5

COMPANY LAW

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I INTRODUCTION

THE YEAR 2024 witnessed several significant company law cases that have an impact on corporate governance, insolvency, and regulatory practices. Key rulings include the Supreme Court striking down the electoral bonds scheme, interpretation of capital reduction under section 66 of the Companies Act, 2013, by National Company Law Tribunal (NCLT) and the transfer of winding-up petitions from high courts to the NCLT. Apart from these, there is a series of key judgments that have shaped the legal landscape for businesses, directors, and stakeholders, which have examined the definition of a promoter, the prevention of oppression and mismanagement, *etc.* These judgments not only provide clarity on complex provisions but also establish important precedents for future cases involving company law.

II DONATIONS TO POLITICAL PARTIES: OBLIGATION ON COMPANIES

The Supreme Court had an occasion in *Association for Democratic Reforms* v. *Union of India*[1] to deal with the issue of whether unlimited corporate funding to political parties, as envisaged by the amendment to Section 182(1) of the Companies Act, 2013,[2] infringes the principles of free and fair election under Article 14 of the Constitution of India. The Finance Act, 2017, Section 154, amended Section 182 of the Companies Act, 2013, deleting the proviso that restricted contributions from companies to 7.5% of their average net profits and also removed the requirement to disclose the particulars of contributions in their profit and loss accounts. The petitioners argued that these amendments, particularly the anonymity feature of the electoral bond scheme and the unlimited, non-disclosed corporate funding, facilitated oppression and mismanagement, violated the principle of free and fair elections, and infringed upon the right to information of the voters.

The apex court held that the amendment to Section 182 of the Companies Act, 2013, removing the limit on corporate contributions and the disclosure

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1 2024 INSC 113.

2 Prior to this amendment of Companies Act in 2013, the Companies Act 1956, s. 239-A, provided several checks upon corporate donations to political parties, as also to any individual or body for any political purpose of an amount exceeding Rs. 25,000.

requirement, is manifestly arbitrary and violates Article 14 of the Constitution. The removal of the cap (7.5% of net profits) and the permission for unlimited contributions allow companies to wield significant influence over the political process, potentially leading to *quid pro quo* arrangements, which undermines the principle of free and fair elections. The court stated that the ability of companies, including shell companies, to make unlimited, undisclosed contributions cannot be justified.

In furtherance of this, the bench observed that the amendment to Section 182 of the Companies Act, 2013, becomes otiose in view of the unconstitutionality of the electoral bonds scheme. It observed:[3]

> The ability of a company to influence the electoral process through political contributions is much higher when compared to that of an individual. A company has a much graver influence on the political process, both in terms of the quantum of money contributed to political parties and the purpose of making such contributions. Contributions made by individuals have a degree of support or affiliation with a political association. However, contributions made by companies are purely business transactions, made with the intent of securing benefits in return.

Before the amendment in 2017 through the Finance Act, Section 182 of the Companies Act, 2013 dealt with four essential requirements before donations are made to the political parties. Accordingly, there was a cap on the contributions of 7.5% of the net annual profits in the last preceding three years. *Secondly*, the donor company should have been in existence for more than three years, and contributions should have been made only through a resolution passed by the Board of Directors authorising the contribution for the particular purpose. *Thirdly,* there were penal consequences attached to the violations of provisions laying down conditions for political donations. *Fourthly*, the company was also required to disclose in its profit and loss account any amount contributed by it to any political party during the financial year, with specific particulars of the total amount contributed, with the name of the political party to which the contribution was made.

However, the amendment in 2017 of Section 182 removed the upper cap/limit on corporate funding. The names of political parties to whom donations were made were not disclosed. Companies were also allowed to donate through any scheme framed by the Central Government. Accordingly, the Central Government unveiled the electoral bond scheme in 2018. As per the notification issued, anyone who is a citizen of India or a corporation incorporated/established in India can acquire bonds individually or team up with other individuals for this clandestine contribution. Authorised branches of the State Bank of India held the privilege to issue these electoral bonds. Under the proposed scheme, the government revoked the limit of 7.5 per cent annual profit limit for company donations to political

3 *Id*., para 212.

parties. It has also allowed for Indian subsidiaries of foreign companies to make donations. It provided for the shell companies, loss-making companies that do not operate for business purposes, or do not do business, could also dole out funds by making an amendment to the Foreign Contribution Regulation Act, 2010. It was stated that in the pre-amended provisions, disclosure requirements were included to ensure that corporate interests do not unduly influence electoral democracy and if they do so, then the electorate must be consciously aware of it. The pre-amended provisions required disclosure of specifics and particulars of the contributions, whereas post-amendment, only the total contributions made to political parties are to be disclosed and not the individualised ones.

Thus, the apex court held that the amendment to Section 182 of the Companies Act, 2013, by removing the limit on corporate contributions and the disclosure requirement, is manifestly arbitrary and violates Article 14 of the Constitution. The removal of the cap (7.5% of net profits) and the permission for unlimited contributions allow companies to wield significant influence over the political process, potentially leading to *quid pro quo* arrangements, which undermine the principle of free and fair elections. The court stated that the ability of companies, including shell companies, to make unlimited, undisclosed contributions cannot be justified.

Finally, the court held that the unlimited corporate funding is manifestly arbitrary for three reasons. *First*, it considered donations by individuals and corporations alike. *Second*, it allowed unregulated corporate interference in free and fair elections. *Third,* it considered donations from profit-making and loss-making companies alike.

III REMOVAL OF THE NAME OF COMPANY: STATUTORY COMPLIANCE

In the year 2024, the apex court delved into a question of balancing between regulatory enforcement and procedural fairness, particularly examining the circumstances under which the name of a company may be removed and the grounds upon which restoration may be granted. Thus, in *R. P. Casting (P.) Ltd.* v. *Registrar of Companies, NCT of Delhi and Haryana.*[4]

The Supreme Court addressed the central issue pertaining to the authority and discretion vested in the Registrar of Companies (ROC) under section 248 of the Companies Act, 2013, to strike off the name of a company from the register for non-compliance with statutory requirements. Subsequently, it also analysed the process and conditions for restoring such names upon appeal under Section 252 of the Act.

In this case, the ROC passed an order directing the removal of the name of the appellant company, R.P. Casting (P.) Ltd., from the register of companies. The ground for removal was that the directors of the company were negligent in not complying with the requirements of the Companies Act, 2013, particularly in filing annual returns and accounts, and not responding to a notice issued under Section

4 [2024] 161 Taxmann.com 162 (SC).

248(1) of the Act. The appellant company applied Section 252(3) of the Companies Act, 2013, seeking orders for the restoration of its name to the register. The primary ground for seeking restoration was that the amount was refundable to the company from the Central Excise Department. The company stated it had been engaged in litigation with the Central Excise Department, which adversely impacted its operations, but had succeeded in the litigation.

The NCLT dismissed the appellant company's application for restoration. The NCLAT upheld the order passed by the NCLT. The present appeal before the Supreme Court was against this impugned judgment of the NCLAT.

Supreme Court critically scrutinised the Registrar of Companies' (ROC) authority to strike off company names under the Companies Act, 2013. The court emphasised the necessity for the ROC to exercise this power judiciously, ensuring that strike-offs are warranted and justified, thereby preventing arbitrary or unfair removals from the Register. The Court directed that the name of the appellant, R.P. Casting Private Limited, be restored in the register of companies. The court's reasoning was based on finding that the appellant company was in existence and even operative during the relevant time, despite the directors' negligence in statutory compliance. Given this factual finding, the court deemed it appropriate to allow the appeal and restore the name of the company. The court felt a "practical rather than a technical view should be taken" while addressing the appellants' lapses.

However, while acknowledging the negligence of the directors in not complying with the requirements of the Companies Act, 2013, such as filing annual accounts and responding to the Section 248(1) notice, the Supreme Court set aside the orders of the NCLT and NCLAT. It directed the restoration of the company's name, but conditioned it upon the payment of costs and acknowledged potential further liabilities for non-compliance.

This case shows that judicial scrutiny serves to safeguard the interests of companies and stakeholders while maintaining regulatory integrity. It laid down the principle that any actions determining the stringent action against the company should be undertaken with careful consideration by the ROC. It aims to prevent the arbitrary or unfair removal of names from the Register by the authorities concerned. Additionally, it also highlighted the accountability of company directors in ensuring compliance with statutory obligations, setting a precedent for directorial duties and liabilities under the statutory framework and their liability for negligence.

Powers of the Regional Director – Where the Pre-Conditions of Section 233(1) of the Companies Act, 2013 are not satisfied

In *Asset Auto India Pvt. Ltd.* v. *Union of India,*[5] the High Court of Bombay profoundly clarified the scope of the Regional Director's discretionary power under Section/233 of the Companies Act, 2013, in the context of fast-track mergers between whollyowned subsidiaries or small/start-up companies. In this case, Asset

5 [2024] 167 Taxmann.com 461 (HC-Bom).

Auto India Pvt. Ltd. and its four whollyowned subsidiaries had complied meticulously with all pre-requisites under Section233(1) to (4), including obtaining shareholder and creditor approvals and filing declarations of solvency. Despite this, the Regional Director (Western Region, Mumbai) issued an order outright rejecting the scheme, citing alleged insolvency as manifested in financial statements.

The court held that where the Central Government, through the Regional Director, thinks that a proposed fast-track merger is not in the interest of the public or is detrimental to creditors, it is mandatory, rather than discretionary, that a reference be made to the National Company Law Tribunal for adjudication. If the regional director declines to do so, then the rejection must be based on cogent reasoning and relevant materials. A non-referral equates to procedural non-compliance and violates principles of natural justice.

Having found that no objections or suggestions had been raised by the Registrar or the Official Liquidator, the court emphasised that refusal to proceed *via* the NCLT deprived the petitioners of their right to adjudicatory mercies. In consequence, the court quashed the regional director's order on the ground that it was procedurally invalid and devoid of proper rationale.

The ruling is notable both for its purposive interpretation of statutory terms treating "may" in section 233 (5) as creating an obligation and for strengthening the legal permanence of fast-track merger routes. It provides much-needed assurance to companies executing intra-group restructurings under section 233 that authority exercised by the regional director must conform to transparent and rule-based adjudication. The judgment compels administrative restraint and aligns procedural practice with the legislative intent behind fast-track mergers.

IV RECTIFICATION OF REGISTER OF MEMBERS

The Supreme Court of India in *Chalasani Udaya Shankar* v. *Lexus Technologies (P.) Ltd,*[6] ruled that company law tribunals have the authority to rectify the register of members under Section 59 of the Companies Act, 2013, if it is evident that the applicant was a victim of an "open-and-shut" case of fraud. This decision clarifies the role of company law tribunals in dealing with cases of fraud and mismanagement within a company. The apex court explained that the rectification of a company's register is not a superficial task. It requires the courts to carefully examine the facts, evidence, and arguments presented before it to determine if rectification is necessary or not. This decision followed the precedent set in the case of *Adesh Kaur* v. *Eicher Motors Limited*,[7] where the court emphasised that tribunals must exercise their rectification powers in clear cases of fraud where the applicant has been wronged.

In this case, the appellant, a shareholder, claimed to have acquired equity shares, representing a majority shareholding (94.8%), from a respondent director by executing securities transfer deeds and paying consideration. Share certificates

6 [2024] 9 S.C.R. 235.

7 [2018] 7 SCC 3709.

were issued to the appellants, which are signed and authenticated by the other directors. The appellants claimed to have paid a total consideration of Rs. 14,67,41,557/- to the respondent director. Due to the company's failure to hold Annual General Meetings and file Annual Returns for the financial years 2014-15, 2015-16, and 2016-17, the Registrar of Companies (RoC) struck off the name of the company from the Register of Companies, exercising power under Section 248 of the Companies Act, 2013. The company's name was restored in August 2017, and annual returns were filed in June 2018.

The appellants claimed that it was only upon browsing the online portal (MCA portal) in 2017/2018 that they discovered the respondent directors had filed annual returns and financial statements with false information, erasing the appellants' shareholding from the company records. The appellants alleged various acts of oppression and mismanagement with the intention of grabbing the company's property.

The appellants filed a petition before the NCLT, praying for rectification of the Register of Members by entering their names. They also submitted to initiate action against the respondent directors for oppression and mismanagement, including criminal proceedings for fraud. However, the respondent directors denied the transfer of shares, claimed the money was a loan, and alleged fabrication of documents by the appellants. They also raised the issue of limitation, arguing that the petition was filed more than three years after the alleged share acquisition. The NCLT, in its final order, dismissed the petition, finding no documents to show a share transfer, doubting the money payment as consideration for shares, deeming the share certificates dubious and fabricated, and concluding the case was fraudulent and barred by limitation. The NCLAT dismissed the appeal, observing that the allotment of shares in favour of the appellants was not established and concluding that the appellants lacked *locus* to maintain the oppression and mismanagement allegations, as they were not members of the company. Thus, both NCLT and NCLAT dismissed to contentions of the appellants, hence, the matter reached the apex court.

The Supreme Court found that neither the NCLT nor the NCLAT examined, with any seriousness, the issues raised before them to come to a cogent conclusion. The court held that the NCLT failed to discharge the mandate of law by not carrying out a proper verification of the assertions made by the parties. It took a narrow view and did not call upon the respondent director to prove the veracity of his contrary story, despite the undisputed fact that he received a large sum of money from the appellants. The apex court noted that the acting president of NCLT summarily dismissed the petition, ignoring the interim order passed by the judicial member, which had indicated the need for a thorough inquiry into the factual issues, including the receipt of monies, signatures on transfer deeds, and the genuineness of documents.

The court found that the NCLAT compounded the error by not getting into the right factual aspects, wherein it was mentioned that the appellants did not

transfer the money, which was incorrect based on the record. Instead, it blindly accepted the disputed story of the respondent, wrongly assessing the issue of limitation, and overlooking the documentary evidence produced by the appellants.

Regarding the jurisdiction under Section 59 (Rectification of the Register of Members), the court reaffirmed precedents,[8] which stated that the NCLT is required to examine factual issues to ascertain the substance of the dispute. The court observed that the power of rectification should be exercised if the dispute falls within the "peripheral field of rectification" by the NCLT. While the NCLT has discretion, it should not decline jurisdiction merely because a seriously disputed question arises, especially if it appears to be an open-and-shut case of fraud against the person seeking rectification. Proper appreciation and examination of evidence becomes crucial in such cases. Based on the analysis that neither the NCLT nor the NCLAT properly examined the case on merits, the Supreme Court concluded that their orders must be set aside. The court allowed the appeals. Thereafter, the petition was restored to the file of the NCLT for fresh consideration on merits and in accordance with law, upon proper appreciation of evidence.

V OPPRESSION AND MISMANAGEMENT

In *Hitesh Chhaganlal Ambalia* v. *Ashwin Khushaldas Banker,*[9] the apex court examined whether NCLAT's order remanding the proceedings back to the NCLT is sustainable or not. In this case, appellants and respondents were shareholders and directors of a company referred to as "OSNP". The appellants filed a petition before the NCLT under Sections 241 and 242 of the Companies Act, 2013, alleging oppression and mismanagement by the respondents. The NCLT allowed the petition and issued several directions, including a declaration of the Extraordinary General Meeting as illegal and declaring the resolution passed for the removal of the first appellant from the company as illegal, null, and void. An appeal against the NCLT's order was filed before the NCLAT. The NCLAT reviewed the appeal and, after recording the submissions, noted that the Supreme Court's decision in *Tata Consultancy Services Limited* v. *Cyrus Investments Private Limited*[10] was delivered *after* the NCLT had issued its order. The NCLAT then remanded the proceedings back to the NCLT. The NCLAT's stated reason for the remand was that the NCLT would need to re-examine the original petition in light of the Supreme Court judgment in *Tata Consultancy Services Limited*.[11]

The Supreme Court found the NCLAT's order remanding the proceedings back to the NCLT to be unsustainable. The court emphasised that since the Supreme Court judgment in *Tata Consultancy Services Limited* was rendered *after* the NCLT's decision, it was the responsibility of the NCLAT, as the appellate authority,

8 *Ammonia Supplies Corporation P. Ltd.* v. *Modern Plastic Containers Pvt. Ltd.* (1998) 7 SCC 105: *Adesh Kaur* v. *Eicher Motors Limited, Supra* note 7.

9 Civil Appeal No 185 of 2024 dated April 5, 2024.

10 2021 SCC OnLine SC 272.

11 *Ibid*.

to examine the impact, if any, that the judgment would have on the dispute between the parties.

The Supreme Court held that the NCLAT's action of simply remanding the matter to the NCLT without examining the facts and without analysing the extent of the application of the *Tata Consultancy Services Limited* decision to the facts of the case amounted to an abdication of its appellate jurisdiction. Therefore, the Supreme Court allowed the appeal and set aside the impugned judgment of the NCLAT. The Supreme Court restored the company appeal file of the NCLAT for fresh examination.

VI BUY BACK OF SHARES VERSUS CAPITAL REDUCTION

The NCLT in the case of *Philips India* addressed the interpretation of Section 66 of the Companies Act, 2013, regarding capital reduction, emphasising that it cannot be used merely for providing liquidity or exit to minority shareholders. The case involved a proposal for selective capital reduction to buy out minority shareholders after delisting. Philips India, after delisting from stock exchanges in 2004, sought to reduce its share capital to provide an exit to the remaining minority shareholders. Section 66 of the Companies Act, 2013 allows for capital reduction under specific circumstances, such as extinguishing unpaid share capital or reducing excess capital. The NCLT ruled that Philips' reasons for capital reduction (providing liquidity and cost savings) did not align with the permitted scenarios under Section 66. The tribunal viewed the proposed action as a buyback, which is prohibited under section 66(6).The NCLT held that Section 66, which provides for the reduction of share capital, cannot be used merely to provide liquidity or exit to minority shareholders, or to save on administrative costs. The Order attempts to justify the grounds that the proposed share capital reduction was only incidental to the main objective of the buy-back of shares.

The NCLT acknowledged that the valuation reports submitted by Philips and the minority shareholders differed significantly, but did not delve into the specifics of valuation as it had already rejected the proposal on other grounds. The NCLT's decision clarified that Section 66 is not a tool for forced buyouts of minority shareholders. It also highlighted the need for companies to utilise appropriate mechanisms (like Section 68 for buybacks) for such transactions. The NCLT noted that Section 66 can be invoked for capital reduction in the following cases:

(i) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up;

(ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or is unrepresented by available assets; and

(iii) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

In this case, as per NCLT, the proposed squeeze out of the minority shareholders did not fall under any of the aforementioned (a), (b) or (c) cases. The rationale provided by Philips for the capital reduction was: (i) providing liquidity to the minority shareholders holding Public Shareholding, and (ii) saving administrative costs that were incurred due to such a high number of minority shareholders. NCLT was of the view that neither of the two formed valid reasons for invoking Section 66.

Additionally, the NCLT also held that Section 66 specifically bars the application of this section on the buy-back of its own securities by a company. However, in this case, Philips was in essence buying back the shares from the minority shareholders and incidentally reducing the share capital.

This narrow reading starkly contrasts with the established jurisprudence of the opening phrase "reduce the capital in any manner" of Section 66, which was interpreted by the courts. Commentaries have described the NCLT's approach as unduly literal, failing to engage with the textual breadth of Section 66 and prior precedent. The decision has been noted for ignoring that the subsections (a) and (b) are illustrative and not exhaustive. Indeed, recent analysis highlights that the tribunal's characterisation of the scheme as a disguised buy-back misreads Section 66(6), which merely clarifies that section/68's buy-back regime excludes the need for NCLT sanction under Section/66, not that section/66 becomes unavailable in exit-driven capital reduction scenarios.

The judgment thus raises significant concerns regarding shareholder exit mechanisms for closely held entities. By rejecting the plan of the petitioner, premised on liquidity and costefficiency, the tribunal diverged from a growing trend approving similar schemes under established statutory and judicial precedent. In sum, this case represents a marked departure from the prevailing interpretation of Section 66 and may curtail flexibility for legitimate capital restructuring under the Companies Act. Whether the NCLAT or higher courts restore interpretive consistency remains to be seen.

Transfer of winding-up petition to the National Company Law Tribunal

In a significant ruling, the High Court of Delhi in *Arabian Oilfield Suppliers and Services* v. *Greka Drilling (India)Ltd*,[12] transferred the proceedings to the NCLT. It stated that the matter was at a nascent stage and had not progressed to an advanced stage, as no substantive orders had been passed towards the winding up of the respondent company. The court observed that to determine whether the present winding-up petition was maintainable, reference would have to be made to Section 583 of the Companies Act, 1956. The company in question was unregistered, and the circumstances under which it may be wound up are indicated in Section 583(4) of the Companies Act, 1956. The court noted that "since the respondent company had not paid its debts, the winding-up proceedings against the company were maintainable". Further, the court stated that even an unregistered company

12 [2024] SCC OnLine Del 3654.

would be subject to the winding up proceedings under Part II, comprising Section 375 of the Companies Act, 2013, and that sub-clause 3(b) is *parimateria* to Section 583 of the Companies Act, 1956.The court found that the company's inability to pay its debts justified winding up proceedings under section 583 of the Act.

VII PROMOTER AND SEBI

In *Pradeep Mehta* v. *Union of India*,[13] the High Court of Bombay examined whether the Securities and Exchange Board of India (SEBI) and National Securities Depository Ltd. (NSDL) could freeze the Demat account of an individual merely on the ground that he was once classified as a "promoter" of a company, without any active involvement or proper notice.

The petitioner challenged the freezing of his Demat account by NSDL, acting under SEBI's directions and at the behest of the Bombay Stock Exchange (BSE). It was alleged that such action was not only wholly illegal under the applicable statutory provisions, but also violated his fundamental and constitutional rights under Articles 14 and 21. It also violated his right to property under Article 300A of the Constitution of India. The petitioner asserted that he had no control over, or involvement in, the affairs of *Shrenuj,* the company in question. He had never been part of its management or played any advisory role. His classification as a "promoter" was solely because of his familial relationship with the company's chief promoter, *i.e.* his father-in-law. He contended that he was unaware of such classification until his Demat account was frozen, merely because he had initially subscribed to some shares of the company.

The high court strongly criticised the actions of the respondents, observing that freezing the Demat account of the petitioner revealed a *patent non-application of mind*. The court held that there was no material to suggest that the petitioner continued to be a promoter or had any association with *Shrenuj* at the relevant time. The court observed that the authorities had acted in complete disregard of the principles of natural justice. Such high-handed action, according to the court, is antithetical to the rule of law.

The court emphatically noted that the petitioner had been deprived of his right to trade and deal with his property for several years, amounting to a violation of his constitutional right under Article 300 A.[14] The judgment thus sets an important precedent affirming that regulatory authorities must act within the bounds of law and fairness, particularly when fundamental and property rights are at stake.

In another case of *Harsh Mehta* v. *Securities Exchange Board of India,*[15] the High Court of Bombay upheld the constitutional and statutory validity of Regulation 3(2)(b)(i) of the SEBI (Delisting of Equity Shares) Regulations, 2021. The petitioner had challenged this regulation on the ground that it unlawfully exempted delisting transactions carried out pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC), from the standard

13 [2024] 251 Comp Case 530.

14 *Id*. para 71.

15 [2024] ibclaw.in 1370.

procedural safeguards prescribed under the SEBI delisting framework. The petitioner also questioned the legality of the NCLT's order, which had approved a resolution plan involving the delisting of equity shares without following SEBI's delisting procedure.

The petitioner contended that SEBI had acted *ultra vires* its parent legislation by issuing a regulation that effectively bypassed the protective structure intended to safeguard investor interests. It was argued that the impugned regulation introduced an unreasonable classification, thereby violating Article 14 of the Constitution. The challenge was premised on the assumption that delisting carried out under a resolution plan must also comply with SEBI's regulatory scheme, and the exemption carved out in Regulation 3(2)(b)(i) was arbitrary and lacked any legislative basis.

In response, SEBI and the other respondents submitted that the regulation was well within SEBI's quasi-legislative powers and had been introduced to avoid regulatory overlap with the IBC, which is a special and later enactment. It was contended that the IBC, being a self-contained code, provides a complete framework for insolvency resolution, and Section 238 of the IBC contains a non-obstante clause, giving it overriding effect over all other laws. Hence, SEBI had only acknowledged this statutory hierarchy by providing that delisting under an IBC-approved resolution plan would not require compliance with the delisting regulations. It was further argued that the regulation did not impose any tax, fee, or penalty, and thus need not be supported by an express enabling provision.

The court rejected the petitioner's claim that the regulation was ultra vires or unconstitutional. Referring to the established principle that economic legislation enjoys a strong presumption of constitutionality, the court observed that the burden to rebut this presumption lay with the petitioner, who had failed to discharge it.[16] The court held that Regulation 3(2)(b)(i) does not contradict the SEBI Act. Rather, it harmonises the SEBI framework with the IBC, which is a more recent and overriding statute. The IBC explicitly provides that a resolution plan approved by the Committee of Creditors (CoC) and sanctioned by the NCLT under Sections 30 and 31 binds all stakeholders, including shareholders. The delisting regulations would thus logically give way to the IBC process in such cases. The court noted that the regulation is based on a clear rationale, *i.e.* avoiding regulatory confusion or dual compliance when delisting is part of a judicially approved resolution plan under a distinct statutory mechanism.

In *Jyoti Ltd.* v. *BSE Ltd*.,[17] the apex court examined the requirements of listing of shares under Regulation 28 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. In this case, the appellant company, Jyoti Limited, applied to the Bombay Stock Exchange (BSE) for the listing of certain equity shares. The application was rejected by the BSE. The reasons for the rejection

16 See, *BSE Brokers' Forum* v. *SEBI* (2001) 3 SCC 482; *Swiss Ribbons* v. *Union of India* (2019) 4 SCC 17.

17 [2024] ibclaw.in 337 SC.

were twofold. One is that the appellant had not taken "in principle approval" from the stock exchange. Secondly, the appellant had not obtained the approval of the shareholders for the allotment of these shares to the Asset Reconstruction Company (ARC).The order of the BSE rejecting the listing application was upheld and confirmed by the Securities Appellate Tribunal (SAT). The appeal before the Supreme Court was a statutory appeal challenging the SAT's order. The Supreme Court dismissed the appeal and found no error or illegality committed by either the BSE or SAT in refusing to accept the request for the listing of shares. The court's reasoning addressed both grounds for rejection. The Court held that while Section 9 of the SARFAESI Act authorises ARC to convert debt into shares, this authority is subject to Section 62 of the Companies Act, 2013, which requires a resolution of the shareholders. Therefore, as contemplated by Section 62(1)(c) of the Companies Act, 2013, the approval of the shareholders by way of a special resolution was mandatory before the shares could be accepted for listing on the BSE. Since this necessary shareholder approval was lacking in the instant case, the rejection on this ground was valid. The court noted that this decision was based on the peculiar facts where the company itself passed the resolution and applied for listing, thereby being deemed the proposer for increasing share capital.

Ratification by shareholders' special resolution – where the company utilised proceeds of a preferential issue for a different purpose and delay of investigation by SEBI

In *SEBI* v. *Alps Motor Finance Ltd,*[18] the apex court questioned SEBI regarding the delay in issuing the show cause notice after a 10-year investigation. In this case, the Alps Company made six preferential allotments during the period June 2013 to August 2013 and made the necessary disclosure on the stock exchange platform. However, SEBI, after considering the material evidence on record and after giving an opportunity of hearing, concluded that the company had deviated from the object of the issue and did not utilise the proceeds from the preferential issue as per the objects. SEBI imposed penalties for alleged violation of SEBI (LODR) Regulations and SEBI (PFUTP) Regulations. However, the Security Appellate Tribunal (SAT) overturned the penalty, citing a delay in the adjudication proceedings and a subsequent ratification of the fund utilisation by the company's shareholders. The Supreme Court observed that there is no good ground or reason to interfere with the impugned judgment and hence, the instant appeals are dismissed. The apex court raised concern regarding the delay by SEBI in issuing the show cause notice after a 10-year investigation, indicating potential issues with the regulatory process. However, the question of law is left open.

VIII INSOLVENCY BANKRUPTCY CODE

The decision of the Supreme Court in *State Bank of India* v. *The Consortium of Murari Lal Jalan and Florian Fritsch*[19] marks a decisive and instructive moment in India's insolvency jurisprudence. The court reiterated the principle of IBC that

18 [2024] 159 Taxmann.com 422 (SC).

19 [2024] INSC 852.

the failure to implement an approved resolution plan within the prescribed timelines results in liquidation of the corporate debtor, as timely resolution is fundamental to the IBC.

This case arose from the Corporate Insolvency Resolution Process (CIRP) of Jet Airways (India) Limited (Jet Airways), one of India's largest airline companies. Following Jet Airways' insolvency admission in 2019, a resolution plan was approved by the National Company Law Tribunal, Mumbai Bench (NCLT), with the Consortium of Murari Lal Jalan and Florian Fritsch as the Successful Resolution Applicant (SRA).The approved resolution plan required the SRA to infuse funds in a time-bound manner for the revival of the company. Despite multiple extensions granted by the NCLT and the National Company Law Appellate Tribunal (NCLAT), the SRA failed to implement the plan. As a result, the State Bank of India (SBI), the lead financial creditor, challenged the NCLAT's order, which allowed the adjustment of a Performance Bank Guarantee (PBG) of 150 crores against the SRA's first tranche payment of 350 crores. The Supreme Court intervened to address the delays, enforceability of the resolution plan, and the appropriate remedy for non-compliance.

In this case, the court underscored that there exists no scope for post-approval modifications to a resolution plan. It reinforced the binding and sacrosanct nature of such plans under the IBC. It also rejected the SRA's claims and ordered liquidation. The court reiterated that while the revival of a corporate debtor is a central goal of the IBC, it cannot come at the cost of endless delays and erosion of value. The court, exercising its powers under Article 142 of the Constitution, ordered the liquidation of Jet Airways (India) Ltd., thereby concluding a five-year-long insolvency saga marked by regulatory experimentation, stakeholder disputes, and repeated implementation failures. It opined that the powers of NCLT and NCLAT to extend timelines under the IBC must be exercised judiciously and not mechanically. Unwarranted extensions weaken the framework and incentivise non-compliance by resolution applicants.

The judgment reflects judicial pragmatism by placing commercial reality above misplaced optimism. The court was mindful of its limited role in interfering with the IBC's procedural rigour. It concluded that the present facts warranted the invocation of Article 142 to protect the integrity of the insolvency process. Several Recommendations were made to address the implementation of the IBC process by the apex court. These recommendations include:

(a) The CoC must provide clear and reasoned explanations for approving or rejecting resolution plans to assist adjudicating authorities in understanding the rationale behind their commercial decisions.

(b) The Central Government and IBBI should establish a committee to ensure strict enforcement of the CoC Guidelines issued on August 6, 2024.

(c) Resolution applicants must take proactive responsibility for corporate revival beyond fulfilling transactional obligations. They should act as custodians of the corporate debtor's future.

(d) Creditors must facilitate plan implementation by avoiding unnecessary demands or procedural hurdles for the SRA.

(e) The IBC should include provisions for a monitoring committee to oversee the smooth handover of the corporate debtor to the SRA after plan approval.

(f) NCLTs and NCLATs must avoid frequent relaxations of resolution plans, as such interventions delay implementation and contradict the intent of the IBC

This judgment is significant not only for its immediate outcome but also for the systemic reflections it offers on the structure and efficacy of the Insolvency and Bankruptcy Code, 2016 (IBC), particularly concerning the implementation of resolution plans. Importantly, the Court offered detailed observations on systemic gaps in the insolvency framework. It criticised the routine grant of extensions by NCLT/NCLAT without adequate scrutiny and stressed the need for a more robust and enforceable code of conduct for CoC. It called upon the Central Government and the IBBI to codify standards for the functioning of the CoC, which would include requirements to record reasons for plan approvals and ensure a fair and efficient decision-making process. The court also recommended the establishment of statutorily mandated monitoring committees to supervise post-approval plan implementation, thereby closing a glaring procedural vacuum under the current framework.

The court's observations also prompt a necessary discussion on the particular challenges posed by insolvencies in the aviation sector. The Jet Airways case laid bare the structural mismatch between IBC procedures and the operational demands of airline businesses. Since key airline assets such as aircraft are often leased and become unserviceable during CIRP, it is extremely difficult to maintain business continuity or secure regulatory clearances without prior resumption of operations.

From a jurisprudential perspective, the decision reaffirms several foundational principles, such as the sanctity of resolution plans, the non-adjustability of performance guarantees, and the limited judicial latitude to modify post-approval obligations, and the primacy of creditor interests where revival is no longer feasible. By balancing doctrinal clarity with procedural innovation, the Court's intervention provided a much-needed template for managing complex resolution failures without undermining the credibility of the insolvency regime.

As a matter of forward guidance, the judgment will likely lead to more cautious and better-structured resolution plans, greater scrutiny by adjudicating authorities at the implementation stage, and possibly, legislative amendments to address sector-specific issues like those faced by airlines. If adopted, the court's suggestions regarding enhanced regulatory oversight, stakeholder coordination, and statutorily empowered monitoring committees could significantly bolster the efficiency and enforceability of India's corporate insolvency framework.

IX CORPORATE INSOLVENCY RESOLUTION PROCESS

In *Bharti Airtel Limited* v. *Vijaykumar V. Iyer,*[20] the apex court held that a statutory set off or insolvency set off does not apply to Corporate Insolvency Resolution Process (CIRP) proceedings under the Insolvency and Bankruptcy Code, 2016.

In this case, disputes arose in context of eight spectrum-trading agreements entered into by Bharti Airtel Limited and Bharti Hexacom Limited (Airtel Entities) with Aircel Limited and Dishnet Wireless Limited (Aircel Entities) for the purchase of spectrum rights in the 2300 MHz band. The agreements required the Department of Telecommunications (DoT) to approve the transactions, contingent on bank guarantees being furnished by Aircel Entities. Unable to furnish the guarantees, Aircel Entities requested for adjustment to the payable consideration. Subsequently, when the Aircel Entities entered intothe CIRP, disputes arose between the Resolution Professional (RP) of Aircel Entities and Airtel Entities regarding Airtel's claim of set-off for various amounts. The RP rejected Airtel's set-off claims, leading to a series of legal challenges before the Adjudicating Authority NCLT and NCLAT, and eventually the Supreme Court.

The apex court dealt with the issue of whether the provisions of the Insolvency and Bankruptcy Code, 2016, permit statutory or insolvency set-off during the CIRP. It examined the applicability of the concept of "mutual dealings" under Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016, to the CIRP stage. It also examined the extent to which contractual or equitable set-off claims are permissible during the CIRP, especially in light of the moratorium under Section 14 of the IBC.

The Supreme Court held that the IBC is a complete code and that the provisions applicable to liquidation proceedings (e.g., Regulation 29 of the Liquidation Process Regulations) do not extend to the CIRP. Specifically, the concept of insolvency set-off or mutual dealings under Regulation 29 does not apply during CIRP, as the IBC explicitly distinguishes between rehabilitation-focused CIRP and liquidation proceedings. The apex court noted that the overarching objectives of the CIRP focus on revival, whereas liquidation proceedings focus on asset distribution.

With respect to set-off claims during CIRP, the Supreme Court emphasised that statutory set-off under Order VIII Rule 6 of the Code of Civil Procedure, 1908 (CPC), or insolvency set-off as envisaged under Regulation 29, cannot be applied to CIRP. However, it carved out two narrow exceptions. One is contractual set-off, which is permissible if explicitly provided in the agreements and effective before the commencement of CIRP, and the other is transactional (Equitable) Set-Off, which is allowed only if the claims and counterclaims arise out of the same transaction or are so closely connected that treating them separately would be inequitable. In both scenarios, the claims must be genuine, ascertainable, and free from disputes.

20 [2024] 1 S.C.R. 140.

The Supreme Court reiterated that the moratorium under Section 14 of the IBC prohibits the initiation or continuation of legal proceedings for recovery, enforcement of security interests, or alienation of assets of the corporate debtor. The apex court rejected Airtel's argument that its set-off claims were self-executing and thus not subject to the moratorium. The apex court highlighted that allowing insolvency set-off during CIRP would undermine the principle of *paripassu*, which ensures that all creditors within the same class are treated equitably. Similarly, it noted that the anti-deprivation principle prevents creditors from contracting out of the insolvency framework to gain an unfair advantage.

The Supreme Court clarified that the RP has no authority to permit set-off unless it satisfies the narrow exceptions outlined. Any claims for set-off must be adjudicated within the resolution framework or by the adjudicating authority, and not through unilateral actions by creditors. Thus, the Supreme Court dismissed Airtel's appeal, upholding the NCLAT's decision that disallowed the set-off claims during CIRP. It highlighted that the CIRP stage prioritises collective resolution and fair treatment of all creditors, thereby prohibiting practices that would grant individual creditors an undue advantage.

In another case of *DBS Bank Limited Singapore* v. *Ruchi Soya Industries Limited,*[21] the Supreme Court has referred to a larger bench, questions about the interplay between statutory safeguards under section 30(2)(b)(ii) of the IBC and the commercial decisions of the CoC.

This case arose from the CIRP initiated against Ruchi Soya Industries Limited ("Ruchi Soya"), a corporate debtor, under the IBC. DBS Bank Limited Singapore ("DBS"), a secured creditor of Ruchi Soya, held exclusive charges over certain immovable and fixed assets of the corporate debtor and had extended financial assistance of 243 crores. During the CIRP, a resolution plan proposed by Patanjali Ayurvedic Limited was approved by the Committee of Creditors ("CoC") with a majority vote of 96.95%. DBS, a dissenting financial creditor, objected to the proposed distribution mechanism, arguing that the plan violated Section 30(2)(b)(ii) of the IBC as amended in 2019. The crux of DBS's argument was that it was entitled to the liquidation value of its exclusive security interest, which was higher than the amount proposed in the resolution plan under a pro-rata distribution. Both the National Company Law Tribunal ("NCLT") and the NCLAT rejected DBS's objections, prompting DBS to appeal before the Supreme Court.

The Supreme Court examined whether dissenting financial creditors are entitled to the full liquidation value of their secured interests or are bound by the CoC's distribution mechanism. It also analysed whether the 2019 amendment to section 30(2)(b) applies to pending appeals where the resolution plan was provisionally/ conditionally approved before the amendment. Apart from this, it examined whether section 53 of the IBC, dealing with the priority of payments during liquidation, applies to dissenting financial creditors during the CIRP.

The Supreme Court held that dissenting financial creditors are statutorily entitled to an amount that is not less than the liquidation value of their secured

21 [2024] 1 S.C.R. 114.

interests under Section 30(2)(b)(ii) of the IBC. However, the Supreme Court clarified that dissenting creditors cannot demand the full value of their security interest. The apex court emphasised that this statutory safeguard ensures that dissenting creditors are not prejudiced by the CoC's commercial decisions, but it does not entitle them to preferential treatment over other creditors. It also clarified that the 2019 amendment to Section 30(2)(b) of the IBC, along with the introduction of "Explanation 2", made the amended provision applicable to all pending appeals, ensuring that dissenting financial creditors are paid their liquidation value.

The Supreme Court further clarified that the reference to Section 53 in Section 30(2)(b)(ii) is intended to determine the minimum payment entitlement of dissenting creditors based on liquidation priorities. However, the Supreme Court rejected the argument that dissenting creditors could enforce their security interests under Section 52 during the CIRP. It held that such enforcement would undermine the resolution process and potentially derail approved resolution plans.

The apex court reaffirmed the principle that the commercial wisdom of the CoC is paramount in determining the manner of distribution under a resolution plan. While the CoC enjoys wide discretion, this discretion is subject to the statutory safeguard that dissenting creditors must be paid at least their liquidation value.

With respect to conflict between the precedents, the Supreme Court acknowledged that differing judicial interpretations of Section 30(2)(b)(ii) of the IBC had created ambiguity regarding the rights of dissenting financial creditors in the resolution process. In India, *Resurgence ARC Private Limited* v. *Amit Metaliks Limited*,[22] the Supreme Court emphasised the primacy of the commercial wisdom of the CoC in approving a resolution plan. It held that dissenting financial creditors cannot expect to receive treatment different from what is provided for in the approved resolution plan, provided their entitlement under Section 30(2)(b) of the Code is met. The judgment leaned towards granting the CoC broad discretion in structuring payouts under the resolution plan, including those made to dissenting creditors.

In another contrasting decision in *Committee of Creditors of Essar Steel India Limited* v. *Satish Kumar Gupta,*[23] the apex Court stressed the importance of safeguarding the interests of dissenting creditors by mandating strict adherence to the statutory minimum payout specified under Section 30(2)(b)(ii) of the Code. The Supreme Court emphasised that dissenting creditors must receive an amount equal to or greater than the liquidation value of their claims, regardless of the distribution mechanism adopted by the CoC. This interpretation provided a stronger statutory shield to dissenting financial creditors while simultaneously reaffirming the CoC's authority over the resolution process.

The Supreme Court noted that these judgments, while addressing related issues, had taken diverging views. *Amit Metaliks*[24] leaned towards empowering

22 [2021] 6 SCR 611.

23 [2019] 16 SCR 275.

24 *Supra* note 21.

the CoC's discretion, whereas *Essar Steel*[25] placed greater focus on the statutory protections for dissenting creditors. This divergence had led to uncertainty in the application of Section 30(2)(b)(ii) of the Code, especially in cases involving dissenting secured creditors holding significant security interests.

Recognising the need for clarity, the Supreme Court in this case highlighted the importance of reconciling these precedents to establish a unified framework for interpreting the rights of dissenting financial creditors. To address these concerns, the Supreme Court referred the broader question of the interpretation of Section 30(2)(b)(ii) of the IBC to a larger bench. The questions pertained to the issues to provide authoritative guidance on the extent of the CoC's discretion in distributing pay-outs under a resolution plan, the specific entitlements of dissenting financial creditors, particularly in light of their liquidation value and the interplay between statutory safeguards under Section 30(2)(b)(ii) of the IBC and the commercial decisions of the CoC.

In view of the above findings, the Supreme Court upheld the CoC's approval of the resolution plan but directed that DBS be paid at least the liquidation value of its security interest in monetary terms, as mandated by Section 30(2)(b)(ii) of the IBC.

Unilateral adjustment of tax refunds of corporate debtor against pre-CIRP dues by the income tax department violates IBC provisions or not?

National Company Law Appellate Tribunal had to examine whether the unilateral adjustment of tax refunds of corporate debtor against pre-CIRP dues by the statutory authority violates IBC provisions or not in *Avil Menezes (Liquidator)* v. *Principal Chief Commissioner of Income Tax, Mumbai*.[26]

It held that statutory authorities such as the Income Tax Department must file claims with the liquidator and cannot bypass the equitable distribution framework under Section 53 of the IBC.

The primary issue before the NCLAT was whether the Income Tax Department could unilaterally adjust income tax refunds against pre-CIRP dues during the liquidation process of a corporate debtor. The corporate debtor was admitted to CIRP and later into liquidation. The liquidator issued a public announcement inviting claims from all creditors. During liquidation, the liquidator identified income tax refunds. The Income Tax Department adjusted these refunds against pre-CIRP tax dues unilaterally. The liquidator contended that the refunds were part of the liquidation estate under Section 36 of the IBC; therefore, they should have been distributed equitably among all stakeholders as per Section 53 of the IBC.

The NCLAT clarified that the moratorium under Section 33(5) of the IBC bars the institution of new suits or legal proceedings but does not prohibit the continuation of existing proceedings. Thus, the Income Tax Department's ongoing

25 *Supra* note 22.

26 Company Appeal (AT) (Insolvency) No. 258 of 2024.

assessment and determination of dues during liquidation were deemed permissible. However, the NCLAT emphasised that while tax assessments could continue, recovery actions, including unilateral adjustments of refunds, were impermissible without following the due process prescribed under the IBC.

The NCLAT rejected the contention that the Income Tax Department qualifies as a secured creditor. Referring to Section 245 of the Income Tax Act, the NCLAT noted that the provision does not create a charge or security interest in favour of the department. The NCLAT distinguished this case from *State Tax Officer* v. *Rainbow Papers Ltd.,*[27] holding that the statutory provisions applicable to value-added tax differ significantly from those governing income tax.

The NCLAT acknowledged that Regulation 29 of the IBBI Liquidation Process Regulations permits the principle of set-off for mutual dealings. However, it held that the unilateral action of the Income Tax Department, without filing claims with the liquidator, violated the statutory framework. The NCLAT relied on the Supreme Court's judgment in *Sundaresh Bhatt, Liquidator of ABG Shipyard* v. *Central Board of Indirect Taxes and Customs,*[28] which established that statutory authorities must adhere to IBC procedures for recovery and cannot act unilaterally. The NCLAT highlighted that all creditors, including statutory authorities, are required to submit claims to the liquidator in the prescribed format under Regulation 18 of the IBBI Liquidation Process Regulations. The failure of the Income Tax Department to file claims undermined the principle of equitable treatment, as it bypassed the distribution mechanism under Section 53 of the IBC.

The NCLAT remanded the matter to the Adjudicating Authority to reassess the quantum of set-off and determine whether the adjusted amount exceeded the department's entitlement under the IBC framework. If excess adjustments were found, the Income Tax Department was directed to refund the excess to the liquidation estate.This judgment addressed key aspects of the interplay between the IBC and the Income Tax Act, 1961, particularly during the liquidation process.

Inherent Power of NCLT

In *Greater Noida Industrial Development Authority* v. *Prabhjit Singh Soni*,[29] the apex court examined the inherent power of NCLT to recall its approval of a resolution plan. It held that the NCLT has the inherent power to recall its approval of a resolution plan if procedural irregularities or misclassifications of creditors undermine statutory compliance.

This case arose out of the CIRP initiated against JNC Construction Private Limited, Corporate Debtor(CD), a lessee of land owned by the Greater Noida Industrial Development Authority (GNIDA). GNIDA had leased land to the CD for a residential project under a 90-year lease agreement. The lease terms required payment of a premium in instalments. Upon default by the CD in paying instalments, GNIDA submitted a claim as a financial creditor during the CIRP. However, the

27 2022 SCC OnLine SC 1162.
28 2022 SCC OnLine SC 1101.
29 2024 SCC OnLine SC 122:AIR 2024 SC 1227.

Resolution Professional (RP) classified GNIDA as an operational creditor and excluded it from the Committee of Creditors (CoC).

The resolution plan was approved by the CoC and subsequently by the NCLT. GNIDA, aggrieved by its classification as an operational creditor and alleging procedural irregularities, filed applications before the NCLT to recall the approval of the resolution plan under Section 60(5) of the IBC. The applications were dismissed by the NCLT, and the NCLAT upheld the dismissal. Aggrieved by the decision of the NCLAT, GNIDA approached the Supreme Court.

The Supreme Court delved into the scope of the NCLT's inherent powers,[30] clarifying that as a statutory tribunal, the NCLT derives its authority to exercise inherent powers from Rule 11 of the NCLT Rules, 2016. These powers, akin to those of a civil court under Section 151 of the CPC, allow the NCLT to recall orders in exceptional circumstances to secure the ends of justice or prevent abuse of the process of law. The Supreme Court emphasised that these powers do not confer upon the NCLT an unfettered right to review its decisions on merits. However, they can be exercised in scenarios such as when an order is passed without jurisdiction, when an order is obtained through fraud or misrepresentation and when there has been a violation of the principles of natural justice, such as when a party has not been afforded a fair opportunity to present its case.

Applying this principle, the apex court found merit in GNIDA's contention that it had been excluded from the CoC meetings and that its classification as an operational creditor was incorrect. Since this misclassification had a significant bearing on its rights under the approved resolution plan, the recall application was deemed maintainable.

The Supreme Court addressed the contention that GNIDA's application to recall the approval order was time-barred. It referred to its earlier rulings on the suspension of limitation periods during the COVID-19 pandemic.[31] The apex court observed that GNIDA had acted promptly upon becoming aware of the approval of the resolution plan and had filed its recall application without unreasonable delay. Considering the exceptional circumstances caused by the pandemic and the procedural complexities involved in CIRP-related cases, the Supreme Court held that GNIDA's application was well within the permissible period.

Similarly, with respect to the compliance of the Resolution Plan with Section 30(2) of IBC, the Supreme Court scrutinised the resolution plan to ascertain its compliance with the statutory mandate under Section 30(2) of the IBC. The Supreme Court noted that GNIDA, as a statutory authority, had a charge over the corporate debtor's leased assets, which elevated its claim beyond the ambit of ordinary operational creditors. Thus, recognising the procedural and substantive irregularities in the approval process, the Supreme Court set aside the orders of the NCLT and NCLAT, which had dismissed GNIDA's applications. The apex

30 Insolvency Bankruptcy Code 2016, s. 60(5) and National Company Law Tribunal Rules, 2016, Rule 11.

31 RE: Cognizance for Extension of Limitation, [2021] 2 SCR 640.

court directed that the resolution plan be remanded to the CoC for reconsideration. It ordered the CoC to reassess GNIDA's claims and ensure that the revised resolution plan complies with the requirements of Section 30(2) and the CIRP Regulations. The Supreme Court clarified that while GNIDA's inclusion in the CoC may not alter the broader commercial decisions of the resolution process, its legitimate claims must be addressed fairly and transparently.

Pre-packaged insolvency resolution process

In *Vikash Gautamchand Jain* v. *Kritish Patel,*[32] the NCLAT bench held that the 120-day timeline for completing a Pre-Packaged Insolvency Resolution Process (PPIRP) under Section 54D of the IBC is not absolute and can be extended in exceptional cases where substantial progress has been made. The IBC's objectives of business revival and continuity demand a flexible approach for MSMEs. The NCLAT Principal Bench dealt with whether the statutory limit of 120 days for completing a PPIRP is mandatory or allows for judicial discretion in granting an extension.

The NCLAT clarified that while Section 54D (1) of the IBC prescribes a 120-day limit for completing the PPIRP, this provision is not meant to automatically terminate the process. Relying on principles from judgments such as *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta*and *Surendra Trading Company* v. *Juggilal Kamlapat Jute Mills Co. Ltd.,*[33] the NCLAT held that procedural timelines under the IBC, though crucial, can be extended if justified by valid reasons.

The NCLAT emphasised that the statutory scheme under Section 54D (3) requires the RP to apply for termination of the PPIRP if no resolution plan is approved within the prescribed timeline. However, the Adjudicating Authority retains discretion to extend this period in exceptional cases where substantial progress has been made. The NCLAT observed that the CoC's resolution with a 91.75% majority, coupled with the submission of a revised base resolution plan, constituted sufficient grounds for judicial intervention.

The NCLAT referred to various judgments, including the *Essar Steel India case,*[34] where the Supreme Court had struck down the term "*mandatorily*" in Section 12 of the IBC, allowing extensions in exceptional circumstances. It highlighted that the word *"shall"* in Section 54D of the IBC should not be interpreted as precluding judicial discretion, particularly in light of the IBC's overarching objectives of maximising value and preserving businesses. The NCLAT set aside the Adjudicating Authority's order and allowed the 60-day extension for the PPIRP of Kethos Tiles Pvt. Ltd., which is the CD in this case.

This case marked a pivotal discussion around the procedural timeline for the Pre-Packaged Insolvency Resolution Process (PPIRP) under the IBC. The decision

32 Company Appeal (AT) (Insolvency) No. 1173 of 2024 dated Aug 20, 2024 decided by NCLAT.

33 [2017] 16 SCC 143.

34 [2020] 8 SCC 531.

also emphasised the special framework provided for Micro, Small, and Medium Enterprises ("MSMEs") under Chapter III-A of the IBC.

Withdrawal/Modification of Resolution Plan

In *Deccan Value Investors L.P.* v. *DinkarVenkatasubramanian,*[35] the apex court held that a resolution applicant couldn't withdraw or modify its resolution plan after approval by the CoCunless fraud or misrepresentation is conclusively proven. The IBC prioritises certainty and finality in resolution plans to avoid delays and ensure effective resolution.

The case concerned the resolution plan submitted by Deccan Value Investors L.P. and DVI PE (Mauritius) Ltd. ("Deccan Value") as successful resolution applicants for Metalyst Forgings Limited ("Corporate Debtor"), a company undergoing CIRP under the IBC. The Committee of Creditors (CoC) approved the resolution plan with an overwhelming majority. However, Deccan Value sought to withdraw its resolution plan during the pendency of approval before the NCLT, citing alleged misrepresentation, misinformation, and lack of material disclosures by the Resolution Professional (RP). The primary grounds for withdrawal raised by Deccan Value includedthat the revenue of the Corporate Debtor was predominantly derived from trading, contrary to its representation as a manufacturing entity, as well as allegations of incorrect projections and misleading information. It also included the discrepancies in the financial data and a lack of reliability in the disclosed accounts, and misrepresentation regarding the availability and location of critical assets, including a 12,500MT press stored on a related entity's premises.

The NCLT and subsequently the NCLAT rejected the withdrawal application, holding that the resolution plan, once approved by the CoC, is binding and cannot be withdrawn unless fraud or misrepresentation is conclusively established. Aggrieved, Deccan Value filed an appeal before the Supreme Court.

The Supreme Court reiterated its decision in *Ebix Singapore Private Limited* v. *Committee of Creditors of Educomp Solutions Limited*,[36] holding that a resolution applicant cannot withdraw or modify its resolution plan after approval by the CoC. The apex court emphasised that the resolution plan, once approved by the CoC, is not merely a private contract but a statutory arrangement binding on all stakeholders.It was observed that permitting withdrawals post-CoC approval would lead to delays, undermine the CIRP's objectives, and erode the sanctity of the IBC framework. Such actions would incentivise frivolous bids and jeopardise the certainty and predictability essential to the insolvency resolution process.The Supreme Court dismissed the claims of fraud and misrepresentation raised by Deccan Value, holding that the information memorandum, virtual data room, and supporting documents made available by the RP provided sufficient disclosure.

Regarding the allegations of inaccuracies in data, the apex court held that such discrepancies are inherent in insolvency proceedings and do not constitute

35 [2024] 3 S.C.R. 1044.

36 [2022] 2 SCC 401.

grounds for withdrawal unless there is deliberate concealment or misrepresentation by the RP. The Supreme Court placed reliance on the *clean slate* principle, which ensures that the resolution applicant acquires the CD free of past liabilities but assumes the risks associated with its revival and operations. It emphasised that resolution applicants are sophisticated financial and domain experts, well versed in assessing risks, and cannot later claim ignorance or misrepresentation as grounds for withdrawal.

The Supreme Court clarified that the RP's obligation to provide accurate information is on a "*best effort*" basis, given the constraints and limitations of distressed entities. While the RP must ensure transparency and access to information, it cannot be held liable for every discrepancy or ambiguity, particularly when the resolution applicant has the means to independently verify such data. The apex court noted that the RP had fulfilled its statutory obligations in this case and that the resolution applicant's allegations of concealment were unsubstantiated.In view of the above, the Supreme Court upheld the orders of the NCLT and NCLAT, rejecting Deccan Value's attempt to withdraw its resolution plan. It directed the resolution plan's implementation as approved by the CoC and emphasised that the IBC does not permit post-approval withdrawals except in cases of proven fraud.

Scope of Subrogation Rights for Resolution Applicants and simultaneous insolvency proceeding against guarantors

In *BRS Ventures Investments Ltd.* v. *SREI Infrastructure Finance Ltd.*[37] apex court held that theapproval of a resolution plan for a corporate guarantor does not extinguish the liability of the principal borrower under Section 128 of the Indian Contract Act. Simultaneous or separate insolvency proceedings against guarantors are permissible under the IBC.

This case involved the resolution process of Gujarat Hydrocarbon and Power SEZ Ltd. (CD) and its parent company, Assam Company India Ltd. (ACIL), acting as the corporate guarantor for a loan extended by SREI Infrastructure Finance Ltd., Financial Creditor (FC). The FC advanced 100 crores to the CD, secured by mortgaging leasehold land, pledging shares, and obtaining a corporate guarantee from ACIL. Due to a repayment default, the FC invoked the corporate guarantee and initiated proceedings under Section 7 of the IBC against ACIL.

During the CIRP of ACIL, a resolution plan submitted by BRS Ventures Investments Ltd. (Appellant) was approved, resulting in the FC receiving 38.87 crores against its admitted claim of 241.27 crores. After the resolution plan was implemented, the FC filed another Section 7 application against the CD for the balance of 1,428 crores. The Adjudicating Authority admitted this application, and the NCLAT upheld the admission. Aggrieved by these decisions, BRS Ventures appealed to the Supreme Court.

The Supreme Court reaffirmed that under Section 128 of the Indian Contract Act, 1872, the liability of a corporate guarantor and the principal debtor is co-

37 2024 SCC OnLine SC 1767.

extensive, meaning the creditor can proceed against either or both to recover the debt. The discharge of the corporate guarantor's liability under the CIRP does not absolve the CD from its remaining obligations.

The Supreme Court distinguished the contract between the creditor and the principal borrower from that of the creditor and the guarantor. It reiterated that the approval of a resolution plan for the guarantor addresses only the liabilities of the guarantor and does not affect the rights of the creditor against the principal borrower. The Supreme Court observed that the balance debt of 1,428 crores remained recoverable from the CD, as the resolution plan of ACIL explicitly settled only the liabilities of the guarantor.

The Supreme Court held that Section 60(2) and (3) of the IBC expressly allow simultaneous or separate CIRP proceedings against the corporate guarantor and the Corporate Debtor. The Supreme Court emphasised that a creditor's decision to initiate CIRP proceedings against one does not preclude it from pursuing insolvency or recovery against the other. The creditor's rights are independent under the IBC and Indian contract law. The apex court clarified that the approval of a resolution plan for one entity does not extinguish the liability of the other unless explicitly stated.

The Supreme Court examined Sections 18 and 36 of the IBC to cull out the clear distinction between the assets of a CD and its corporate guarantor. It ruled that the assets of a subsidiary, *i.e.*, the CD, are separate and cannot form part of the resolution plan or liquidation estate of its holding company, *i.e.*, the corporate guarantor.The Supreme Court emphasised that a holding company's ownership of shares in a subsidiary does not translate into ownership of the subsidiary's assets. This distinction safeguards the independent legal identity and financial responsibilities of each entity.

The Supreme Court addressed the appellant's claim that it was entitled to subrogation rights over the CD's remaining liability under Section 140 of the Indian Contract Act. It held that subrogation rights are limited to the extent of the amount paid by the guarantor (or its resolution applicant) to settle the creditor's claim. In this case, the resolution applicant (BRS Ventures) paid 38.87 crores on behalf of ACIL, extinguishing the guarantor's liability. Consequently, the Appellant's subrogation rights were limited to recovering this amount from the CD. The Supreme Court clarified that subrogation does not preclude the financial creditor from pursuing the remaining debt directly against the Corporate Debtor.

Thus, the Supreme Court dismissed the appeal and upheld the financial creditor's right to pursue recovery against the CD for the balance debt. The Apex Court ruled that the liability of the CD to repay the remaining loan amount is not extinguished by the approval of a resolution plan for the corporate guarantor. It emphasised that simultaneous or separate CIRP proceedings can be initiated against both the guarantor and the debtor under the IBC, and a holding company and its subsidiary are distinct legal entities, and the assets of the subsidiary cannot be included in the resolution plan of the holding company. It also held that the

subrogation rights of resolution applicants are limited to the amounts paid by the guarantor to the creditor.

X SPECIAL COURTS AND INSOLVENCY OFFENCES

In *Insolvency and Bankruptcy Board of India* v. *Satyanarayan Bankatlal Malu,*[38] the apex court held that the IBC incorporates Section 435 of the Companies Act, 2013, as it existed at the time of its enactment, establishing Sessions Courts as Special Courts for the trial of IBC offences.

This case centred on the scope of Section 236(1) of the IBC, which provides for the trial of offences under the IBC by a Special Court established under Chapter XXVIII of the Companies Act, 2013. Specifically, the question was whether the Special Court under Section 236(1) referred to the provision as it stood at the time of the enactment of the IBC or as amended by the Companies (Amendment) Act, 2018.

The facts involve a petition initiated by SBM Paper Mills Private Limited under Section 10 of the IBC for initiating its CIRP. During the proceedings, the ex-directors of the corporate debtor, including SatyanarayanMalu, entered into a One-Time Settlement (OTS) with the financial creditor but subsequently failed to comply with its terms. The NCLT, finding this a fit case for prosecution, directed the Insolvency and Bankruptcy Board of India (IBBI) to file a complaint under Section 236 of the IBC for offences under sections 73(a) and 235A of the IBC.

The IBBI filed the complaint before the Sessions Judge, but the respondents, by way of a writ petition, challenged the jurisdiction of the Sessions Court before the High Court of Bombay, citing amendments to the Companies Act, 2013. The High Court allowed the writ petition, quashed the proceedings, and held that the jurisdiction lay with a Magistrate's Court, not a Sessions Court. This decision was appealed before the Supreme Court.

The apex court held that Section 236(1) of the IBC constitutes "*legislation by incorporation*" rather than "*legislation by reference*". This means that the provisions of Section 435 of the Companies Act, 2013, as they existed at the time of the enactment of the IBC in 2016, were incorporated into Section 236(1). Subsequent amendments to Section 435, including the creation of two categories of Special Courts under the Companies (Amendment) Act, 2018, had no bearing on the IBC. The Apex Court noted that the IBC's reference to Special Courts established under Chapter XXVIII of the Companies Act, 2013, was specific and not general.

With respect to the jurisdiction of the Special Court, the court observed that at the time of the IBC's enactment, Section 435 of the Companies Act mandated that Special Courts be presided over by a Sessions Judge or an Additional Sessions Judge. This jurisdictional structure was carried forward into the IBC. The Supreme Court rejected the High Court's reasoning that post-2018 amendments restricted the jurisdiction of Special Courts under the IBC to Magistrates. It was observed that the High Court erred in conflating the amended Companies Act provisions

38 [2024] 161 taxmann.com 578 (SC):2024 SCC OnLine SC 560.

with the standalone framework of the IBC.The Supreme Court quashed the High Court's decision and restored the proceedings before the Sessions Court. It was observed that the High Court's order undermined the statutory scheme of the IBC and resulted in procedural delays contrary to the IBC's objectives.

XI MANDATORYTIMELINE AND LIQUIDATION UNDER IBC

Timeline for depositing the balance sale consideration during liquidation, Mandatory or not

In *S. Palanivel* v. *P. Sriram, CS, Liquidator,*[39] the Supreme Court held that the 90-day timeline for depositing the balance sale consideration during liquidation is mandatory under the IBBI Regulations. However, extraordinary circumstances, such as the COVID-19 pandemic, may justify limited deviations to ensure fairness and maximise asset realisation.

This case arose from the liquidation of Sri Lakshmi Hotels Pvt. Ltd. ("Corporate Debtor") under the IBC. The appellant, V.S. Palanivel, a former Managing Director and shareholder of the Corporate Debtor, challenged the validity of the liquidation process, focusing on the conduct of the e-auction, the reduction in reserve price, the timeline for payment of the balance sale consideration, and adherence to regulations governing liquidation. The case involved an auction conducted during the COVID-19 pandemic, raising unique challenges about statutory timelines and the role of regulatory flexibility.

The Supreme Court ruled that the reduction of the reserve price by 25% in the second auction complied with Regulation 33 and Clause 4A of Schedule I of the IBBI Liquidation Process Regulations. The liquidator was permitted to reduce the reserve price by up to 25% after a failed auction. The liquidator's actions aligned with the statutory mandate to maximise the realisation of assets. The Supreme Court affirmed that the timeline prescribed in Clause 12 of Schedule I, which requires the highest bidder to deposit the balance sale consideration within 90 days, was mandatory. Non-compliance ordinarily results in automatic cancellation of the sale. However, the Supreme Court acknowledged that the COVID-19 pandemic presented extraordinary circumstances, justifying the relaxation of timelines in this case.

XII INSOLVENCY AND BANKRUPTCY CODE AND JURISDICTION OF THE HIGH COURT UNDER ARTICLE 226

The apex court in *KSK Mahanadi Power Co. Ltd. (CoM)* v. *U.P. Power Corporation. Ltd,*[40] the Supreme Court held that the High Court's direction to defer the CIRP was not justified, emphasising that such interference breached the established legal framework of the IBC. The case revolves around the Insolvency and Bankruptcy Code (IBC) and the High Court's jurisdiction under Article 226 of the Constitution.The case stemmed from a dispute between KSK Mahanadi, a power generation company, and UPPCL, a power distribution company, regarding

39 [2024] 8 S.C.R. 1263.

40 (2025) 253 Comp Case 57.

contractual obligations and potential claims related to a Power Purchase Agreement (PPA).The matter involved the application of the IBC, specifically the CIRP process for a stressed asset, and whether the High Court, exercising its jurisdiction under Article 226, could interfere with the ongoing CIRP. The High Court had initially directed a deferment of the CIRP, but the Supreme Court overturned this decision. The case also touches upon the approval of a resolution plan for KSK Mahanadi, with NCLT Hyderabad approving the plan. In essence, the case highlights the interplay between the IBC and the power of the high courts under Article 226. It emphasised that the High Court should limit its interference with the IBC process.

XIII CONCLUSION

An analysis of the case laws in the year 2024 shows that the Courts and Tribunals have delivered several landmark judgements in the area of company law. It is appreciable to witness that many of the decisions with reference to the Insolvency and Bankruptcy Code, 2016, have significantly shaped the interpretation and implementation of the Code. They have addressed critical issues of Code, clarified procedural nuances and reinforced the objectives of the IBC to ensure time-bound resolution and maximisation of value for stakeholders involved. During this year, the apex court, through the Electoral Bond case,attempted to reverse the trend of increased corporate influence in politics and emphasised the importance of transparency and accountability in political funding by corporations.About insolvency cases, the apex court made several recommendations to reform the IBC and addressed systemic deficiencies in the insolvency process.The apex court opined and insisted that the powers of NCLT and NCLAT to extend timelines under the IBC must be exercised judiciously and not mechanically. In another instance, the Supreme Court also questioned SEBI regarding the delay in issuing the show cause notice after a 10-year investigation, indicating potential issues with the regulatory process.The extraordinary delay in the corporate insolvency process inthe Jet Airways case compelled the Supreme Court to exercise its powers under Article 142 of the Constitution, ordering liquidation as a last resort to prevent further erosion of the value of Jet Airways in the aviation sector. These instances of 2024 show the proactive role in the corporate matters by the judiciary in India.