclude 1,656 days spent in litigation while computing the twenty-four- month look-back period under Section 53(1)(b) of the IBC.
- Aggrieved by the orders dated 04.02.2026 passed by the National Company Law Tribunal, Mumbai Bench, Court-I ("NCLT, Mumbai") in I.A. No. 3426 of 2025 and I.A. No. 4627 of 2025, as well as the

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Viewpoint

The present judgment is a significant addition to the evolving jurisprudence on the treatment of workmen's dues under the Insolvency and Bankruptcy Code, 2016 ("IBC"). By holding that provident fund, pension fund and gratuity dues are **"due- centric"** rather than **"asset-centric,"** the Hon'ble NCLAT has reaffirmed that these statutory entitlements cannot be defeated merely because the Corporate Debtor failed to maintain separate or identifiable funds. The NCLAT also ruled that workmen's retirement benefits must be paid in full and cannot be swallowed up to pay off a company's bank lenders.

The decision strengthens the protective framework envisaged under the IBC by recognising that these dues arise from a statutory obligation and remain payable irrespective of the manner in which the Corporate Debtor maintained its accounts.

order dated 03.02.2026 passed in I.A. No. 4757 of 2025, all arising out of C.P. (IB) No. 2205(MB)/2019, the parties preferred Company Appeal (AT) (Insolvency) Nos. 419 & 420 of 2026, 440 of 2026 and 551 of 2026 before the Hon'ble NCLAT. The appeals raised important questions concerning the treatment of statutory dues such as provident fund, pension fund and gratuity during liquidation, the applicability of the waterfall mechanism under Section 53 of the IBC, and whether the period of 1,656 days spent in litigation ought to be excluded while computing the twenty-four-month look-back period under Section 53(1)(b) of the Code.

Issues at hand

- Whether the period of **1,656 days** spent in litigation during the Corporate Insolvency Resolution Process and allied proceedings ought to be excluded while computing the **twenty-four-month look-back period** under Section 53(1)(b) of the Insolvency and Bankruptcy Code, 2016 for determining the priority of workmen's dues?
- Whether statutory dues such as **provident fund, pension fund and gratuity**, which are excluded from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016, continue to enjoy such protection even where the Corporate Debtor has failed to maintain or segregate the requisite statutory funds?
- Whether the exclusion of provident fund, pension fund and gratuity from the liquidation estate under Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016 is **"due-centric"** rather than **"asset-centric"**, thereby obligating the Liquidator to satisfy such statutory dues notwithstanding the absence of separately maintained or identifiable statutory funds on the liquidation commencement date?
- Whether the Liquidator is required to satisfy statutory dues payable towards provident fund, pension fund and gratuity **outside the waterfall mechanism** prescribed under Section 53 of the Insolvency and Bankruptcy Code, 2016, irrespective of whether such amounts are reflected in segregated statutory funds?

Findings of the Court

- The Hon'ble NCLAT held that Section 36(4)(a)(iii) of the Insolvency and Bankruptcy Code, 2016 ("IBC") expressly excludes all sums due to workmen towards provident fund, pension fund and gratuity from the liquidation estate. Consequently, such statutory dues cannot be treated as assets available for distribution under the waterfall mechanism prescribed under Section 53 of the IBC.
- The Hon'ble NCLAT clarified that the protection accorded to provident fund, pension fund and gratuity is "due-centric" and not "asset-centric". In other words, the workmen's entitlement arises by virtue of the governing welfare legislations and is not dependent upon the existence of a separately maintained or identifiable statutory fund on the liquidation commencement date.
- While arriving at this conclusion, the Hon'ble NCLAT relied upon the decisions of the Hon'ble Supreme Court in State of Jharkhand v. Jitendra Kumar Srivastava[1] and Jaswant Singh Gill v. Bharat Coking Coal Ltd.[2], which recognise pensionary and terminal benefits as statutory rights that cannot be withheld except in accordance with law. The Tribunal observed that these benefits are vested rights earned by an employee through service and not discretionary payments.
- The Hon'ble NCLAT reiterated that a Liquidator cannot evade the obligation to discharge provident fund, pension fund and gratuity dues merely because the Corporate Debtor had failed to create or maintain separate statutory funds prior to the commencement of liquidation.
- In reaffirming this position, the Tribunal placed reliance on State Bank of India v. Moser Baer Karamchari Union & Anr.[3], wherein it was held that provident fund, pension fund and gratuity dues remain outside the liquidation estate and are, therefore, insulated from the waterfall mechanism under Section 53 of the IBC.
- The Hon'ble NCLAT further observed that the earlier view taken in Savan Godiwala v. Appala Siva Kumar[4], to the extent it suggested otherwise, no longer holds the field, as the Hon'ble Supreme Court restored the order of the Adjudicating Authority recognising the statutory protection available to such dues.
- Reliance was also placed on Truvisory Insolvency Professionals Pvt. Ltd. v. Employees Provident Fund Organisation[5], wherein it was held that the absence of a separately identifiable provident fund or gratuity fund cannot defeat the statutory rights of employees, and such dues must be

The judgment also provides much-needed clarity on the responsibilities of liquidators. By reaffirming that statutory social security dues fall outside the liquidation estate and are not subject to the waterfall mechanism under Section 53 of the IBC, the Hon'ble NCLAT has removed a long-standing area of uncertainty and reinforced the employee-centric safeguards built into the insolvency framework.

At the same time, the Hon'ble NCLAT has adopted a strict interpretation of the IBC while dealing with the computation of the twenty-four- month look-back period under Section 53(1)(b). Although the refusal to exclude the period consumed in litigation may appear harsh in cases involving prolonged insolvency proceedings, the decision underscores that courts cannot depart from the express language of the statute on equitable considerations alone. Any relaxation of the statutory timeline would therefore have to come through legislative intervention rather than judicial interpretation.

Overall, the judgment strikes a careful balance between protecting the statutory rights of workmen and preserving the certainty of the liquidation process. It is likely to serve as an important precedent for insolvency professionals and stakeholders dealing with employee dues in liquidation proceedings, while also shaping future debates on whether the IBC requires legislative refinement to address delays arising from protracted litigation.

[1](2013) 12 SCC 210
[2](2007) 1 SCC 663
[3] 2023 SCC OnLine SC 140
[4] CA No. 2520/2020
[5] 2024 SCC OnLine NCLAT 2801

discharged from the available assets of the Corporate Debtor before any distribution under Section 53 of the IBC.

- The Hon'ble NCLAT also referred to Sunil Kumar Jain v. Sundaresh Bhatt[6] and clarified that the expression "if any available" cannot be interpreted to mean that workmen's statutory entitlement is contingent upon the existence of a segregated fund on the liquidation commencement date. Rather, the phrase only acknowledges the practical existence of such funds without diluting the underlying statutory obligation.
- The Hon'ble NCLAT reaffirmed its earlier decision in Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia[7], which had specifically recognised the entitlement of the workmen of Jet Airways to receive their unpaid provident fund and gratuity dues in full. The said decision, having been affirmed by the Hon'ble Supreme Court, continued to bind the parties and governed the present proceedings.
- On the issue of computation of workmen's dues under Section 53(1)(b) of the IBC, the Tribunal declined the request to exclude 1,656 days spent in litigation while calculating the twenty-four-month look-back period.
- The Tribunal held that the Liquidation Commencement Date, as defined under Section 5(17) of the IBC, is a statutory concept that admits of no judicial modification. Accordingly, the twenty-four-month period under Section 53(1)(b) must be computed strictly with reference to the actual liquidation commencement date, irrespective of the duration of the preceding insolvency or litigation proceedings.
- Rejecting the plea founded on equitable considerations, the Tribunal observed that courts cannot rewrite or expand an express statutory provision to accommodate hardships faced by a particular class of stakeholders. In the absence of any enabling provision under the IBC, the period spent in litigation could not be excluded while computing the statutory look-back period.

In The National Company Law Appellate Tribunal Aman Monga & Anr. [Appellants] Vs The Liquidator of Jet Airways (India) Ltd. & Ors. [Respondents].

Company Appeal (AT) (Insolvency) No. 1257 of 2026, National Company Law Appellate Tribunal, Principal Bench, New Delhi (Decided on 21.08.2026)

Background facts

- The present appeal arose out of the liquidation proceedings of Jet Airways (India) Limited ("Corporate Debtor"), which entered the Corporate Insolvency Resolution Process on 20.06.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The resolution plan submitted by the Jalan Fritsch Consortium was approved by the National Company Law Tribunal, Mumbai Bench ("NCLT, Mumbai") on 22.06.2021, along with the constitution of a Monitoring Committee comprising representatives of financial creditors, including State Bank of India and Punjab National Bank.
- During the CIRP, a decision was taken to sell three Boeing 777-300ER aircraft belonging to the Corporate Debtor, and Letters of Intent were issued on 12.10.2022 in favour of entities belonging to the Ace Aviation Group ("Respondents 4 to 6"). The sale was, however, kept in abeyance by the Monitoring Committee. By its order dated 17.10.2023, the NCLT, Mumbai directed that the sale process be resumed and completed, which direction was upheld by the NCLAT on 22.12.2023 and affirmed by the Hon'ble Supreme Court on 07.03.2024. Despite this, the successful bidder failed to deposit the balance sale consideration within the stipulated period.
- Consequent upon the Successful Resolution Applicant's failure to implement the resolution plan, the Hon'ble Supreme Court, by its judgment dated 07.11.2024, directed liquidation of the Corporate Debtor under Section 33 of the IBC. Liquidation proceedings commenced on 26.11.2024, and a Liquidator was appointed. The Stakeholders' Consultation Committee ("SCC"), constituted under Regulation 31A of the Liquidation Process Regulations, 2016, resolved on 16.12.2024 to continue the sale process and ratified the prior acts of the erstwhile Resolution Professional and Monitoring Committee, with 79.81% voting share approval. The sale of the three aircraft was executed on 05.02.2026 for approximately USD 12.5 million, USD 16 million and USD 17.5 million respectively, with the balance sale consideration of USD 41.4 million transferred to the liquidation account on 22.01.2026 and disclosed to stock exchanges on 11.02.2026.
- The Appellants, former employees of the Corporate Debtor, thereafter, filed I.A. No. 1604 of 2026 before the NCLT, Mumbai, seeking a declaration that the sale of the aircraft was vitiated, alleging

[6](2022) 7 SCC 540
[7]Comp. App. (AT) (Ins.) No. 752/2021

undervaluation, absence of fresh valuation, conflict of interest involving VMAN Aviation Services, and execution of the sale agreements outside India in violation of Section 35(1) of the IBC. The Adjudicating Authority dismissed the application by order dated 22.04.2026, holding that the application was an attempt to delay realisation of assets. Aggrieved thereby, the Appellants preferred Company Appeal (AT) (Insolvency) No. 1257 of 2026 before the NCLAT.

Issue at hand

- Whether former employees of a Corporate Debtor, whose dues are payable under the waterfall mechanism prescribed under Section 53 of the Insolvency and Bankruptcy Code, 2016, possess the locus standi to challenge the sale of assets conducted by the Liquidator during liquidation proceedings?
- Whether a sale process initiated during the Corporate Insolvency Resolution Process can validly be continued and completed by the Liquidator during the liquidation framework?
- Whether the sale of the aircraft assets, undertaken on the basis of valuation determined in 2022 without a fresh valuation exercise, was vitiated on grounds of undervaluation, conflict of interest, or extra-territorial execution of the sale agreements?

Findings of the Court

- The Hon'ble NCLAT held that former employees of a Corporate Debtor, whose entitlement is to be satisfied under the waterfall mechanism contained in Section 53 of the IBC, do not have the locus to challenge the sale process of assets undertaken by the Liquidator, as their remedy lies solely in receiving their dues under Section 53 and not in questioning the manner or valuation of the asset sale.
- The Tribunal held that there is no bar under the provisions of the IBC disentitling a Liquidator from continuing a sale process initiated during the CIRP stage, and that Regulation 32 of the Liquidation Process Regulations vests unfettered power in the Liquidator to conduct such sale, subject to the consideration of creditors holding security interest.
- The NCLAT noted that the facts recorded in the impugned order — including the issuance of the Letter of Intent on 12.10.2022, the deposit of USD 5.6 million as Earnest Money Deposit, the directions of the NCLT, NCLAT and Supreme Court upholding completion of the sale, and the eventual transfer of the balance sale consideration — remained undisputed by the Appellants during submissions.
- The Tribunal observed that the Appellants had waited for over fifteen months after commencement of the sale in liquidation before challenging it, and held that such belated challenge, in deference to a sale already subjected to judicial scrutiny at multiple stages, amounted to an attempt to frustrate the sale process and delay realisation of assets of the Corporate Debtor.
- The NCLAT placed reliance on its earlier judgment dated 22.12.2023 in Company Appeal (Insolvency) Nos. 1517 and 1595 of 2023, wherein it had categorically held that the Appellants were fully protected under the orders of the Adjudicating Authority and that their entitlement to dues under the resolution plan remained unaffected.
- The Tribunal further noted that identical contentions raised by employee associations had already been rejected by the NCLT, Mumbai in I.A. No. 223 of 2025 (filed by the All India Jet Airways Officers and Staff Association) and I.A. No. 718 of 2025 (filed by the Jet Aircraft Maintenance Engineers Welfare Association), both of which held that the Liquidator was duty-bound under Section 35 of the IBC to take control of and sell the assets of the Corporate Debtor, and that no illegality had been shown in the sale process.
- Holding that the Appellants had failed to demonstrate any material irregularity or illegality in the sale process and reiterating that their concern ought to be confined to receipt of their dues which would be paid to them under Section 53 of the IBC, the NCLAT dismissed the appeal as being without merit, with no order as to costs.

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Viewpoint

In our view, the judgment appropriately reinforces that employees cannot use their statutory dues as a basis to derail or delay the liquidation process, where the IBC provides a specific mechanism for addressing such claims.

- The NCLAT held that employees cannot collaterally challenge the liquidation process on the basis of their dues and must pursue their claims through the mechanism under Section 53 of the IBC.
- The 15-month delay in challenging the sale, despite the sale having already been scrutinised by the NCLT, NCLAT & SC over a period of time, weighed against the employees and raised concerns of abuse & duplicity of process

In The Supreme Court of India
Tejas J. Shah & Ors. [Appellants] Vs. Mantri Technology Constellations Pvt. Ltd. (Now Known as Buoyant Technology Constellations Pvt. Ltd.) & Ors [Respondents]

2026 INSC 746

Background facts

- The Appellants are homebuyers who had booked residential apartments in the project **"Mantri Manyata Energia"** being developed by Respondent No.1. Pursuant to the transaction, Agreements for Sale and Construction Agreements were executed in the year 2016, under which possession of the apartments was contractually promised on or before 31 December 2018. Respondent No. 2 was the developer company associated with the project, Respondent Nos. 3 to 5 were its promoters/directors, and Respondent Nos. 6 and 7 were the owners of the project land.
- According to the Appellants, despite having paid a substantial portion of the sale consideration and despite repeated assurances from the developer, the project remained incomplete and possession was never delivered within the stipulated timeline. Aggrieved by the delay, the Appellants, along with several other homebuyers, instituted Consumer Complaint No.13 of 2023 before the National Consumer Disputes Redressal Commission ("NCDRC") alleging deficiency in service and unfair trade practices against all the respondents.
- During the pendency of the consumer complaint, the National Company Law Tribunal, Bengaluru Bench admitted an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against Respondent No.1 and commenced the Corporate Insolvency Resolution Process ("CIRP"). Consequently, a moratorium under Section 14 of the IBC came into force in respect of Respondent No.1. Following the commencement of CIRP, the Appellants filed interlocutory applications before the NCDRC seeking continuation of the consumer complaint against Respondent Nos.2 to 7, contending that the statutory moratorium operated only in favour of the corporate debtor and not the remaining respondents.
- The NCDRC, however, rejected the applications and adjourned the consumer complaint *sine die*, holding that the liability of the remaining respondents could not be independently examined while the proceedings against the corporate debtor stood suspended on account of the moratorium. Challenging this approach, the homebuyers preferred Civil Appeals before the Hon'ble Supreme Court.

Issue at hand

- Whether the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 extends protection to promoters, directors, associated companies and landowners who have been impleaded as respondents in consumer proceedings?
- Whether consumer proceedings can continue against respondents other than the corporate debtor during the subsistence of the Corporate Insolvency Resolution Process?
- Whether the National Consumer Disputes Redressal Commission was justified in refusing to proceed against Respondent Nos. 2 to 7 solely on the ground that CIRP had been initiated against Respondent No. 1?

Findings of the Court

- The Hon'ble Supreme Court observed that the controversy before it was confined to a narrow issue, namely, whether the NCDRC had correctly interpreted the scope of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC") while refusing to continue the consumer proceedings against respondents other than the corporate debtor. The Hon'ble Supreme Court clarified that it was not examining the merits of the consumer complaint but only the legal effect of the moratorium.
- The Hon'ble Court examined the object and scope of Section 14 of the IBC. It observed that the moratorium is intended to preserve the assets of the corporate debtor during the Corporate Insolvency Resolution Process and facilitate an effective resolution. However, such protection is purely statutory and cannot be extended beyond what the legislature has expressly provided. The Hon'ble Court therefore held that the moratorium under Section 14 is available only to the corporate debtor and does not automatically extend to promoters, directors, associated entities, landowners or any other persons merely because insolvency proceedings have been initiated against the corporate debtor.

HSA
Viewpoint

The judgment brings much-needed clarity on the interplay between the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 and proceedings under the Consumer Protection Act, 2019. The SC held that an IBC moratorium protects only the corporate debtor, and consumer proceedings before the NCDRC can continue against promoters, directors, and other respondents not covered by the moratorium.

Some key takeaways are:

- The moratorium under Section 14 is confined to the corporate debtor and does not automatically extend to promoters, directors or other non-corporate respondents.
- Consumer and other statutory proceedings may continue against people who are not protected by the moratorium, subject to the facts and circumstances of each case. The decision reiterates that courts and tribunals cannot enlarge the scope of a statutory moratorium beyond what the IBC expressly provides.

The judgment is likely to serve as an important precedent in insolvency and consumer disputes by balancing the objectives of the IBC with the rights of consumers to pursue remedies against non-corporate Respondents.

- In support of this interpretation, the Hon'ble Supreme Court first relied upon *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*, (2021) 6 SCC 258[1] , wherein it was held that the moratorium under Section 14 applies only to the corporate debtor and does not protect natural persons who may otherwise be liable under law. Drawing from this principle, the Hon'ble Court reiterated that the scope of Section 14 cannot be expanded through judicial interpretation so as to grant protection to persons who are not expressly covered by the statute.
- The **Hon'ble Supreme Court** next referred to *Ansal Crown Heights Flat Buyers Association v. Ansal Crown Infrabuild Pvt. Ltd.*, (2024) 5 SCC 745[2], where it had recognised that although proceedings against a corporate debtor remain suspended during the moratorium, the same protection is not available to its promoters or directors. Relying upon the said decision, the Hon'ble Supreme Court observed that there is no legal impediment to continuing proceedings against non-corporate respondents merely because CIRP has commenced against the developer company.
- The Hon'ble Supreme Court also relied upon its decision in *Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth & Ors.*, 2025 INSC 314[3]. Although that case dealt with the interim moratorium under Section 96 of the IBC, the Hon'ble Supreme Court found the underlying principle equally applicable. It reiterated that the protection afforded by any moratorium under the IBC must remain confined to the limits prescribed by the statute and should not be interpreted in a manner that unnecessarily curtails independent remedies available under other laws unless the Code expressly so provides.
- Applying the above principles, the Hon'ble Supreme Court held that Respondent No. 1 alone was the corporate debtor against whom CIRP had been initiated. Since no moratorium operated in favour of Respondent Nos. 2 to 7, there was no statutory bar preventing the NCDRC from proceeding against them. The Hon'ble Court therefore concluded that the NCDRC had erred in refusing to continue the consumer complaint against the remaining respondents solely because CIRP had been initiated against Respondent No. 1.
- The Hon'ble Supreme Court further found that the approach adopted by the NCDRC was self-contradictory. While the Commission had observed that the liability of the respondents was yet to be determined, it simultaneously held that the alleged deficiency in service was attributable only to the corporate debtor. According to the Hon'ble Court, such a finding effectively decided the merits of the dispute at an interlocutory stage without giving the parties an opportunity to establish their respective cases, which was legally impermissible.
- While declining the Appellants' request to decide the liability of the remaining respondents itself, the Court observed that issues such as maintainability of the complaint, privity of contract and the existence of any independent obligations of Respondent Nos. 2 to 7 were yet to be examined by the NCDRC. Since these questions required adjudication on merits, the Hon'ble Supreme Court deliberately refrained from expressing any opinion on them.
- Accordingly, the Hon'ble Supreme Court partly allowed the appeals, set aside the NCDRC's order rejecting the interlocutory applications and directed the NCDRC to proceed with Consumer Complaint No. 13 of 2023 against Respondent Nos. 2 to 7 in accordance with law. It was, however, clarified that the proceedings against Respondent No. 1 shall continue to remain governed by the moratorium under Section 14 of the IBC.

In The Supreme Court of India
Civil Appeal No. 13023 of 2025
ASJ Finsolutions Pvt. Ltd [Appellant] Vs. Vikram Bajaj [Respondent]

2026 SCC OnLine SC 2012 - Decided on 28.09.2026

Background facts

- The Appellant was the successful bidder for Lot No. 5, having a reserve price of Rs. 25.56 crore, in an e-auction conducted as part of the liquidation proceedings under the Insolvency and Bankruptcy Code, 2016.
- Under the e-auction notice dated 25.10.2021, the Appellant was required to deposit an Earnest Money Deposit ("EMD") of 10% of the reserve price. The auction was conducted on 15.11.2021 and the Appellant's bid of Rs. 25.56 crore was accepted. The Appellant deposited Rs. 6.39 crore, which included Rs. 2.55 crore towards EMD and Rs. 3.84 crore towards part of the balance sale consideration.

[1](2021) 6 SC 258
[2](2024) 5 SCC 745
[3] 2025 INSC 314

- The balance sale consideration was required to be paid within 30 days, or within 90 days from the date of the auction with interest at 12% per annum. The Appellant did not pay the balance amount within the stipulated period. Although the Appellant had communicated its intention to make the payment, it subsequently sought the prior title deeds of the property.
- The auction notice specifically provided that the entire amount paid by the successful bidder, including the EMD, could be forfeited if the bidder failed to pay the balance sale consideration in accordance with the terms of the sale. The Liquidator accordingly forfeited the amount deposited by the Appellant.
- The NCLT directed refund of the amount relying upon the "Triple Test". The NCLAT, however, reversed the decision of the NCLT and upheld the forfeiture. Aggrieved by the decision of the NCLAT, the Appellant approached the Supreme Court.

Issue at hand

- Whether the 10% ceiling prescribed for EMD under Schedule I of the IBBI (Liquidation Process) Regulations, 2016 restricts the forfeiture of amounts deposited by a successful bidder over and above the EMD?
- Whether the forfeiture clause contained in the e-auction notice would operate where the successful bidder fails to pay the balance sale consideration within the stipulated period?
- Whether the "Triple Test" could be applied to relieve the successful bidder from forfeiture in the facts of the present case?

Findings of the Court

- The Supreme Court dismissed the appeal and upheld the decision of the NCLAT confirming the forfeiture.
- The Court noted that Schedule I of the IBBI (Liquidation Process) Regulations, 2016 provides that the EMD should not exceed 10% of the reserve price. However, the Court distinguished the EMD requirement from the consequences of default under the terms of the e-auction notice.
- In the present case, the Appellant had voluntarily deposited Rs. 6.39 crore without protest, which included the EMD as well as a portion of the balance sale consideration. The e-auction notice specifically provided that the entire amount paid, including the EMD, could be forfeited if the successful bidder failed to pay the balance sale consideration as per the terms of the sale.
- The Court therefore held that the 10% ceiling on EMD did not prevent forfeiture of the additional amount deposited by the Appellant, where the forfeiture was expressly provided for in the auction terms. The Court relied upon its earlier decisions in *Westcoast Infraprojects Pvt. Ltd. v. Ram Chandra Dallaram Choudhary*[1] and *Potens Transmission & Power Pvt. Ltd. v. Apex Buildsys Ltd*[2].
- The Court also rejected the Appellant's reliance on the "Triple Test". It noted that the Appellant was aware that the auction was conducted on an "as is where is" basis and that the auction notice itself disclosed the issue relating to the title deeds. The Appellant had not sought verification of the title deeds before participating in the auction or depositing the EMD.
- The Court further observed that merely expressing willingness to make the payment was not sufficient to establish financial capacity. The bidder was required to produce material substantiating its financial capacity as on the relevant date, rather than relying upon repeated assurances of its intention to pay.
- The Court accordingly held that, in the facts of the present case, there was no reason to interfere with the forfeiture provided for under the e-auction terms.

HSA

Viewpoint

The judgment reinforces the importance of adhering to the terms of an e- auction in liquidation proceedings. The Supreme Court clarified that the 10% ceiling prescribed for EMD under Schedule I of the Liquidation Process Regulations does not, by itself, restrict forfeiture of additional amounts deposited by a successful bidder, where the e-auction terms expressly provide for forfeiture of the entire amount paid upon failure to pay the balance sale consideration within the stipulated period.

The decision also highlights the need for bidders to undertake due diligence before participating in an auction, particularly where the sale is conducted on an "as is where is" basis and the relevant issues are disclosed in the auction notice. A bidder cannot subsequently rely on such issues to avoid its payment obligations. The Court further observed that mere assurances of willingness to pay are insufficient to establish financial capacity; such capacity must be supported by material demonstrating the availability of funds as on the relevant date.

The judgment thus serves as a reminder to prospective bidders to carefully examine the auction terms, complete their due diligence before bidding and ensure that they are financially capable of complying with the stipulated payment schedule.

[1]Company Appeal (AT) (Ins) No. 1258 of 2022
[2] Company Appeal (AT) (Ins) No. 1543 of 2023

In The High Court of Judicature at Bombay
M/s. Ravijyot Finance and Leasing Pvt. Ltd. [Petitioner] Vs. Unity Small Finance Bank Ltd. [Respondent]

Judgment dated August 11, 2025 [Company Appeal (AT)(INS) No. 887 - 888 of 2025]

Background facts

- The dispute arose in the context of enforcement proceedings initiated by Unity Small Finance Bank in respect of the subject property. The Petitioner was the mortgagor of the property and the Bank was proceeding towards its sale pursuant to a sale notice dated 22 July 2026. The Petitioner sought to restrain the Bank from proceeding with the proposed sale by invoking the writ jurisdiction of the High Court under Article 226 of the Constitution. The Petitioner's case was principally founded upon the provisions of the Insolvency and Bankruptcy Code, 2016, particularly Sections 96, 100, 101, 121 and 122.
- The background to the Petition also involved insolvency proceedings before the National Company Law Tribunal. The Respondent-Bank itself had initiated proceedings under Section 95 of the IBC. According to the Petitioner, those proceedings had reached the stage contemplated under Section 100 of the IBC. On this basis, the Petitioner sought to contend that the insolvency process was still relevant and that the Bank could not independently proceed with the sale of the property while those proceedings remained unresolved.
- The Petitioner's argument was that although the statutory period of 180 days of moratorium had expired, the expiry of that period did not, by itself, permit the Respondent-Bank to proceed with the sale. According to the Petitioner, unless and until the insolvency process reached its logical conclusion through an application of mind by the NCLT followed by the requisite order, the consequences contemplated under Sections 121 and 122 of the IBC could not arise. Therefore, according to the Petitioner, the Bank ought to have been restrained from proceeding with the intended sale of the subject property.
- The Respondent-Bank, on the other hand, challenged the very maintainability of the writ petition. It contended that the Petitioner had an alternative and efficacious statutory remedy under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, before the Debt Recovery Tribunal. The Bank specifically pointed out that the Petitioner had already filed a Securitisation Application before the DRT challenging the first sale notice issued by the Bank and that the said proceeding was still pending.
- The Respondent further pointed out that the Petitioner was a mortgagor and could not present itself as though it were a creditor seeking to regulate the conduct of another creditor under the IBC. The Bank also brought to the Court's attention the proceedings in Commercial Suit (L) No. 9866 of 2026, in which the Petitioner had challenged the very mortgage itself by alleging that the relevant documents were forged and fabricated. In that proceeding, the Petitioner had filed Interim Application (L) No. 9874 of 2026 seeking urgent interim relief to stall the auction proceedings. However, by an order dated 24 March 2026, the learned Single Judge had rejected the prayer for urgent ad-interim relief, inter alia observing that the Petitioner had the remedy of approaching the DRT.

The Issue at hand

- Whether the High Court should entertain a writ petition under Article 226 when the Petitioner has an efficacious statutory remedy before the DRT under the SARFAESI Act?
- Whether the Petitioner, being a mortgagor, could rely upon the IBC provisions in the manner suggested, particularly by portraying the dispute as one concerning competing creditors?
- Whether a writ petition against the Respondent, a private bank, was maintainable under Article 226?

Findings of the Court

- The High Court was first of the view that the Petitioner's status as a mortgagor was important. The Court was not impressed by the attempt to portray the Petitioner as a creditor and the Bank as a creditor which was acting contrary to the interests of other creditors. When the Court specifically asked the Petitioner to provide details of the other creditors, no such details were forthcoming. The Court therefore did not accept the manner in which the Petitioner attempted to frame the dispute under the IBC.
- The Court then observed that, considering the tenor of the Petitioner's submissions, the proceedings appeared to be another attempt by the mortgagor to somehow wriggle out of the

situation instead of taking recourse to the statutory remedy available under the SARFAESI Act. Since an alternative and efficacious statutory remedy was available before the DRT, the Court was not inclined to entertain the writ petition.

- The Court relied upon the Supreme Court's judgment in *United Bank of India v. Satyawati Tondon*, (2010) 8 SCC 110[1], and *Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. & Ors.*, (2024) 2 SCC 1[2]. The High Court reiterated the principle that where an efficacious statutory remedy is available, the High Court exercising jurisdiction under Article 226 should ordinarily refrain from interfering. The Court specifically referred to the Supreme Court's concern that High Courts have continued to exercise writ jurisdiction despite the availability of statutory remedies under the RDBFI Act and the SARFAESI Act.
- The High Court considered the present case particularly significant because the Petitioner had already invoked the statutory remedy. The Petitioner had filed a Securitisation Application before the DRT challenging the first sale notice and that proceeding was still pending. The Court also noted that the learned Single Judge, while dealing with the Commercial Suit, had previously declined urgent interim relief and had referred to the availability of the DRT remedy. In these circumstances, the Court found no reason to exercise its writ jurisdiction.
- The Court further held that the question of law sought to be raised by the Petitioner by relying upon the various provisions of the IBC appeared to be another attempt to avoid steps being taken by the Respondent-Bank, which was a secured creditor, under the SARFAESI Act. The Court therefore refused to grant relief under Article 226.
- The Respondent-Bank had relied upon Nanda Takwane & Ors. v. State of Maharashtra, 2026 SCC OnLine 5212[3] and the judgment dated 28 July 2023 in Writ Petition (L) No. 9116 of 2023, Mr. Latif Yusuf Manikkoth & Anr. v. The Board of Directors, Bank of Baroda[4]. These authorities were relied upon to contend that the moratorium would not apply to or affect the subject property because the property exclusively belonged to the Petitioner as mortgagor and did not belong to the borrower. The Court, however, expressly stated that it was unnecessary to go into this aspect because the Petition was liable to be dismissed on the ground of availability of an efficacious alternative remedy itself.
- This is an important aspect of the judgment because the Court did not finally decide the substantive question concerning the application of the IBC moratorium to the property of the third-party or mortgagor. The Court also did not finally determine the substantive interaction between Sections 96, 100, 101, 121 and 122 of the IBC and the Bank's SARFAESI enforcement rights. The Court deliberately left that question open because the Petition failed at the threshold on the ground of the alternative statutory remedy.
- The Court also found substance in the Respondent's contention that the writ petition was not maintainable because the Respondent was a private bank. The Court noted that the Respondent-private bank was the sole Respondent in the Petition and held that, on this ground also, the writ petition deserved to be dismissed.
- Another important adverse finding concerned the Petitioner's failure to disclose that the moratorium had not been extended by the NCLT. The Court noted that the Petitioner had not disclosed this fact and that it came to light only when the Respondent's Senior Counsel produced the NCLT order dated 1 July 2026. The Court treated this non-disclosure as another reason why the Petitioner did not deserve the indulgence of the writ Court.
- The Court reiterated the settled principle that a person approaching the writ Court must come with clean hands. For this proposition, the Court relied upon Udyami Evam Khadi Gramodyog Welfare Sanstha & Anr. v. State of Uttar Pradesh & Ors., (2008) 1 SCC 560[5]. The principle referred to by the Court is that writ jurisdiction is an equitable remedy and a person approaching a superior court must not suppress material facts or repeatedly resort to legal proceedings in a manner amounting to abuse of the process of law.
- In view of all these circumstances, the High Court dismissed the writ petition. The pending applications, if any, were also disposed of.

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Viewpoint

In our view, the judgment is primarily a maintainability decision and does not conclusively decide the substantive issue concerning the applicability of the IBC moratorium to property belonging to a third-party mortgagor. The Court rightly declined to exercise its writ jurisdiction since the Petitioner had an efficacious statutory remedy before the DRT under the SARFAESI Act, which it had already invoked and which remained pending.

The Petitioner's attempt to invoke the IBC provisions was also not accepted, particularly since the Petitioner was a mortgagor and not a creditor, and could not substantiate its contention regarding the alleged other creditors.

The Court further relied upon the fact that the Respondent was a private bank and that the Petitioner had failed to disclose the NCLT order dated 1 July 2026 recording that the moratorium had not been extended. Such non-disclosure was viewed adversely, as a party seeking equitable relief under Article 226 must approach the Court with clean hands.

Importantly, the Court left the substantive IBC issue open. It did not decide whether the moratorium under the IBC applies to property exclusively owned by a mortgagor or whether the Bank could proceed with SARFAESI enforcement after expiry of the moratorium. Therefore, the judgment should be relied upon primarily for the alternative remedy and writ maintainability principles, and not as a final determination of the IBC & SARFAESI conflict.

[1] (2010) 8 SCC 110
[2] (2024) 2 SCC 1
[3] 2026 SCC OnLine 5212
[4] Writ Petition (L) No. 9116 of 2023
[5] (2008) 1 SCC 560

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