

## 5

## COMPANY LAW

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## I INTRODUCTION

ECONOMIC DEVELOPMENT of a country is largely dependent on the advancement and prosperity of the companies functioning in it. In India, there is a growth of incorporation of the companies, which calls for the regulation of the same for the transparent and fast resolution of grievances in its administration. The Companies Act, 2013 was a significant move to address the change in the economic structure in India. With the significant move towards resolving of the cases relating to the winding up of company, corporate restructuring Insolvency and Bankruptcy Code, 2016 (IBC) was enacted. Its objectives related to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of the value of assets, promote entrepreneurship, enhance availability of credit and balance the interest of all stakeholders. National Company Law Appellate Tribunal (NCLAT), Company Law Tribunal (CLAT), High court as well as Supreme Court addressed the issues relating to the application of insolvency proceedings, jurisdictional issues, liability of the directors under Negotiable Instruments Act while proceedings are pending under IBC *etc.* in the year 2023. The aspect of consideration of Intellectual Property Rights (IPR) under insolvency plan was also addressed by the apex court. The cases discussed below relates to the same and the major ruling, which upheld the provisions of the Insolvency and Bankruptcy Code and rejected the contentions of manifest arbitrariness.

## II INSOLVENCY PROCEEDINGS

**Priority of government dues**

The Supreme Court of India in a landmark decision in *Sanjay Agarwal v. State Tax Officer*,<sup>1</sup> upheld the priority of government dues in insolvency proceedings. The judgment has important implications for lenders, corporate

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<sup>1</sup> [2023] 156 taxmann.com 69 (SC).

debtors, and other stakeholders involved in Insolvency proceedings under IBC.<sup>2</sup>

This case is the batch of five review petitions, which sought to review the earlier apex court's common Judgment,<sup>3</sup> wherein in the case of the liquidation proceedings of a corporate debtor, the Sales Tax Officer sought payment of total dues under the Gujarat Value Added Tax, 2003 (GVAT), asserting a first charge over the liquidation property. The NCLT rejected the application, stating that the sales tax department's claim did not supersede IBC provisions. The NCLAT upheld this decision. However, the Supreme Court, in an impugned order, allowed the appeal against NCLT and NCLAT. Thereafter, the liquidator filed his review petition to review the order of apex court. The Supreme Court observed that the power to review its judgments has been conferred on it by article 137 of Constitution of India. That power is subject to provisions of any law made by Parliament or Rules made under Article 145. The Supreme Court also clarified that Section 53 of the IBC doesn't override Section 48 of the GVAT Act, and that debts owed to a secured creditor, which includes the state under the GVAT Act, should rank equally with other specified debts, including workmen's dues for the 24 months antedating the liquidation commencement date. Thus, the Supreme Court dismissed a batch of review petitions filed against the judgment in *Rainbow Papers Ltd.*<sup>4</sup> and reiterated that government dues are secured debts under the IBC and that resolution plans which ignore government dues are liable to be rejected.

Earlier, the Supreme Court in *State Tax Officer v. Rainbow Papers Ltd.*,<sup>5</sup> held that the description of a secured creditor under the IBC includes any government or governmental authority. The court also held that Section 53 of the IBC, which sets out the waterfall medium, does not override Section 48 of the GVAT, Act, which gives the government a statutory charge over the assets of a corporate debtor.

This judgment means that lenders will have to give priority to government dues in resolution plans. This is a reversal for lenders, who will have lower inflexibility in structuring resolution plans. As far as corporate debtors are concerned, they will have to make sure that, their resolution plans adequately address government dues and any failure to do so may result in the rejection of the resolution plan. Apart from this, decision is also likely to have an impact on other stakeholders

2 It is to be noted that The Insolvency and Bankruptcy Code (IBC) 2016 was legislated to give a comprehensive frame for the resolution of insolvency and bankruptcy proceedings in India. S. 53 provides for waterfall mechanism for the distribution of proceeds in liquidation. It is a systematic approach of distributing proceeds from the sale of liquidation assets. This mechanism ensures a fair and orderly distribution of funds among various stakeholders, reflecting the principle of equitable treatment while maintaining a clear priority structure. Under the waterfall mechanism, government dues are ranked lower than secured debts.

3 Civil Appeal No. 1661 of 2020 and Civil Appeal No. 2568 of 2020 decided on Sep. 6, 2022.

4 [2022] 142 taxmann.com 157/174 SCL 250.

5 *Ibid.*

involved in Insolvency proceedings, such as employees, suppliers, and unsecured creditors. These stakeholders may now have to wait longer to receive their dues, as government dues will be given priority.

**Liability of director under proceedings of Section 138 of Negotiable Instrument Act, 1881 and pendency of proceedings under IBC**

In *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation India Ltd.*,<sup>6</sup> the apex court examined the issue whether pendency of proceedings under the Insolvency and Bankruptcy Code, 2016 ('IBC') permits proceedings under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') to continue simultaneously. The court observed that the process under section 31 or sections 38 to 41 of the IBC, which can extinguish the debt, would not *ipso facto* apply to the extinguishment of the criminal proceedings.<sup>7</sup> Therefore, it was held that personal liability of a director who signed the cheque on behalf of a company and facing a dishonour of cheque case filed under the NI Act could not be absolved pending corporate insolvency resolution proceedings ("CIRP") against the company under the provisions IBC.

The court was of the opinion that the nature of the proceedings under IBC and NI Act were quite different and would not intercede each other. Further, reliance was placed on Section 14 of the IBC, wherein the court highlighted the aspect that the nature of proceedings, which have to be kept in abeyance, do not include criminal proceedings. The court opined that proceedings under Section 138 of the NI Act arise from a default in financial debt and are penal in character and not in the nature of recovery proceedings.<sup>8</sup> The accused under such proceedings may face imprisonment or fine or both in terms of Section 138 of the NI Act and thus such proceedings are not akin to civil/ suit proceedings. In this case, the company issued post-dated cheques in order to satisfy its obligation under a loan agreement and one of the cheques returned stating "Account Closed." Against this dishonour of cheque proceedings under NI Act legal action was initiated and being signatory, the director of the company was made accused.

It was held that where proceedings under Section 138 of the NI Act had already commenced, during the pendency the company is dissolved, the directors could not escape from their penal liability under Section 138 of the NI Act by citing its dissolution. In addition, the benefit of provision of moratorium under section 14 of the IBC cannot be provided as an aid to a drawer of a cheque to escape criminal liability because of dishonour of cheques. Although, stemming from a civil liability, dishonour of cheques carry a penal liability vis-à-vis the natural persons who are associated with the commission of the offence, which can extend to imprisonment up to two years. The intent is to encourage fair trade in the realm

6 (2023) 10 SCC 545.

7 *Id.* at para 17.

8 Pardiwala J. relied on *P. Mohanraj v. Shah Brothers Ispat Private Limited* (2021) 6 SCC 258. which was upheld in *Narinder Garg v. Kotak Mahindra Bank Limited* (2022) SCC OnLine SC 517.

of Negotiable Instruments and to deter fraudulent or dishonest endeavours in said trade. Resolution proceedings under the IBC aim to ensure the revival of the corporate debtor. Thus, the aspect of criminal liabilities of directors of a corporate debtor cannot, and must not, become a cause of disagreement whilst undergoing a resolution process. The rulings can be briefed as follows:

(i) the nature of proceedings which have to be kept in abeyance under Section 14 of the IBC do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act

(ii) Section 138 of the Negotiable Instrument Act are not recovery proceedings. (iii) making of a claim under the IBC and accepting the same and not making any claim, will not make any difference in light of Section 31 of the IBC.

(iv) By operation of the provisions of the IBC, the criminal prosecution initiated against the natural persons under Section 138 read with 141 of the NI Act read with Section 200 of the Cr PC would not stand terminated

(v) If the guarantor does not get the benefit of extinguishment of debt under Section 31 of the IBC, then similarly for extinguishment of debt, the signatory/director cannot get any benefit.

(vi) The clauses of the resolution plan cannot control the Enactment/Rules in force. It is the resolution plan which has to comply with the laws in force. In the case on hand, any clause giving any effect to the corporate debtor under Section 138 NI Act proceedings, cannot be used to protect the signatories/directors under Section 138/141 NI Act.

(vii) There is no bar contained in any of the provisions of the IBC, and the NI Act from approaching the criminal court to seek penal action under Section 138 of the NI Act

(viii) Where the proceedings under Section 138 of the NI Act had already commenced with the Magistrate taking cognizance upon the complaint and during the pendency, the company gets dissolved, the signatories/directors cannot escape from their penal liability under Section 138 of the NI Act by citing its dissolution.

(ix) Where proceedings under Section 138 of Negotiable Instruments Act, 1881 had already commenced and during the pendency Resolution Plan for Corporate Debtor is approved or the company gets dissolved, the directors and the other accused cannot escape from their liability by citing its dissolution.

This approach by the court highlights that the courts are painstakingly endeavouring to streamline the resolution process by settling the various legal nuances faced from time to time.

#### **Rectificatory jurisdiction of national company law tribunal**

In *IFB Agro Industries Ltd v. SICGIL India Ltd*,<sup>9</sup> in this case court clarified the scope of jurisdiction of NCLT with respect to rectification of register under section 59 of Companies Act 2013. The question before the court for consideration

9 (2023)4 SCC 209; [2023] 1 S.C.R. 527.

in this appeal was related to the scope of the rectificatory jurisdiction of the NCLT under Section 59 of the Companies Act, 2013. It determined the appropriate forum for adjudication and determination of violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997, and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, framed under the Securities and Exchange Board of India Act, 1992. The court citing case of *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd.*,<sup>10</sup> held that the rectificatory jurisdiction under Section 59 of the 2013 Act is summary in nature and not intended to be exercised where there are contested facts and disputed questions. It also held that transactions falling within the jurisdiction of regulatory bodies created under a statute must be subjected to their ex-ante scrutiny, enquiry and adjudication. Therefore, rejected the contention that the National Company Law Tribunal under section 59 exercises a parallel jurisdiction with Securities and Exchange Board of India for addressing violations of the Regulations framed under the SEBI Act. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The words 'sufficient cause' cannot be interpreted in a manner that would enlarge the scope of the provision.

This case revolved around allegations that SICGIL India Limited and its associates violated the disclosure requirements under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (SEBI SAST) and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (SEBI PIT), leading to a petition filed by IFB Agro before the Company Law Board (now the National Company Law Tribunal). The case emerged when IFB Agro Industries Limited sought rectification of its register of members under Section 111A of the Companies Act, 1956 (now Section 59 of the Companies Act, 2013), alleging that SICGIL and its associates unlawfully acquired more than 5% of its shares without proper disclosure. The NCLT initially ruled in favor of IFB Agro, ordering SICGIL to divest its excess shareholding. However, the NCLAT overturned this decision, stating that the NCLT had exceeded its jurisdiction, as the matter pertained to violations of SEBI regulations, which fall within the exclusive purview of SEBI.

The Supreme Court upheld the NCLAT's judgment, clarifying that company tribunals under Section 59 of the Companies Act, 2013, are empowered to address disputes limited to rectification of member registers in a summary manner. However, any issues involving violations of SEBI regulations, such as non-compliance with disclosure norms or insider trading provisions, must be adjudicated exclusively by SEBI as the statutory regulator.<sup>11</sup> The court emphasized that securities laws are a specialized domain requiring the expertise of SEBI for effective adjudication and enforcement.

The court recommended that entities involved in corporate disputes ensure compliance with securities law and avoid invoking company law mechanisms to

<sup>10</sup> (1998) 7 SCC 105.

<sup>11</sup> SEBI Act, 1992, s.11.

address matters squarely within SEBI's domain. It further suggested that SEBI could strengthen its regulatory processes to streamline dispute resolution and minimize overlaps with other regulatory frameworks.

### III INSOLVENCY PROCEEDINGS AND LIMITATION ACT

The Supreme Court of India addressed a critical procedural aspect of limitation and filing requirements under IBC in the case of *Sanket Kumar Agarwal v. APG Logistics Private Limited*.<sup>12</sup> The case clarified the rules governing the commencement of the limitation period and the procedural validity of e-filing in appeals before the National Company Law Appellate Tribunal (NCLAT). The case arose when Sanket Kumar Agarwal, a director of the corporate debtor, challenged an order passed by the NCLAT initiating the Corporate Insolvency Resolution Process (CIRP). The appeal was filed electronically before the NCLAT after the expiration of the 30-day period but within the additional 15-day condonable delay period under Section 61(2) of the IBC. The NCLAT dismissed the appeal, stating that the limitation period began from the date of pronouncement of the order, and rejected the appellant's argument that it should begin from the date of receiving the certified copy. Additionally, the NCLAT raised concerns about procedural lapses in e-filing and physical filing.

The Supreme Court overturned the NCLAT's decision, holding that the date of pronouncement alone cannot always determine the commencement of the limitation period. It emphasized that the limitation period under section 61(2) starts when the aggrieved party becomes aware of the order, typically through its pronouncement or publication. The court further clarified that the time taken to obtain a certified copy of the order should be excluded from the limitation period if the request is made promptly and within the prescribed timeframe.<sup>13</sup> The court also addressed the procedural conflict regarding e-filing and physical filing, affirming that the date of e-filing should be considered the effective date for stopping the limitation period. It criticized the insistence on physical filing as redundant and counterproductive, urging tribunals to adopt technology-driven processes to reduce procedural delays and enhance efficiency. The judgment highlighted the environmental and administrative benefits of transitioning to a paperless judiciary. The court provided recommendations for improving procedural consistency in insolvency appeals. It called for standardization of filing practices across tribunals, ensuring that e-filing is recognized as the primary mode of filing.

The court also suggested that judicial and administrative officers receive training to adapt to electronic systems. It also recommended amendments to the IBC by addressing the ambiguity in computation of limitation period and filing requirement. This judgment is pivotal in strengthening procedural clarity and efficiency under the IBC.

<sup>12</sup> (2023) ibclaw.in 36 NCLAT: 2023 SCC OnLine SC 976.

<sup>13</sup> Insolvency Bankruptcy Code, S. 61(2); Limitation Act, S. 12(2).

Similarly, in *Sanjay Pandurang Kalate v. Vistra ITCL (India) Limited*,<sup>14</sup> the apex court again examined the application of limitation under Section 61 of IBC and addressed key issues related to procedural timelines and the pronouncement of orders by the National Company Law Tribunal (NCLT). This case was filed before the Supreme Court after the dismissal of an appeal by the NCLAT on the grounds of being time-barred. The dispute began when Vistra ITCL (India) Limited filed a section 7 application under the IBC, initiating the Corporate Insolvency Resolution Process (CIRP) against Evirant Developers Private Limited, the corporate debtor. The appellant, a former director of the corporate debtor, alleged collusion among the respondents and filed an application before the NCLT challenging the authorization of certain filings made on behalf of the corporate debtor. On May 30, 2023, the NCLT dismissed the appellant's application, deeming it unauthorized and frivolous, with the intention to delay the CIRP. The appellant sought to appeal against this decision and filed an application for condonation of delay after missing the 30-day limitation period stipulated under Section 61 of the IBC.

The Supreme Court, while addressing the appeal, clarified that the limitation period for filing an appeal under Section 61 begins on the date of pronouncement or upload of the order and not merely the date on which hearings conclude.<sup>15</sup> In this case, the NCLT order, although dated May 17, 2023, was uploaded and pronounced only on May 30, 2023. Accordingly, the limitation period began on May 30, 2023, and the appellant's appeal fell within the additional 15-day condonable period under Section 61(2). The Supreme Court set aside the NCLAT's decision and restored the appeal for fresh consideration, emphasizing the need for precision in calculating limitation periods to ensure procedural fairness.

The judgment offered several recommendations to enhance procedural clarity in insolvency proceedings. It urged the NCLT and NCLAT to maintain clear distinctions between hearings and pronouncement of orders, as mandated by the NCLT Rules.<sup>16</sup> Tribunals were advised to refrain from backdating orders to the hearing date to avoid confusion regarding limitation calculations. The court also reiterated the importance of adhering to the 45-day outer limit under section 61 to preserve the time-bound framework of the IBC. Furthermore, it highlighted the utility of e-filing systems and encouraged tribunals to reduce reliance on physical filing to streamline procedures.

This judgment underscores the importance of maintaining procedural integrity and clarity in insolvency cases. By ensuring that limitation periods are calculated correctly and tribunals adhere to procedural rules, the court reinforced the IBC's objective of time-bound resolution of corporate insolvencies. The decision also emphasizes the need for judicial forums to adapt to modern technological practices, promoting efficiency and reducing unnecessary litigation.

<sup>14</sup> (2024) ibclaw.in 255 NCLAT Decided on Dec. 4, 2024.

<sup>15</sup> IBC, S. 61, read with NCLT Rules, 2016.

<sup>16</sup> NCLT Rules, 2016, Rule 150 and Rule 151.



In another case *Sabarmati Gas Ltd. v. Shah Alloys Ltd.*,<sup>17</sup> the Supreme Court held that the right to apply under the IBC would accrue on the date when default occurs and it is extendable only by application of Section 5 of the Limitation Act. Further, it is incumbent on the Adjudicating Authority to consider the claim for condonation of the delay when the proceeding concerned is found filed beyond the period of limitation.

The limitation period for initiating CIRP under Section 9, IBC is to be reckoned from the date of default, as opposed to the date of commencement of IBC and the period prescribed. Therefore, three years as provided by Section 137 of the Limitation Act, 1963 would commence from the date of default and is extendable only by application of Section 5 of the Limitation Act, 1963. It is incumbent on the adjudicating authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation. As per erstwhile The Sick Industrial Companies Act, 1985 (SICA), Section 22(1), there was a legal bar for initiation of proceeding against concerned Industrial company without the permission of BIFR. The court held that 'Sufficient Cause' is the cause for which a party could not be blamed.

The court noted that there was a legal provision for initiation of proceeding against an industrial company by virtue of section 22(1) SICA and obviously when a party was thus legally disabled from resorting to legal proceeding for recovering the outstanding dues without the permission of BIFR and even on the application, the permission thereof was not given. The period of suspension of legal proceeding is excludable in computing the period of limitation for the enforcement of such right in terms of section 22(5) SICA.

In *Next Education India Pvt. Ltd. v. K12 Techno Services Pvt. Ltd.*,<sup>18</sup> the court ruled that for calculation of period of limitation, invoices for the period preceding three years from the date of the application under Section 9 of IBC ought to be considered. The limitation period will not start from the date of first invoice.

In this case, operational creditor raised 187 different invoices for the Digital Classroom Solution Services provided for the period between March 12, 2011 and June 30, 2017. The amount under different invoices were unpaid, which gave rise to the appellant to initiate the proceedings under Section 9 of the IBC before the NCLT. The NCLT considering the starting point of limitation as March 12, 2011 held that the claim is barred by limitation. NCLAT dismissed appeal. Supreme Court held that NCLT did not take into consideration the subsequent invoices at least preceding three years from the date of filing of section 9 application, which ought to have been considered. Under the circumstances, the NCLT ought to have considered the invoices at least for the period preceding three years from the date of the application under section 9, rather than considering the starting point of limitation as March 12, 2011.

<sup>17</sup> [2023] 4 S.C.R. 188.

<sup>18</sup> Civil Appeal No.1775 of 2021 decided on Mar. 27, 2023.



**Balance sheet acknowledging debt is also a document relevant for calculating limitation**

The apex court in *Axis Bank v. Naren Sheth*,<sup>19</sup> held that after initiation of Corporate Insolvency Resolution Process, the balance sheet acknowledging debt is also a document relevant for calculating limitation. In this case, the main issue considered by Supreme Court was whether a petition under Section 7 IBC would be barred by limitation, on the sole ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA. The corporate debtor subsequently acknowledged its liability to the appellant bank, within a period of three years prior to the date of filing of the petition under Section 7 IBC, by making a proposal for a one-time settlement, or by acknowledging the debt in its statutory balance sheets and books of accounts.

In *Godrej Sara Lee Ltd. v. The Excise And Taxation Officer-Cum-Assessing Authority*,<sup>20</sup> the court ruled that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition not maintainable. It held that the power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. Non pursuance of an alternative remedy by a petitioner cannot be construed mechanically a ground for the disposal of petition. It is axiomatic that the high courts have a discretion whether to entertain a writ petition or not.

**IV CORPORATE DEBTOR**

In *Punj Lloyd Aviation Ltd. v. Chipsan Aviation Pvt. Ltd.*,<sup>21</sup> held that even if there is no privity of contract between the parties to a particular contract, the advance paid for service falls under the definition of operational debt. In this case, the operational creditor paid an advance amount of Rs. 60 lakhs to the corporate debtor for his services. However, the corporate debtor did not provide the services and neither provided the refund of the advance amount. After around 3 years, the operational creditor issued a demand notice under Section 8 of the IBC for the refund of the advance amount. Despite that, no refund was initiated, and hence, the creditor filed a petition under Section 9 of IBC to seek a corporate insolvency resolution process. The respondent contended that there was no privity of contract between the parties and hence, no operational debt as per Section 5(21) of IBC. The NCLAT has reversed the decision of adjudicating authority

19 (2024) 1 SCC 679; 2023 14 SCR 581.

20 [2023] 3 S.C.R. 871; 2023 Insc 92.

21 (2023) ibclaw.in 20 SC.

relying upon the decision,<sup>22</sup> wherein it has been held that Section 5(21) has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the corporate debtor which ultimately leads to an operational debt. NCLT in its original decision has ruled that in the cases where a corporate debtor is the service provider and not operational creditor then the advance payment made will not fall within the four corners of operational debt. Therefore, it refused to recognise it as operational debt under section 5(21) of IBC 2016.

In *Victory Iron Works Ltd. v. Jitendra Lohia*,<sup>23</sup> the court ruled that a bundle of rights and interests are created in favour of the corporate debtor by a series of documents and some of these partook the character and shade of ownership rights. Therefore these rights and interests are liable to be included by the resolution professional in the information memorandum and the resolution professional was duty bound under section 25(2)(a) to take custody and control of the same. It held that the development of rights created in favour of the corporate debtor in the present case constituted “property” within the meaning of the expression under section 3(27). Further, since the expression “asset” in common parlance denotes “Property of any kind”, the bundle of rights that the corporate debtor had over that property in the present case, would constitute “asset” within the meaning of S 18(1)(f) and S 25(2)(a).

#### V INSOLVENCY RESOLUTION PLAN AND IPR

The Supreme Court of India addressed pivotal issues concerning the treatment of IPR and their interpretation under approved resolution plans in insolvency proceedings under IBC. Thus, in *Srei Multiple Asset Investment Trust Vision India Fund v. Deccan Chronicle Marketers*,<sup>24</sup> the issue was revolved around whether perpetual exclusive usage rights granted under a resolution plan equated to ownership rights, particularly concerning trademarks like “Deccan Chronicle”. The apex court examined the question whether declaration of ownership over Trademarks after approval of Resolution Plan by CoC, which is not a part of Resolution Plan amount to modification or alteration of approved Resolution Plan. The Supreme Court held that it clearly indicates that what the CoC with 81.39% of its voting approved is to the effect that the Corporate Debtor has a perpetual exclusive right to use the brands, namely, “Deccan Chronicle” and “Andhra Bhoomi”. Further, it nowhere indicates regarding the right of ownership over the trademarks/brands, “Deccan Chronicle” and “Andhra Bhoomi” of the Corporate Debtor.

The facts of the case stemmed from the approval of a resolution plan submitted by Srei Multiple Asset Investment Trust Vision India Fund for Deccan

22 *Construction Consortium Limited v. Hitro Energy Solutions Private Limited*, (2022) SCC OnLine SC 142.

23 (2023) 7 SCC 227; 2023 SCC OnLine SC 260.

24 (2023) 7 SCC 295; 2023 SCC OnLine SC 298.

Chronicle Holdings Ltd. (DCHL) during the Corporate Insolvency Resolution Process (CIRP). The approved resolution plan allowed the corporate debtor to use specific trademarks on a perpetual exclusive basis. However, a subsequent NCLT order declared that this usage right also conferred ownership of the trademarks to the corporate debtor. This led to challenges from stakeholders, asserting that such ownership rights were beyond the scope of the approved resolution plan. The NCLAT reversed the NCLT's order, leading to the appeal before the Supreme Court.

The Supreme Court upheld the NCLAT's decision, clarifying that granting perpetual exclusive usage rights does not imply the transfer of ownership unless explicitly stated in the resolution plan. The court highlighted that any modification to an approved resolution plan, including conferring ownership rights not originally contemplated, is impermissible under the IBC framework. It emphasized that the sanctity of the resolution plan must be preserved to ensure predictability and fairness in the insolvency process.<sup>25</sup> Moreover, the court reiterated that disputes regarding intellectual property ownership must align with the provisions of the Trademarks Act, 1999, and cannot be unilaterally resolved within the scope of an insolvency proceeding.

The judgment offered critical recommendations for resolving similar disputes in the future. It urged greater clarity and specificity in drafting resolution plans, particularly in defining the rights and obligations of stakeholders concerning intellectual property.

Additionally, the court suggested that regulators and insolvency professionals incorporate best practices from international insolvency regimes to address the complexities of intellectual property in insolvency. It also encouraged coordination between the IBC framework and intellectual property law to prevent jurisdictional overlaps and ensure comprehensive dispute resolution.

This decision is significant for its implications on corporate law and insolvency practice in India. It reinforces the integrity of the resolution process while safeguarding intellectual property rights. By establishing clear boundaries for the powers of insolvency authorities, the judgment ensures that stakeholder interests are balanced with the overarching objectives of the IBC.

#### VICORPORATE INSOLVENCY RESOLUTION PROCESS

In *Abhishek Singh v. Huhtamaki PPL Ltd.*,<sup>26</sup> the Supreme Court holds that an application for withdrawal of corporate insolvency resolution process under IBC can be allowed even prior to the constitution of the committee of creditors

<sup>25</sup> Insolvency Bankruptcy Code, 2016, s.31.

<sup>26</sup> 2023 SCC OnLine SC 349.

(CoC). It observed that under CIRP withdrawal application under section 12A of IBC cannot be kept pending for constitution of CoC, CIRP Regulation 30A provides a complete mechanism for withdrawal applications being entertained before constitution of CoC and no requirement to hear any other concerned parties except outstanding creditors and Financial creditors. The apex court clarified various issues on settlement CIRP withdrawal under IBC:

- i. Settlement prior to the constitution of CoC and NCLT Rule 11
- ii. Violation of the Moratorium under section 14 of IBC as the transactions to be made in the accounts of the CD for settlement (iv) Claims of other creditors
- iii. Section 12A of IBC and Regulation 30A of CIRP Regulations, 2016
- iv. Power under Rule 11 would be exercised for settlement after hearing all concerned parties and
- v. Cost/Fee/Expenses of IRP/RP in case of settlement before constitution of CoC.

In *VistraItcl (India) Ltd. v. Dinkar Venkata subramanian*<sup>27</sup> the Supreme Court re-affirmed the legal position that persons who are merely beneficiaries of security by a corporate debtor do not qualify as financial creditors in the CIRP of the corporate debtor. However, the Supreme Court also held that a resolution plan could not dilute the security interest provided by the corporate debtor in favour of such beneficiaries.

Under various agreements, KKR India Financial Services and Land T Finance had extended financial assistance in the form of short-term loans to WLD Investments Pvt. Ltd. and BRASSCO Engineering Ltd. respectively.

The apex court held that:

- (i) the person in whose favour the security interest is created need not be the creditor who avails the credit facility, and can be a third person. Security interest can be created for credit facilities/loan advanced to another person. It is accepted and admitted that the Vistra has security interest in the pledged shares.
- (ii) In terms of the decision of this Court in *Anuj Jain* (supra) and *Phoenix ARC* (supra), Vistra is to be treated as a secured creditor, but would not fall under the category of financial creditors or operational creditors. A very odd and a peculiar situation is created where a secured creditor is denied the benefit of the secured interest i.e., the right to exercise the sale of the secured interest, yet not be treated as either a financial creditor or an operational creditor.
- (iii) Intent of the amended Section 30(2) read with Section 31 of the Code recognises and protects the interests of other creditors who are outside the purview of the CoC.
- (iv) First is to treat the secured creditor as a financial creditor of the Corporate Debtor to the extent of the estimated value of the pledged share on the date

<sup>27</sup> (2023) ibclaw.in 62 SC.

of commencement of the CIRP. This would make it a member of the CoC and give it voting rights, equivalent to the estimated value of the pledged shares.

#### **Jurisdiction of high court in insolvency matters**

In *South Indian Bank Ltd. v. Naveen Mathew Philip*,<sup>28</sup> Supreme Court examined and reiterated the settled position of law on the interference of the high court invoking Article 226 of the Constitution of India in commercial matters. The court observed that certain high courts continue to interfere in such matters, leading to a regular supply of cases before this court. Punjab and Haryana Court is one among them. The court held that :

- (i) a writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.
- (ii) When a Tribunal is constituted, it is expected to go into the issues of fact and law, including a statutory violation. A question as to whether such a violation would be over a mandatory prescription as against a discretionary one is primarily within the domain of the Tribunal.
- (iii) A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India.
- (iv) The powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.

#### **VII RESOLUTION PROFESSIONALS UNDER IBC**

The apex court decided on the role of resolution professionals in relation to personal guarantors.<sup>29</sup> The legislature has carefully calibrated the role of the resolution professional and the stage at which the adjudicating authority comes into play. The contention that the resolution professional exercises an adjudicatory role cannot be read with IBC by the top court as that would be equivalent to rewriting the law. The apex court explained that the real adjudicatory process starts when the adjudicating authority either accepts or rejects the resolution professional's application to start the insolvency process, not at the stage when the resolution professional makes an application to the authority. It said the role of a resolution professional is not to enter into a roving or a detailed enquiry, but to make a recommendation to the adjudicating authority regarding the initiation of

28 2023 LiveLaw (SC) 320.

the insolvency process. The adjudicating authority has the option to either accept or reject the recommendation made by the resolution professional, the bench said. Over 200 petitions had been filed against various provisions of the IBC, such as applications by creditors to initiate the insolvency resolution process against personal guarantors, interim moratorium, and appointment of the resolution professional (RP).

In *Victory Iron Works Ltd. v. Jitendra Lohia*,<sup>30</sup> the apex court addressed key issues regarding the inclusion of development rights as “assets” under the IBC and the scope of powers of resolution professionals during the CIRP. This case involved a dispute over the possession and development rights of a 10.19-acre property in Howrah, West Bengal, owned by Energy Properties Pvt. Ltd., but significantly financed and developed by the Corporate Debtor, Avani Towers Pvt. Ltd.

The dispute arose when Victory Iron Works Ltd., a licensee occupying 10,000 sq.ft. of the property under a Leave and License Agreement, claimed possession of the entire property based on an alleged oral understanding. Meanwhile, the Resolution Professional, acting on behalf of the Corporate Debtor, sought to include the development rights over the property in the CIRP’s Information Memorandum under Sections 18(f) and 25(2)(a) of the IBC.<sup>31</sup> Energy Properties objected, asserting that the Corporate Debtor had no ownership rights over the property. Victory also opposed the inclusion, arguing that the Adjudicating Authority under the IBC lacked jurisdiction to evict third-party licensees or lessees.

The Supreme Court upheld the decisions of the NCLT and NCLAT, confirming that the development rights granted to the Corporate Debtor under the Joint Development Agreement, Memoranda of Understanding, and related contracts constituted “assets” within the meaning of Section 3(27) of the IBC.<sup>32</sup> The court clarified that while the Explanation to Section 18 excludes third-party-owned assets from the Corporate Debtor’s “assets,” this exclusion does not extend to Section 25. Consequently, the Resolution Professional was obligated to include the development rights in the information memorandum and secure the property under CIRP.

The court dismissed Victory’s broader claim to the entire property, limiting its rights to the 10,000 sq.ft. covered by the Leave and License Agreement. It emphasized that a license does not create any interest in the immovable property and that Victory could not claim possession beyond the terms of the agreement. The judgment also directed the local administration to assist the Resolution

29 *Dilip B. Jiwrajika v. Union of India* (2023) ibclaw.in 147 SC decided on Nov. 9, 2023.

30 (2023) 7 SCC 227.

31 S. 18(f), IBC: Duties of the Interim Resolution Professional to take control of assets; s. 25(2)(a), IBC: Duties of the Resolution Professional to preserve and protect the Corporate Debtor’s assets.

32 IBC, s. 3(27) defines “property” to include all interests, whether present, future, or contingent.

Professional in taking control of the corporate debtor's development rights over the property. The court highlighted the need for judicial and administrative clarity in defining the scope of "assets" under the IBC, ensuring consistency across insolvency proceedings.

This judgment reaffirms the importance of protecting intangible development rights as assets under the IBC and underscores the duty of resolution professionals to preserve the corporate debtor's value for creditors. By balancing the rights of third parties like Victory with the statutory objectives of CIRP, the court has reinforced the integrity and efficacy of the insolvency framework.

#### VIII ACCOUNTABILITY OF AUDITOR

The Supreme Court of India in *Union of India v. Deloitte Haskins and Sells LLP*,<sup>33</sup> uphold the accountability of the auditor under Company law. The apex court addressed critical questions regarding the scope of Section 140(5) of the Companies Act, 2013,<sup>34</sup> and its applicability in cases where auditors resign during ongoing proceedings. The issue arose in the context of governance failures in ILFS and its subsidiaries, which had accrued a debt exceeding 91,000 crores, threatening India's financial markets.

The Ministry of Corporate Affairs (MCA) initiated investigations into the fraudulent activities of the ILFS group and its auditors. The NCLT ordered the reopening and recasting of financial accounts under Section 130 of the Companies Act, 2013.<sup>35</sup> Additionally, the MCA filed a petition under section 140(5), alleging that Deloitte and BSR had colluded with the company to falsify accounts and defraud stakeholders. Both auditors challenged the maintainability of the proceedings, arguing that their resignations nullified the need for further inquiries. The NCLT upheld the maintainability of the proceedings, but the High Court of Bombay set aside this order, holding that resignation effectively terminated the application of section 140(5). The matter was escalated to the Supreme Court.

The Supreme Court reversed the decision of High Court of Bombay emphasizing that resignation does not absolve auditors of accountability under Section 140(5). The court clarified that the provision aims to determine whether an auditor has acted fraudulently, regardless of their employment status during the inquiry. It further held that terminating proceedings due to resignation would render the provision ineffective, allowing auditors to evade scrutiny. The court reinstated the NCLT's authority to continue the proceedings, directing it to conclude the inquiry and pass a final order, including any consequences under Section 447 for fraud.<sup>36</sup>

The judgment included significant recommendations to strengthen the corporate governance framework. It highlighted the importance of ensuring that

33 [2023] 150 taxmann.com 77 (SC).

34 The Companies Act, 2013, s.140(5).

35 *Id.*, s. 130.

36 The Companies Act, 2013, s.447.



auditors remain accountable for their actions to maintain public trust in financial systems. The court urged companies and regulatory bodies to establish robust mechanisms for monitoring auditor conduct, including enforcing strict adherence to professional standards and ethical guidelines. It also recommended legislative clarity to harmonize provisions related to auditor accountability and fraud prevention under the Companies Act, 2013.

This landmark decision reinforces the fundamental principles of corporate governance and auditor accountability, ensuring that fraudulent activities are addressed comprehensively. By maintaining the integrity of Section 140(5), the judgment safeguards stakeholders' interests and underscores the judiciary's role in upholding the statutory framework of the Companies Act, 2013.

#### IX BANKING GOVERNANCE AND COMPANY LAW

The Supreme Court of India in *Religare Finvest Ltd v. State of NCT of Delhi*,<sup>37</sup> examined the issue of liability transfer during banking amalgamation under the Banking Regulation Act, 1949. This case revolved around criminal proceedings initiated against DBS Bank India Limited, the entity of Lakshmi Vilas Bank (LVB), for alleged misappropriation of fixed deposits belonging to Religare Finvest Limited. The central issue was whether DBS Bank, as the transferee entity, could be held criminally liable for acts committed by LVB prior to the amalgamation.

The facts of the case are rooted in the amalgamation scheme approved by the Reserve Bank of India (RBI). In this amalgamation LVB merged with DBS Bank India Limited. Religare Finvest Limited alleged that its fixed deposits worth 791 crores were misused by LVB as collateral for loans granted to entities connected to its promoters, resulting in substantial financial loss. Following the merger, DBS Bank was implicated in criminal proceedings, including allegations of conspiracy and breach of trust under the Indian Penal Code. The high court had earlier stayed the proceedings against DBS Bank, prompting an appeal to the Supreme Court.

In its judgment, the Supreme Court held that criminal liabilities do not transfer to the successor entity under a scheme of amalgamation unless explicitly provided in the terms of the scheme. The court reasoned that such liability transfer would undermine public confidence in banking resolutions and deter potential acquirers from taking over distressed banks. It emphasized that the terms of the amalgamation scheme, as sanctioned by the RBI, expressly limited the scope of liabilities to be assumed by DBS Bank.<sup>38</sup> The court quashed the criminal proceedings against DBS Bank, stating that the primary liability for the alleged acts rested with the erstwhile LVB and its officials.

The judgment underscored the need for regulatory clarity in schemes of amalgamation. It recommended that future amalgamation schemes explicitly address the treatment of criminal and contingent liabilities to avoid legal ambiguities. Additionally, the court called for stricter oversight mechanisms to ensure that pre-

37 2023 SCC OnLine SC 1148.

38 Banking Regulation Act, 1949, S.45.

amalgamation irregularities are addressed promptly and do not jeopardize the interests of stakeholders.

Similarly, in *Orbit Electricals Private Limited v. Deepak Kishan Chhabria*,<sup>39</sup> the Supreme Court examined the issue of procedural integrity in corporate governance disputes. It also addressed significant issues concerning procedural fairness, and the jurisdictional responsibilities of the NCLT and the NCLAT. This case, revolved around disputes related to the control and governance of Finolex Cables Limited, focusing on allegations of procedural irregularities during general meetings and subsequent judicial interventions.

The dispute arose from disagreements regarding resolutions passed at an Extraordinary General Meeting (EOGM) of Finolex Cables Limited in 2019, which were contested by shareholders and directors. While the NCLAT issued a *status quo* order to halt further actions during the pendency of the appeal, this order was criticized for its lack of detailed reasoning. The matter escalated when the Annual General Meeting (AGM) held on September 29, 2023, faced procedural challenges, including delays in declaring voting results by the scrutinizer, leading to allegations of bias and violation of court directions. The Supreme Court, in its judgment, vacated the *status quo* order issued by the NCLAT, citing procedural impropriety and lack of adherence to established legal norms. The court censured the NCLAT for prematurely pronouncing its judgment and failing to comply with procedural safeguards mandated in corporate disputes. It emphasized the importance of tribunals providing detailed reasoning in their orders to ensure transparency and accountability. Furthermore, the Court penalized individuals responsible for procedural misconduct, including the scrutinizer, and directed the NCLT to hear the case afresh under a different bench, ensuring impartiality and adherence to due process.<sup>40</sup>

In *Maneesh Pharmaceuticals Ltd. v. Export Import Bank of India*,<sup>41</sup> the apex court reaffirmed the procedural integrity in IBC cases. It again addressed critical issues of limitation, procedural fairness, and jurisdiction in insolvency proceedings under IBC. It revolved around an application filed by the financial creditor under Section 7 of the IBC, which was initially dismissed on the grounds of limitation, but later reinstated following appellate intervention.

The dispute arose when the Export Import Bank of India, a financial creditor, filed an application under Section 7 of the IBC to initiate the Corporate Insolvency Resolution Process (CIRP) against Maneesh Pharmaceuticals Ltd. The NCLT dismissed the application, citing that the debt was barred by limitation under the Limitation Act, 1963. However, the NCLAT reversed the NCLT's decision, declaring the limitation finding as patently illegal and directing the NCLT to admit the application. Maneesh Pharmaceuticals challenged the NCLAT's order before the Supreme Court,

39 (2023) ibclaw.in 116 SC.

40 Companies Act, 2013, Ss. 241-242.

41 (2024) 243 Comp Cas 97 (NCLAT).

raising questions about the appropriateness of appellate intervention and the scope of limitation in insolvency cases.

The Supreme Court, while setting aside the NCLAT's order, clarified that the issue of limitation must be addressed as a substantive ground before the admission of a Section 7 application.<sup>42</sup> The court observed that the NCLAT had erred in directing the admission of the application without allowing the NCLT to evaluate rival contentions on the merits. The court emphasized that while the IBC is a time-bound framework for insolvency resolution, procedural integrity cannot be compromised, and limitations must be applied judiciously to prevent misuse of the process.

This judgment reinforces the importance of procedural fairness and application of limitation in insolvency law. It ensures that the objectives of the IBC to resolve corporate insolvency in a time-bound manner balanced with safeguards against arbitrary or premature admissions. By strengthening the procedural framework, this decision bolsters confidence among stakeholders and upholds the integrity of the insolvency process.

#### X UNSECURED CREDITORS

In *Modi Rubber Ltd. v. Continental Carbon India Ltd.*,<sup>43</sup> the apex court addressed significant questions about the rights of unsecured creditors under rehabilitation schemes approved under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). It centered on whether unsecured creditors could reject the scaled-down payments stipulated in the scheme and opt to recover the full dues after the company's rehabilitation.

The case arose when Modi Rubber Limited, a company declared "sick" by the Board for Industrial and Financial Reconstruction (BIFR), implemented a rehabilitation scheme under Section 18 of SICA. The scheme involved scaling down dues owed to unsecured creditors to facilitate the company's revival. Continental Carbon India Ltd., an unsecured creditor, challenged the scheme, arguing that it retained the right to reject the reduced payment and claim the full amount after the company was rehabilitated. The High Court had upheld this view, leading to an appeal by Modi Rubber Limited.

The Supreme Court overturned the high court's decision, ruling that once a rehabilitation scheme is approved under SICA, it is binding on all stakeholders, including unsecured creditors. The court emphasized that allowing creditors to opt out of the scheme would defeat its purpose and potentially jeopardize the company's recovery. It noted that the collective nature of the rehabilitation process under SICA prioritizes the broader goal of reviving the company over individual creditor interests.<sup>44</sup> The court reasoned that individual creditors opt-outs could trigger financial instability, undermining the collective agreement necessary for the scheme's success.

<sup>42</sup> IBC, s. 7, read with Limitation Act, 1963.

<sup>43</sup> (2023) ibclaw.in 33 SC.

<sup>44</sup> SICA, s.18(8).

The judgment also made several recommendations to improve the effectiveness of corporate rehabilitation framework. It stressed the need for transparent and equitable processes in preparing rehabilitation schemes, ensuring that all stakeholders have a voice during the approval process. The court suggested that future insolvency framework, such as the IBC, should incorporate clear provisions to balance creditor rights with the objectives of corporate revival. Additionally, it called for better monitoring mechanisms to assess the long-term outcomes of rehabilitation schemes, ensuring compliance and sustainability.

This judgment underscores the balance between individual creditor rights and the broader public interest in ensuring the revival of distressed companies. By affirming the binding nature of rehabilitation schemes, the decision reinforces the principles of corporate governance and collective stakeholder responsibility. Although SICA has been replaced by the IBC, this ruling provides valuable insights into managing creditor-debtor relationships in insolvency resolutions, promoting industrial recovery while safeguarding economic stability.

#### XI SECURED CREDITORS RIGHT

In *Industrial Development Bank of India v. Superintendent of Central Excise and Customs*,<sup>45</sup> the Supreme Court of India addressed the interplay between the Companies Act, 1956, and the Customs Act, 1962, with specific reference to the priority of claims during a company's liquidation. The court examined whether the Customs Act conferred a statutory first charge over the sale proceeds of warehoused goods, overriding the preferential rights of secured creditors under Sections 529A and 530 of the Companies Act, 1956.

The dispute arose when Sri Vishnupriya Industries Limited, a company availing financial assistance from the Industrial Development Bank of India (IDBI), defaulted on its obligations, leading to the initiation of winding-up proceedings. The company had hypothecated its movable properties, including imported machinery stored in a bonded warehouse. Due to non-payment of customs duties, the customs authorities sought to auction the goods under the Customs Act, while the official liquidator claimed precedence for secured creditors and workmen under the Companies Act. A legal tussle ensued regarding the order of priority between secured creditors and government dues.

The Supreme Court ruled that Sections 529A and 530 of the Companies Act prevail over the provisions of the Customs Act in determining the distribution of assets during a company's liquidation.<sup>46</sup> It held that while government dues under the Customs Act may qualify as preferential payments under Section 530, they cannot override preferential claims of secured creditors and workmen under Section 529A. The court emphasized that the Customs Act does not create a statutory first charge on the goods in question, unlike explicit provisions in other laws. Consequently, the secured creditors' rights, protected by the Companies Act, take

45 2023 SCC OnLine SC 1024.

46 Companies Act, 1956, Ss. 529A and 530.

precedence over customs authorities' claims. The judgment also included critical observations on the procedural responsibilities of the liquidator. It highlighted the need for a fair and systematic distribution of assets under the waterfall mechanism outlined in the Companies Act. Furthermore, the court recommended enhanced clarity in legislative drafting to avoid ambiguities in the priority of claims under overlapping statutes. It also underscored the importance of harmonizing insolvency and company law with tax and revenue laws to ensure consistency and reduce disputes.

This judgment reinforces the supremacy of the Companies Act in resolving conflicts between secured creditors and government authorities during liquidation proceedings. By emphasizing the need for legislative coherence and procedural fairness, the decision strengthens confidence in the corporate insolvency framework and encourages greater compliance among financial institutions and companies.

#### **Balancing liquidation transparency and creditor rights**

In *EVA Agro Feeds Pvt. Ltd v. Punjab National Bank*,<sup>47</sup> the Supreme Court addressed critical issues related to liquidation under IBC. This case centered around the rights of auction bidders during the liquidation process and the discretionary powers of the liquidator in canceling auctions. It provided significant guidance on ensuring fairness and adherence to legal principles in corporate liquidation.

The case arose when EVA Agro Feeds Private Limited, as the successful bidder in an e-auction conducted by the liquidator for the assets of a corporate debtor under liquidation, faced the cancellation of the auction by the liquidator. The liquidator justified the cancellation on the expectation of receiving a higher bid in subsequent auctions. EVA Agro contested the decision, arguing that the cancellation violated the principles of transparency and fairness inherent in the IBC. The NCLT ruled in favor of EVA Agro, directing the liquidator to proceed with the sale. However, this decision was overturned by the NCLAT, leading to an appeal before the Supreme Court.

The Supreme Court, while restoring the NCLT's decision, held that the liquidator's action of canceling the auction was arbitrary and lacked valid justification. It emphasized that liquidators under the IBC are bound by principles of fairness and transparency, and their discretionary powers must be exercised within the framework of reasonableness and objectivity.<sup>48</sup> The court clarified that mere possibility of a higher bid cannot justify the cancellation of a completed auction. It further ruled that in the absence of evidence of fraud, collusion, or procedural irregularities, the liquidator's decision to cancel the auction was unsustainable.

Thus it can be seen that this decision reinforces the principle that liquidation processes must adhere to the highest standards of fairness and transparency to

47 (2023) ibclaw.in 98 SC.

48 Insolvency Bankruptcy Code, Ss 35 and 53.

protect the rights of all stakeholders, including creditors and bidders. By delineating the limits of liquidators' discretion, the decision ensures that the IBC's objectives of timely and efficient resolution needs to be upheld.

#### XII GROUP OF COMPANIES DOCTRINE

The Supreme Court of India delivered a landmark judgment in *Cox and Kings Ltd v. SAP India Pvt. Ltd.*<sup>49</sup> on December 6, 2023, addressing the validity and applicability of the Group of Companies Doctrine in arbitration law under the Arbitration and Conciliation Act, 1996. This doctrine allows non-signatory entities within a corporate group to be bound by an arbitration agreement signed by another group entity, provided there is evidence of mutual intent to arbitrate. This decision clarifies the jurisprudential basis of the doctrine and its statutory anchoring in Indian arbitration law.

The case arose when SAP India Pvt. Ltd. sought to invoke arbitration against Cox and Kings Ltd. and other entities within the Cox and Kings corporate group. While some entities were signatories to the arbitration agreement, others were not. The dispute centered on whether the non-signatory entities could be compelled to arbitrate under the Group of Companies Doctrine, considering their participation in the underlying transaction. The petitioner argued that the doctrine contradicted fundamental principles of contract law, such as party autonomy and privity of contract.

In its judgment, the Supreme Court upheld the validity of the Group of Companies Doctrine, stating that it is firmly rooted in the statutory framework of the Arbitration and Conciliation Act. The court emphasized that the doctrine is not premised solely on the concept of a single economic reality or tight group structure. Instead, its application depends on evidence of mutual intent, as discerned from the conduct of the parties, the composite nature of the transaction, and the interdependence of contracts involved.<sup>50</sup>

The court clarified that under Section 7 of the Arbitration and Conciliation Act, an arbitration agreement can bind non-signatories if their conduct, involvement in negotiations, or role in contract performance demonstrates an intention to arbitrate. However, the court rejected the automatic application of the doctrine, stating that it requires a detailed analysis of facts and cannot be invoked based solely on corporate control or ownership within a group. This reasoning aligns with international precedents, such as the Dow Chemical case, where tribunals focused on mutual intention rather than mere corporate affiliation.<sup>51</sup>

The court provided recommendations to ensure the proper application of the doctrine. It directed that at the referral stage, courts should adopt a prima facie standard, leaving the arbitral tribunal to decide complex factual issues regarding non-signatories. This preserves party autonomy and respects the consensual

49 2023 SCC OnLine SC 1634.

50 *Chloro Controls (I) P. Ltd. v. Severn Trent Water Purification Inc.*, [2012] 13 S.C.R. 402.

51 Dow Chemicals ICC Arbitration Case No. 4131.

nature of arbitration. The court also recommended that legislative amendments could explicitly incorporate principles governing non-signatories into the Arbitration and Conciliation Act to provide greater clarity.

This decision has significant implications for corporate law and arbitration in India. By balancing corporate separateness with the realities of modern business transactions, the judgment strengthens the integrity of arbitration agreements while preventing misuse of corporate structures to evade obligations. It reinforces the need for clear documentation of intercompany arrangements and underscores the importance of evidencing intent in multi-entity transactions.

### XIII CONCLUSION

In the year 2023, the decisions provided by the courts in India brought significant impact on the corporate disputes. Majority of the decisions centred around the insolvency laws. The earlier practice of lenders and commercial debtors trying to avoid payment of government dues have been addressed and gave priority to government dues in insolvency proceeding. It brought clarity that the provisions of Insolvency and Bankruptcy Code does not override the power of government to recover its dues. In another instance, the apex court distinguished between corporate and criminal liabilities in mergers and acquisitions by reinforcing the principles of corporate separateness, and safeguards the stability of the financial system. It also highlights the importance of well-drafted amalgamation schemes to protect the interests of all parties, including depositors, creditors, and acquiring entities. It recommended the improvement of governance in corporate disputes. It urged stricter regulatory oversight of corporate governance practices, especially in shareholder and board meetings, to minimize litigation and enhance procedural integrity. The court suggested that regulatory authorities such as the Ministry of Corporate Affairs (MCA) evolve and enrich clear guidelines for the conduct of general meetings, including transparent mechanisms for voting and reporting. The court also reinforced the role of tribunals in maintaining transparency and accountability and ensured corporate governance framework operates within the bounds of law, protecting the interests of shareholders, directors, and other stakeholders. In another landmark decision, it urged insolvency tribunals to meticulously analyze limitation issues during the preliminary stages of admission to avoid unnecessary litigation. The court also suggested that financial creditors adopt robust documentation practices to ensure timely filings and avoid disputes over timelines. Additionally, it called for greater synergy between the IBC and the Limitation Act, advocating legislative amendments to address ambiguities in the application of limitation in insolvency cases. This judgment underscores the interplay between company law and securities law, reaffirming the specialized jurisdiction of SEBI in matters involving public shareholding and disclosure norms. It also highlights the importance of regulatory clarity and the role of company tribunals in handling corporate disputes, ensuring that the governance frameworks for companies and securities remain distinct yet complementary. The judgment provided several recommendations to enhance the integrity of the liquidation



process. It urged regulators and insolvency professionals to establish robust protocols for e-auctions to ensure consistency and transparency. The court also recommended training programs for liquidators to strengthen their understanding of the legal and ethical standards governing their role. Furthermore, it called for better documentation of the decision-making process in liquidation to minimize disputes and enhance confidence among stakeholders. Finally, it can be observed that these decisions have significant implications for corporate law and insolvency practice in India.

