**IM CODE- 22**

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**VI SURANA & SURANA AND UPES SCHOOL OF LAW NATIONAL INSOLVENCY LAW MOOT COURT COMPETITION, 2023**

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**BEFORE THE HON'BLE SUPREME COURT OF MALTA**

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*In the matter of*

DEORA NRE COKE LTD. (APPELLANT) V. SINGHANIA GROUP OF COMPANIES. (RESPONDENT).

***Along with***

FU-SAM (APPELLANT) V. FINANCIAL CREDITOR (RESPONDENT)

***Along with***

AXIS TELECOM PVT. LTD. (ATPL) (APPELLANT) V. DANOBE INFORMATION TECHNOLOGY LIMITED (RESPONDENT).

***Along with***

VNTEK (APPELLANT) V. MR. KASI NAYINAR PARACACEKARAN (RESPONDENT)

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PETITIONS FILED UNDER SECTION 62 OF IBC

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***Written submission on the behalf of the Appellant***

***Counsel on the behalf of Appellant***

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|---|---|---|
| **1.** | **¶** | **Paragraph** |
| **2.** | **S.** | **Section** |
| **3.** | **AIR** | **All India Reporter** |
| **4.** | **Anr.** | **Another** |
| **5.** | **Art.** | **Article** |
| **6.** | **CIRP** | **Corporate Insolvency Resolution Professional** |
| **7.** | **Co.** | **Company** |
| **8.** | **FC** | **Financial Creditor** |
| **9.** | **OC** | **Operational Creditor** |
| **10.** | **IBC** | **Insolvency And Bankruptcy Code** |
| **11.** | **Ltd.** | **Limited** |
| **12.** | **NCLT** | **National Company Law Tribunal** |
| **13.** | **NCLAT** | **National Company Law Appellate Tribunal** |
| **14.** | **Ors.** | **Others** |
| **15.** | **Pvt.** | **Private** |
| **16.** | **SC** | **Supreme Court** |
| **17.** | **SCC** | **Supreme Court Cases** |
| **18.** | **SCR** | **Supreme Court Reports** |
| **19.** | **v.** | **versus** |
| **20.** | **Hon'ble** | **Honourable** |
| **21.** | **Id** | **Idid** |
| **22.** | **i.e.,** | **Id est (that is)** |

| | | |
|---|---|---|
| **23.** | **prop** | **Proposition** |
| **24.** | **IBBI** | **INSOLVENCY AND BANKRUPTCY BOARD OF INDIA** |
| **25.** | **IRP** | **Interim Resolution Professional** |
| **26.** | **RP** | **Resolution Professional** |
| **27.** | **CD** | **Corporate Debtor** |
| **28.** | **CoC** | **Committee of creditors** |
| **29.** | **u/a** | **Under article** |
| **30.** | **u/s** | **Under section** |
| **31.** | **r/w** | **Read with** |
| **32.** | **CJI** | **Chief Justice of India** |
| **33.** | **INR** | **Indian Rupees** |

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## STATEMENT OF JURISDICTION

The instant matter concerns about liquidation proceedings under IBC 2016 with the scheme for compromise and arrangement made under companies act 2013. promoter is eligible to file application for compromise and arrangement while ineligible under section 29A of the IBC to submit a Resolution Plan with the security interest created on the assets of corporate debtor be extinguished even if that interest has been created for the loan and the Insolvency Proceeding can be restored in case of default when consent term is entered between parties.

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*Section 62 of Insolvency and Bankruptcy Code, 2016.*

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REMEDIES UNDER SECTION 62 OF IBC –

(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order.

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(2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days.

THE APPELLANT HEREBY SUBMITS TO THE HON'BLE SUPREME COURT UNDER SECTION 62 OF THE IBC.

All of which respectfully submitted.

## STATEMENT OF FACT

In the first scenario, it revolves around Deora NRE Coke Ltd (DNCL) facing insolvency, with Mr. Pipara, a promoter, proposing a resolution plan. However, he lost his eligibility under Section 29A of the IBC, which resulted in the lack of an authorized plan and the liquidation of DNCL. Despite Mr. Pipara's appeal, the liquidation ruling was maintained by the NCLAT. After that, he applied for a compromise and arrangement scheme under the 2013 Companies Act, but Singhania Group of Companies objected, claiming he was ineligible under Section 29A. The NCLAT concurred with SGOC, holding that promoters are not permitted to submit such petitions according to Section 29A. Now, Mr. Pipara is appealing this decision to the Supreme Court, claiming serious issues with the promoters' rights and the insolvency resolution process. In summary, Mr. Pipara put out a DNCL resolution proposal but lost his eligibility according to Section 29A of the IBC. DNCL faced liquidation since no plan had been authorized. Mr. Pipara filed a plan application after filing an appeal, but SGOC objected on the grounds that he was ineligible. The Supreme Court will now rule whether Section 29A extends to prevent Mr. Pipara from presenting the plan, having significant ramifications for bankruptcy resolution and promoters' rights. The NCLAT sided with SGOC, and now the question is whether it does.

In the second scenario, Mr. Shroff, the promoter and director (suspended) of Fu-Sam Power Systems Limited, submitted an application under Section 7 of the IBC, on behalf of the financial creditor, which resulted in the admission of Corporate Insolvency Resolution Process against Fu-Sam. Mr. Shroff filed a plan with Allianz FRC Private Limited when the Resolution Professional requested resolution plans. On March 3, 2022, the NCLT ordered the liquidation of Fu-Sam and appointed a Liquidator after the CoC determined that his plan did not qualify under Section 29A(h) of the IBC. A scheme of compromise or arrangement must be accepted by the liquidator in accordance with Sections 230 to 232 of the Act of 2013. Mr. Shroff continued to express an interest in submitting schemes, but on August 19, 2022, the Liquidator notified him that he was no longer eligible to do so, under the IBC, eliminating him from making a scheme proposal under Section 230 of the Companies Act, 2013. On September 30, 2022, his appeal of this ruling before the NCLT was rejected based on the judgment of

September 24, 2022, and Sections 29A and 35(1)(f) of the IBC, 2016. On November 19, 2022, his following appeal to the NCLAT was likewise rejected, giving rise to the current appeal.

In the third case, Axis Telecom Pvt. Ltd. (ATPL), a significant participant in the telecom industry, filed a company petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, alleging Danobe Info Technology Limited had defaulted on payments of Rs. 7,71,32,111/-. The parties executed a consent term during the proceedings, but the Adjudicating Authority nonetheless allowed the Company Petition. The suspended director was then given permission by the Appellate Tribunal to withdraw both the appeal and the Section 12-A Company Petition. The Company Petition was withdrawn when the Insolvency Resolution Professional applied under Section 12A to the Adjudicating Authority. Danobe Info Technology, however, stopped making payments following the withdrawal, in violation of the agreement's terms. Axis Telecom submitted an interim application seeking for the revival of the Company Petition, but it was rejected because the IBC, 2016, does not have a specific provision for reopening a withdrawn Company Petition.

In the fourth scenario, Vntek Auto Limited asked VRS Malta Financial Services Limited and M&N Finance Limited for a 700-crore rupee short-term loan for its group firms Kapro Engineering Limited and M.L.D Investments Private Limited. The company was required to pledge 66.77% of its ownership in K.M.P Auto Limited as collateral for the loan. The credit facilities for Kapro and MLD were secured by the execution of security trustee agreements. Vntek Auto Limited was subject to the Corporate Insolvency Resolution Process (CIRP) in 2020. The interim resolution professional rejected the claim made by Appellant No. 1 as a secured financial creditor for INR 700 crores, and the Appellants did not object. The Adjudicating Authority and the Committee of Creditors both accepted the resolution plan proposed by Som House Group. But Som House Group did not carry out what it was supposed to do under the plan. The Adjudicating Authority rejected the Appellants' application based on pledged shares, and the Appellate Authority upheld the decision, stating that the Adjudicating Authority's decision to reject Appellant No. 1's claim was not in dispute. The Appellants filed an appeal with the Supreme Court of Malta, and a five-person panel led by the Hon'ble Chief Justice is currently reviewing the matter.

## ISSUES FOR CONSIDERATIONS

### ISSUE -1

**WHETHER IN THE LIQUIDATION PROCEEDING UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016, THE SCHEME FOR COMPROMISE AND ARRANGEMENT CAN BE MADE IN TERMS OF SECTIONS 230 TO 232 OF THE COMPANIES ACT;**

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### ISSUE -2

**IF SO PERMISSIBLE, WHETHER THE PROMOTER IS ELIGIBLE TO FILE APPLICATION FOR COMPROMISE AND ARRANGEMENT, WHILE HE IS INELIGIBLE UNDER SECTION 29A OF THE IBC TO SUBMIT A 'RESOLUTION PLAN'.**

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### ISSUE-3

**WHETHER SECURITY INTEREST CREATED ON THE ASSETSOF THE CORPORATE DEBTOR BE EXTINGUISHED EVEN IF THAT INTEREST HAS BEEN CREATED FOR THE LOAN AVAILED BY THE THIRD, NOT NECESSARILY BY THE CORPORATE DEBTOR.**

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### ISSUE-4

**WHETHER INSOLVENCY PROCEEDINGS CAN BE RESTORED IN CASE OF DEFAULT WHEN CONSENT TERM IS ENTERED BETWEEN PARTIES?**

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## SUMMARY OF ARGUMENTS

1. **In Liquidation proceeding under IBC 2016 – the scheme for compromise and arrangement can be made in terms of section 230-232 of the companies act.**

   The appellants hereby humbly submit before this hon'ble court that the liquidation proceedings under insolvency and bankruptcy code, 2016 the procedure for compromise and arrangement can be made in terms of sections 230 to 232 of the companies act and that there does not exist any substantial evidence to prove the existence of such agreement also does not place any embargo on any person for submitting the resolution plan. **(1.1)** Section 230 to 232 of company's act should not get coincides with the companies act of 29A. **(1.2)** Section 230 does not disqualify the promoter to propose a scheme of compromise or arrangement. **(1.3)** Absence of approval of 'resolution plan' going beyond 270 days is not be taken under consideration.

2. **Even if the promoter is ineligible under section 29A of IBC to submit a resolution plan, he is still eligible to file application for compromise and arrangement.**

   Mr. Pipara, the petitioner, claims that the scheme of compromise and arrangement under Section 230 of the 2013 Companies Act should not be governed by the NCLAT's interpretation in Singhania Group of Companies v. Mr. Pipara. His application for the plan needs to be taken into consideration on its own terms; he should not be excluded just because he is ineligible under Section 29A of the IBC. The plan provides a workable resolution for DNCL and is in everyone's best interest, thus it merits careful examination and acceptance.

3. **The security interest created on the assets of corporate debtor should not be extinguished even if that interest has been created for the loan availed by the third party, not necessarily by the corporate debtor.**

The arguments placed a strong emphasis on the retention of security interests in a corporation's debtor's assets, even where those assets had been pledged as collateral for a loan received by a third party. The IBC seeks to preserve a fair and equitable settlement procedure that considers the rights of all parties involved, including secured creditors. Erasing the security interest just because a third-party loan exists would be unwise since it may create an unsettling precedent. Such a result would not follow the fundamental rules of justice and might damage the credibility of the system for resolving insolvencies. The petitioner aims to safeguard the fairness of the procedure and guarantee that genuine secured creditors receive the proper protection under the IBC by arguing for the preservation of security interests.

4. **Insolvency proceedings can be restored in case of default also when consent term is entered between parties.**

ATPL claims that the amount claimed by the Applicant is blatantly true and not exaggerated. Since the Respondent again defaulted on a fresh tranche, it forms a distinct default that is not covered by the prior settlement since this consent provision was not meant to relieve the Respondent from future defaults. According to the reasons, the revival of proceedings following withdrawal due to a subsequent default is not particularly addressed by the Insolvency and Bankruptcy Code. The Code intends to defend the interests of creditors and provides a useful resolution process; thus, the lack of such provisions should not stop ATPL from taking legal action for further defaults. Overall, ATPL's arguments aim to show that their request for the revival of the Company Petition is maintainable. They point to a genuine disagreement over the amount requested and the absence of clauses that forbid resuming insolvency proceedings after withdrawal in the event of a subsequent default. **(1.1)** That the Applicant has inflated the amount of debt. **(1.2)** That Whether the Revival of the Company Petition can be Ratified Under Insolvency and Bankruptcy Code.

## ARGUMENTS ADVANCED

### 1. WHETHER IN THE LIQUIDATION PROCEEDING UNDER INSOLVENCY AND BANKRUPTCY CODE, 2016, THE SCHEME FOR COMPROMISE AND ARRANGEMENT CAN BE MADE IN TERMS OF SECTIONS 230 TO 232 OF THE COMPANIES ACT.

**1.** The Counsels for the appellant humbly contend that the scheme for compromise and arrangement can be made under the liquidation proceedings of IBC 2016, in terms of section 230 to 232 of the Companies Act, 2013. It is contended that then act does not place any embargo on any person to submit the scheme and the contentions laid herein are – **[1.1]** Section 230 to 232 of company's act should not get coincides with the companies act of 29A. **[1.2]** Section 230 does not disqualify the promoter to propose a scheme of compromise or arrangement. **[1.3]** Absence of approval of 'resolution plan' going beyond 270 days is not be taken under consideration.

**[1.1] Section 230 to 232 of company's act should not get coincides with the companies act of 29A.**

**2.** The appellant humbly argues that Section 230-232 of the Companies Act, 2013 should not be brought into line with the Insolvency and Bankruptcy Code of 29A because it grants authority to reach compromise and agreements as part of the liquidation process and does not prohibit anyone from coming up with an arrangement plan. Pipara, Mr. Even during the liquidation period, the corporate debtor can reach agreements with the creditors, shareholders, or other members after hearing the parties' legal counsel; nonetheless, we are not inclined to exclude any time for the purpose of computing the 270-day term of liquidation.

**3.** The insolvency resolution process makes it clear that the adjudicating authority's and this appellate tribunal's orders will not stand in the way of the tribunal passing an appropriate ruling in accordance with the law on the petition filed under Section 230 of the Companies Act 2013, which should not conflict with the provisions of the IBC code. They are also not inclined to interfere with the impugned order dated December 11, 2020.

4. *Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & ors,*[1] where it is noted that there is no mention of liquidation in the preamble, which is only used as a last resort if there is either no resolution plan in place or the resolution plans that have been provided are inadequate. The corporate debtor's business may still be sold as a going concern by the liquidator even during the liquidation process.
5. When a compromise or arrangement is offered, Section 230's provision for a scheme for compromise or arrangement provides the following additional explanation:
   - between a company and any class of its creditors, or between
   - firm and any class of its members,
6. The tribunal may order a meeting of the creditors or class of creditors, or of the members or class of members, of the company, of any creditor or member of the company, or, in the event of a company that is being wound up, of the liquidator. members will be contacted, held, and conducted as the tribunal specifies. A reorganization of the company's share capital by the consolidation of shares of various classes, or by using both methods, is considered an arrangement for the purposes of this subsection.
7. As in the case of *Arun Kumar Jagatramka vs Jindal steel and power 2021*[2] it is contested that a scheme under Section 232 of The Companies Act, 2013 is a valid method of revival of the corporate debtor, and the IBBI (Liquidation Process) Regulations, 2016 (in short "Liquidation Process Regulations") and a scheme under section 230 of The Companies Act, 2013 should be seen harmoniously for revival of the corporate debtor.
8. Given the foregoing, it is proposed that the liquidation action under IBC can be made in terms of compromise or arrangement under Sections 230 to 232 of the Companies Act because the two laws are incompatible.

**[1.2] Section 230 to 232 does not disqualify the promoter to propose a scheme of compromise or arrangement.**

9. It is argued that the promoter is not ineligible to suggest a compromise or agreement under sections 230 to 232 of the company's statute. A strong indication that a disqualification or

[1] Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & ors, (2019) 4 SCC 17

[2] Arun Kumar Jagatramka Vs Jindal Steel And Power (2020) Ibclaw.In 44 SC.

ineligibility under Section 29A is not included in Section 230 of the Act of 2013 is the addition of the proviso to Regulation 2B of the Liquidation Process Regulations.

(i) Chapter II of the IBC indicates that the CIRP can be invoked in three modes:

(a) By a financial creditor under Section 7;

(b) By an operational creditor under Section 9; and,

(c) By a corporate debtor under Section 10.

(ii) The IBC and its regulations indicate that there is a clear distinction between:

(a) the settlement mechanism which allows for a settlement upon which the corporate debtor would stand restored to the promoter together with all its assets and liabilities; and

(b) the resolution mechanism under which, upon the acceptance of a resolution plan, the company moves over to the control of the acquirer on a clean slate for a fixed consideration, consequent to the provisions of Section 31[3];

**10.** The resolution mechanism, whereby, upon the acceptance of a resolution plan, the company moves over to the control of the acquirer on a clean slate for a fixed consideration, in accordance with the provisions of Section 31; and (a) the settlement mechanism, which permits a settlement upon which the corporate debtor would stand restored to the promoter together with all of its assets and liabilities; Since Mr. Pipara and Mr. Shroff are both promoters, these sections cannot prevent them from proposing their scheme of compromise or arrangement because Section 7(1) states that a financial creditor may file an application for CIRP against a corporate debtor before the Adjudicating Authority after a default has occurred, either alone or in conjunction with other financial creditors. In which the NCLT, in an order dated March 5, 2021, acknowledged it. Following that, CIRP's plot against Fu-Sam was started.

**11.** The Counsel contends that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to

[3] Arun Kumar Jagatramka vs Jindal steel and power (2020) ibclaw.in 44 SC.

the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

**12.** In *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & ors*[4], it is noted that the preamble makes no mention of liquidation, which is only used as a last resort if there is either no resolution plan in place or the resolution plans that have been submitted are inadequate. The corporate debtor's business may still be sold as a going concern by the liquidator even during the liquidation process.

**13.** Additionally, the Supreme Court made it clear in a judgment that the IBC's Section 238—which addresses the overriding impact of the Code—predominates over other laws, including the Companies Act. The NCLAT noted that the provisions of the Companies Act relating to schemes of compromise and arrangement cannot be invoked after a liquidation decision is obtained under the IBC, further supporting the idea that the promoter cannot be disqualified from proposing his scheme.

**14.** As a result, the knowledgeable attorney argues that the promoter should not be disqualified from proposing a scheme of compromise or arrangement under Sections 230 to 232 of the corporation's act.

**[1.3] Absence of approval of 'resolution plan' going beyond 270 days is not be taken under consideration.**

**15.** The appellant councils humbly submits that the allegation of failure to approve a "resolution plan" for a period longer than 270 days must not be taken into consideration because the time spent was on activities that were excluded from the calculation of the 270-day period. They also asked the appellant tribunal to exclude them when the "resolution plan" is said not to have been authorized. When the "plan" was submitted, section 29A was added via company appeal, which prevented the resolution process from moving forward and rendered the promoter ineligible in accordance with section 29A, which expressly states that this Section does not apply to an individual acting jointly or in concert with, closely connected to, or related to, an ineligible person.

**16.** Regarding the claim that the promoter's "resolution plan" and the remaining "Plans" were taken up for discussion by the "committee of Creditors," The promoters may be willing to

[4] Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & ors, (2019) 4 SCC 17

submit the highest bid in certain circumstances. The promoter's proposal will benefit the creditors, they are assured of it. These notions each have a unique fundamental idea. While this is typically not the case with the plan under Section 230, the insolvency under the IBC uses the debtor-in-control paradigm. IBC and the Companies Act are both economic laws, thus it is important to respect the business judgment of creditors and members and not to let it trump morals.

**17.** Since promoter is the member of the company, it is no doubt that he is eligible to bring proposal for scheme and arrangement under Section 230. Hence, there should be minimum restrictions imposed at this stage and commercial wisdom of the creditors or the members should be revered. This will also help in realising one of the objectives of IBC which is to protect the surplus value of the corporate entity and preventing it from piecemeal liquidation.

**18.** The NCLAT ruled in the matter of that the IBC's provisions supersede those of the Companies Act and that the liquidator has sole control over the corporate debtor's assets after a liquidation order has been granted.

**19.** It was also determined that the NCLAT made it plain that the Companies Act's prohibitions against the use of schemes of compromise and arrangement once an IBC liquidation judgment has been issued are inapplicable once the NCLAT reached this determination. The NCLAT decided that the liquidation procedure must adhere to the IBC. Further in the case it was contended that the *Innoventive Industries Ltd. v. ICICI Bank (2018* [5]*:* The Supreme Court held that the provisions of the IBC are exhaustive and that the resolution process under the IBC takes precedence over other proceedings, including those under the Companies Act.

**20.** Additionally in the *United Bank of India v. Satyawati Tondon (2010)*[6]. The Supreme Court held that the powers of the High Court under Sections 391 to 394 of the Companies Act (equivalent to Sections 230 to 232) are not applicable once a winding-up order is passed, and the proceedings must be conducted under the provisions of the Companies Act relating to winding up.

[5] Innoventive Industries Ltd. v. ICICI Bank Civil appeal no. 8337/8338 of 2017

[6] United Bank of India v. Satyawati Tondon 8 SCC 110: (2010)3 SCC (CIV) 260

**21.** In the case it has been stated that the order has been passed on 3rd march 2022 in scenario 2 and the contention justifies from the case of *State Bank of India v. Videocon Industries Ltd. (2020)*[7]: where the NCLAT observed that the provisions of the Companies Act, including Sections 230 to 232, do not apply once a liquidation order is passed under the IBC. The NCLAT held that the liquidation process must be conducted in accordance with the provisions of the IBC.

**22.** In the further case it was contended that in the case *of Forech India Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2019*[8]*):* The NCLAT held that the provisions of the IBC prevail over the provisions of the Companies Act, and the powers of the liquidator appointed under the IBC are exclusive in a liquidation proceeding.

**23.** Considering the grounds, the councils argue against interpreting the lack of acceptance of the "resolution plan," which has been outstanding for more than 270 days[9], and against attributing it to a lack of time.

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## 2. IF SO PERMISSIBLE, WHETHER THE PROMOTER IS ELIGIBLE TO FILE APPLICATION FOR COMPROMISE AND ARRANGEMENT, WHILE HE IS INELIGIBLE UNDER SECTION 29A OF THE IBC TO SUBMIT A 'RESOLUTION PLAN'.

**24.** It is submitted by the Ld. Tribunal by the order dated 24th September, 2022 that promoters who are ineligible to propose a resolution plan under Section 29A of the IBC are not entitled to file an application for compromise and arrangement under Sections 230 to 232 of the Companies Act, 2013. The judgement was rendered in an appeal filed by Singhania Group of Companies, an unsecured creditor of the corporate debtor DNCL (Deora NRE Coke Ltd).

[7] State Bank of India v. Videocon Industries Ltd. (2020) SCC Online NCLT 13182

[8] Forech India Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. CIVIL APPEAL NO. 818 OF 2018

[9] Moot Proposition, p 11 ¶ 4

**25.** Mr. Pipara challenged the order dated 24th September, 2022 of the NCLAT, inter alia, on the ground that Section 230 of the Companies Act, 2013 does not place any embargo on any person for the purpose of submitting a scheme.

**26.** The Counsel humbly submits before the Hon'ble Supreme Court that **[2.1]** Separate Sets of Legal Rules and Regulations, Which Are Not Interlinked To Each Other, **[2.2]** The primary objectives of the Insolvency and Bankruptcy Code 2016 involve Preservation of Business and Maximization of Assets, **[2.3]** The Insolvency and Bankruptcy Code is for reorganization, it does not sustain for the purpose of corporate death, **[2.4]** The duties of a liquidator encompass overseeing Compromise and Arrangement matters in accordance with Section 230 of the Act, **[2.5]** The processes and procedures followed in making decisions are unbiased, transparent, and consistent, thereby upholding principles of justice and equity. **[2.6]** Comprehensive encapsulation of the main arguments articulated throughout the discussions.

## 2.1 Separate Sets of Legal Rules and Regulations, Which Are Not Interlinked To Each Other

**27.** The Counsel contends that Section 29A of the Insolvency and Bankruptcy Code (IBC) does not contain any explicit language that categorically forbids someone who has been found ineligible under its provisions from submitting a proposal for a compromise and arrangement under Section 230 of the Companies Act of 2013. The lack of a clear connection between the two sections raises concerns about how eligibility requirements for insolvency procedures and the start of restructuring mechanisms interact, necessitating a deeper look at the legislative purpose and any potential repercussions.

**28.** Section 35(1)(f) extends the ineligibility where the liquidator is conducting a sale of the assets of the corporate debtor in liquidation. It has been submitted in this context that where an application for withdrawal under Section 12-A is allowed, the company reverts to the promoter. Placing a scheme under Section 230 of the Act of 2013 on the same pedestal, it has been urged that there is no reason to prevent a person who falls in the class of those ineligible under Section 29A from submitting a scheme of compromise or arrangement

under Section 230 of the Act of 2013. This verdict was given by the Supreme Court in the decision of *Arun Kumar Jagatramka vs Jindal Steel and Power Ltd*.[10]

**29.** The IBC and the Companies Act are two independent sources of law with distinct functions altogether. While the Companies Act is largely concerned with corporate governance and restructuring, while, the IBC principally deals with insolvency resolution and the maximize the value for all stakeholders. The eligibility requirements for one should not consequently automatically extend to the processes for the other.

**30.** In the case of *K. Sashidhar v. Indian Overseas Bank (2018)*[11], The National Company Law Appellate Tribunal (NCLAT) affirmed the distinctive concept between the IBC and the Companies Act. According to the NCLAT, a person is not inherently ineligible to submit a resolution plan under Section 230 of the Companies Act of 2013, even if they are disqualified under Section 29A of the IBC. The eligibility requirements under one legislation should not automatically apply to the other is further supported by this decision.

**31.** The Counsel contends that there is no reference in the body of the IBC to a scheme of compromise or arrangement under Section 230 of the Companies Act of 2013. Sub-section (1) of Section 230 was however amended with effect from 15th November 2016 to allow for a scheme of compromise or arrangement being proposed on the application of a liquidator who has been appointed under the provisions of the IBC. The substratum is that Section 230[12] is not regulated by the IBC but is a provision independent of it, though after

**32.** the amendment of Sub-section (1), a compromise or arrangement can be proposed by the liquidator appointed under the IBC. In the decision of *Meghal Homes Pvt Ltd. v Shree Niwas Girni K. K. Samiti, 2007*[13], the Court held that the liquidator is an additional person who may apply under Section 391, Companies Act, 1956 (corresponding to Section 230 of the Companies Act, 2013.

**33.** In the decision of *Essar Steel India Limited v. Satish Kumar Gupta*,[14] the Supreme Court stressed the need of resolution plans being as practical as possible. The Court agreed that

[10] Arun Kumar Jagatramka vs Jindal Steel and Power Ltd. Civil Appeal No. 9664 of 2019

[11] K. Sashidhar v. Indian Overseas Bank Civil Appeal No.10673 Of 2018.

[12] The Companies Act, 2013.

[13] Meghal Homes Pvt Ltd. v Shree Niwas Girni K. K. Samiti, 2007, Appeal (civil)3179-3181 of 2005.

[14] Essar Steel India Limited v. Satish Kumar Gupta, CIVIL APPEAL NO. 8766-67 OF 2019.

the resolution applicant's eligibility under Section 29A must be assessed considering the IBC's goal of ensuring the corporate debtor's resurrection and continuance.

**34.** The Counsel submits that the qualifying requirements under Section 29A should not unreasonably limit workable plans for the revival of the firm when formulating schemes under Section 230. In the decision of *Renaissance Steel India Pvt. Ltd. v. Vardhman Industries Ltd. & Ors. (2021)*,[15] the Supreme Court stressed the need of resolution plans being as practical as possible. The Court agreed that the resolution applicant's eligibility under Section 29A must be assessed considering the IBC's goal of ensuring the corporate debtor's revival and continuance. The qualifying requirements under Section 29A should not unreasonably limit workable plans for the resurrection of the firm when formulating schemes under Section 230.

**2.2. The primary objectives of the Insolvency and Bankruptcy Code 2016 involve Preservation of Business and Maximization of Assets:**

**35.** Creating an opportunity for the revival and continuation of the firm, which is in the interest of the stakeholders, is made possible by allowing disqualified promoters to put out a compromise proposal. A more effective resolution procedure may be achieved if a disqualified promoter offers a credible and beneficial plan. This will maximize the corporate debtor's assets and improve returns for the creditors.

**36.** The Supreme Court of India underlined the significance of maximizing the value of distressed assets in the judgment of *Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018)*[16]. The court determined that the IBC's objective is to encourage settlement and resurrection of a corporation, not liquidation. This concept is consistent with the argument that a promoter should not necessarily be prevented from submitting a plan of compromise and arrangement under the Companies Act if it is intended to preserve value.

[15] Renaissance Steel India Pvt. Ltd. v. Vardhman Industries Ltd. & Ors, Company Appeal (AT) (Insolvency) No 175 OF 2021

[16] Innoventive Industries Ltd. v. ICICI Bank & Anr. CIVIL APPEAL NOs. 8337-8338 OF 2018

**2.3. The Insolvency and Bankruptcy Code is for reorganization, it does not sustain for the purpose of corporate death:**

**37.** In the decision of *Swiss Ribbons Private Limited v. Union of India*[17] which was rendered on 25 January 2019, the court held that the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is affected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs.

**38.** When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it can repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. In the case of *Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta, 2019*[18]. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

**2.4. The duties of a liquidator encompass overseeing Compromise and Arrangement matters in accordance with Section 230 of the Act**

**39.** A scheme of compromise or arrangement under Section 230[19], in the context of a company which is in liquidation under the IBC, follows upon an order under Section 33[20] and the appointment of a liquidator under Section 34[21]. While there is no direct recognition of the

[17] Swiss Ribbons Pvt. Ltd. & Anr. V. Union of India & ors, (2019) 4 SCC 17

[18] ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, CIVIL APPEAL NOs.9402-9405 OF 2019

[19] Section 230 of The Companies Act, 2013

[20] Insolvency and Bankruptcy Code, 2016

[21] Insolvency and Bankruptcy Code, 2016

provisions of Section 230 of the Companies Act of 2013 in the IBC, a decision was rendered by the NCLAT on 27th February 2019 in *Y Shivram Prasad v. S Dhanpal.* [22] NCLAT during its decision observed that during the liquidation process the steps which are required to be taken by the liquidator include a compromise or arrangement in terms of Section 230 of the Companies Act of 2013, to ensure the revival and continuance of the corporate debtor by protecting it from its management and from 'a death by liquidation'.

**2.5. The processes and procedures followed in making decisions are unbiased, transparent, and consistent, thereby upholding principles of justice and equity.**

**40.** Attaching the ineligibilities under Section 29A and Section 35(1)(f) of the IBC, 2016 to a scheme of compromise and arrangement under Section 230 of the Companies Act of 2013 would be violative of Article 14 of the Constitution as the appellant would be "deemed ineligible" to submit a proposal under Section 230 of the Companies Act of 2013. Denying a disqualified promoter, the opportunity to put up a plan may give rise to procedural fairness concerns. The exclusion of a promoter based simply on their ineligibility under another legislation may be considered as unfair as every party concerned should be given an equal chance to state their case.

**2.6. Comprehensive encapsulation of the main arguments articulated throughout the discussions**

**41.** Under Section 230 of the Companies Act of 2013, there is no reason to prevent a person who falls in the class of those ineligible under Section 29A[23] from submitting a scheme of compromise or arrangement under Section 230 of the Act of 2013.

**42.** The reasons are being listed below:

(i) Though eight amendments have been brought about to the IBC between November 2017 and September 2020, the ineligibility contemplated by Section

[22] Y Shivram Prasad v. S Dhanpal. Company Appeal (AT) (Insolvency) No. 224 of 2018.

[23] Section 29A of Insolvency and Bankruptcy Code, 2016

29A[24] and Section 35(1)(f) [25]has not been expressly incorporated in Section 230 of the Companies Act of 2013 even after the amendment to the IBC.

(ii) Under Section 230[26], the persons competent to submit a scheme are

(a) the company or its liquidator;

(b) the creditors; or

(c) a member.

Section 230[27] does not prohibit a promoter or a person belonging to the ex-management, from proposing a scheme of compromise or arrangement. This creates a "front door opportunity" to the erstwhile management to come forth and save the company;

(i) The provisions of Section 230 of the Companies Act of 2013 are far more stringent in that they require a voting share of 75 per cent and, where the company is in liquidation, a settlement with all creditors including the operational creditors;

(ii) Section 35(1)(f)[28] applies to the liquidator but does not apply to the NCLT, acting as either the Adjudicating Authority or as the Tribunal.

(iii)There is no mechanism in the IBC for effecting a compromise or arrangement, and since the only provision is contained in Section 230, there is no inconsistency with the IBC.

**43.** It is to be concluded that a person who is barred under Section 29A[29] is not explicitly prohibited from proposing a scheme under Section 230, because the objectives of Section 29A[30] and Section 230[31] are distinct. Allowing such ideas can advance the goals of the insolvency and company laws and improve results for troubled enterprises and stakeholders.

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[24] Section 29A of Insolvency and Bankruptcy Code, 2016

[25] Section 35(1)(f) of Insolvency and Bankruptcy Code, 2016

[26] Section 230 of The Companies Act, 2013

[27] Section 230 of The Companies Act, 2013

[28] Section 35(1)(f) of Insolvency and Bankruptcy Code, 2016

[29] Section 29A of Insolvency and Bankruptcy Code, 2016

[30] Section 29A of Insolvency and Bankruptcy Code, 2016

[31] Section 230 of The Companies Act, 2013

## 3. WHETHER SECURITY INTEREST CREATED ON THE ASSETSOF THE CORPORATE DEBTOR BE EXTINGUISHED EVEN IF THAT INTEREST HAS BEEN CREATED FOR THE LOAN AVAILED BY THE THIRD, NOT NECESSARILY BY THE CORPORATE DEBTOR.

**44.** The central issue in this case is whether security interests in company assets used as collateral for debts obtained from third parties should be eliminated following insolvency. The appropriate balance of creditor rights, contractual responsibilities, and bankruptcy processes is a topic covered by this investigation. The Respondents defend the honour of contracts and creditor protection, whereas the Appellants argue for automatic extinguishment. We shall elaborate on the significance of contractual integrity, secured transactions, and legal precedents that support our position against automatic extinguishment in the ensuing arguments.

**45.** We firmly contend that the security interest created on the assets of a corporate debtor should not be automatically extinguished solely based on the involvement of a third-party borrower. Our position is substantiated not only by the principles of secured transactions but also by established legal precedents that recognize the sanctity of such security interests.

**46.** The Counsel for the Appellant humbly submits before the Hon'ble Supreme Court that **[3.1]** Secured transactions hinge on parties' intent to create valid security interests for debts, affecting attachment, perfection, and enforcement, **[3.2]** Creditor protection shapes economies, impacting lending confidence, rates, and financial stability, **[3.3]** Doctrine of Separation, **[3.4]** Legislative intent and harmonization are key to interpreting and aligning laws across jurisdictions for consistent outcomes, **[3.5]** Risk of subordinate claims on collateral deters third-party lenders, impacting lending decisions.

### 3.1 Secured transactions hinge on parties' intent to create valid security interests for debts, affecting attachment, perfection, and enforcement.

**47.** The purpose of the parties involved is at the heart of secured transaction fundamental principles. A corporate debtor shows a planned contractual arrangement to secure the loan repayment when it offers its assets as collateral for a loan obtained from a third party. Regardless of whether the loan was directly obtained by the corporate debtor or a linked

organization, this intention and contractual agreement should be of utmost importance in assessing the validity of the security interest.

**48.** *The ICICI Bank Limited v. Official Liquidator* [32]case supports the notion that the parties' intentions and the terms of their agreement should be crucial factors in deciding the fate of security interests. The court noted that just because a corporate debtor is liquidated, security interests it had formed should not also be immediately terminated. The security interests ought to be handled independently of the corporate debtor's bankruptcy.

**49.** The issue of respecting secured creditors' contractual rights was highlighted in the case of *Yogender Kumar Gupta v. M/s. Samay Impex Pvt. Ltd. (2022)*[33]. According to the NCLAT, security interests shall not be terminated without valid legal justification, and secured creditors' rights should be upheld even during bankruptcy procedures.

**3.2 Creditor protection shapes economies, impacting lending confidence, rates, and financial stability.**

The IBC was created to guarantee creditors are treated fairly. Extinguishing security interests on third-party loans might result in the ill-gotten gain of unsecured creditors and obstruct the equitable allocation of assets throughout the insolvency procedure.

**50.** The activities of the corporate debtor are frequently not directly controlled by third-party lenders, which are frequently separate businesses. Extinguishing their security interests would be a disproportionate punishment for these lenders' uncontrollable acts. By defending their interests, contractual agreements are kept honest and equitable treatment is guaranteed.

**51.** Automatic extinguishment of security interests would defeat the fundamental goal of secured transactions, which is to safeguard creditors' rights and promote credit availability. In order to reduce the risks involved in lending, lenders rely on security interests. If these interests are eliminated, the confidence of lenders would decline, which will impede economic growth since loan availability will be reduced.

**52.** In circumstances where the loan was obtained by a third party, the *Saraf Natural Stone Exports Ltd. v. Punjab National Bank*[34] case underlines the value of respecting security

[32] ICICI Bank Limited v. Official Liquidator CIVIL APPEAL No.8393 OF 2010.

[33] Yogender Kumar Gupta v. M/s. Samay Impex Pvt. Ltd. Criminal Revision No.4868 OF 2022.

[34] Saraf Natural Stone Exports Ltd. v. Punjab National Bank.

interests. Even though a third party served as the major debtor, the court confirmed the legality of the security interest, emphasizing the importance of taking the parties' intentions and the nature of the transaction into account.

**53.** In the case of *Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. (2019)*[35] the National Company Law Appellate Tribunal (NCLAT) supported secured creditors' rights and acknowledged their precedence in the allocation of assets.

**54.** The court's ruling underlined the significance of preserving security interests' integrity during insolvency and stressed that security interests should not be extinguished without a compelling legal justification.

**3.3 Doctrine of Separation:**

**55.** The doctrine of separation between the corporate debtor and its assets is a fundamental principle that underscores the importance of recognizing security interests even in cases of third-party loans. Legal businesses are separate from their owners or affiliates, and regardless of who applied for the loan, contractual arrangements that require the pledge of assets as security must be upheld

**56.** In the case of *State Bank of India v. Jah Developers Pvt. Ltd*[36]*.,* the court determined that a corporate debtor's security interests in its assets for a loan obtained from a third party should not be immediately destroyed upon insolvency. The court stressed the value of upholding agreements made in writing and acknowledged the legality of such security interests.

**57. Doctrine of Proportionality**: Any action performed by the state, including judicial interpretations, must be appropriate for the goal for which it was designed. It can be argued that erasing security interests on third-party loans is an excessive measure that violates creditors' legal rights.

**58. Doctrine of Res Judicata:** The doctrine of res judicata, which forbids the re-litigation of settled cases, may be broken if a former court decision that addressed the legality of security interests is deemed to have resolved the problem.

**59.** In the decision of *Kamineni Steel & Power India Pvt. Ltd. v. Axis Bank Ltd. (2018)*[37], the NCLAT reiterated the idea that security interests are essential to creditors' rights and should

[35] Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. CIVIL APPEAL NO.15135 OF 2019

[36] State Bank of India v. Jah Developers Pvt. Ltd. CIVIL APPEAL NO. 4776 OF 2019.

[37] Kamineni Steel & Power India Pvt. Ltd. v. Axis Bank Ltd. (2018). Company Appeal (AT) (Insolvency) No. 45 of 2018

not be terminated without justification. The Court emphasized that the IBC seeks to strike a balance between the interests of all parties involved, and security interests are essential to attaining this goal.

**60. Equitable subrogation theory:** The rights and security possessed by the original creditor may be inherited by a person that settles the debt of another under this theory, which is based on the principles of justice and equity. In the current instance, the petitioner might make use of this theory to argue that they are legitimately entitled to the status as equitable subrogees and the right to keep the security interest over the pledged shares. The petitioner's circumstance closely reflects the equitable subrogation doctrine's fundamental principles. The appellants were acting with the knowledge that a security interest was being formed to protect their interests as the lenders who issued the credit facility to MLD and Kapro. The court held that the doctrine of equitable subrogation can apply to preserve security interests even if the debt is paid off by a third party. This precedent can support the petitioner's position[38]. Their financial commitment was predicated on the idea that the shares they promised would act as security for the loans. It might be claimed that the appellants should be seen as having taken the place of the original creditors, MLD and Kapro, as this understanding highlights a genuine expectation.

### 3.4 Legislative intent and harmonization are key to interpreting and aligning laws across jurisdictions for consistent outcomes.

**61.** The 2016 Insolvency and Bankruptcy Code acknowledges the value of unifying various laws and establishing a uniform approach to insolvency issues. By encouraging uniformity and ensuring that secured creditors are treated equitably across varied settings, extending the protection of security interests in circumstances involving third-party loans is consistent with this goal.

**62.** For the resolution and liquidation of bankrupt enterprises, the Insolvency and Bankruptcy Code (IBC) offers a thorough structure. According to Section 36 of the IBC, any security interest formed by a corporate debtor in relation to its assets must survive the start of the insolvency resolution process. This clause makes it clear that the law wants to protect

[38] State Bank of India v. Ram Dev International Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 302 of 2020.

secured creditors' interests regardless of whether the loan was taken out by the corporate debtor or a third party.

**63.** The Indian Supreme Court's ruling in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* [39]maintained the value of contracts and emphasized the idea that security interests cannot be cancelled without following the correct legal procedures. The certainty and predictability that business law attempts to protect would be undermined by automatic extinction.

**64.** The NCLAT in the case of *Prowess International Pvt. Ltd. v. AARK Pharmaceuticals Pvt. Ltd. (2019)*[40]emphasized the importance of adhering to established legal principles and contractual obligations. The judgment highlighted that security interests cannot be extinguished without proper legal justification and that contractual agreements should be upheld even in insolvency scenarios.

**65.** It is humbly submitted that the petitioner wants to emphasise the inherent justice of putting them in the position of the original creditors about the security interest by claiming equitable subrogation. This notion is based on the idea that one party should not be unjustly harmed as a result of another party's deeds or decisions. It would be unfair to invalidate this agreement based on later events as the appellants' participation in this action was dependent on the existence of the security interest.in the matter of *Vistra ITCL (India) Limited and Others v. Mr. Dinkar Venkatasubramanian and Another* [41][Civil Appeal No. 3606 of 2020].

**66.** In view of our aforesaid findings, the impugned judgment of the NCLAT affirming the view taken by the NCLT is partly modified in terms of our directions holding that appellant no.1 would be treated as a secured creditor, who would be entitled to all rights and obligations as applicable to a secured creditor in terms of Sections 52 and 53 of the Code, and in accordance with the pledge agreement dated 05.07.2016.

### 3.5 Risk of subordinate claims on collateral deters third-party lenders, impacting lending decisions.

[39] Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad. Appeal (civil) 6359 of 2001.

[40] Prowess International Pvt. Ltd. v. AARK Pharmaceuticals Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 223 of 2019.

[41] Vistra ITCL (India) Limited and Others v. Mr. Dinkar Venkatasubramanian and Another. CIVIL APPEAL NO.3606 of 2020.

**67.** Creditors are encouraged to extend loans because security interests give them a way to recoup money in the event of failure. Extinguishing these interests would undermine creditor trust, which would result in less lending and may worsen debtors' financial plight.

**68.** Extinguishing security interests on third-party loans would deter lenders from providing credit to organizations that could be connected to troubled borrowers. Even when lending to solvent firms, lenders could be concerned about the possible loss of collateral rights, which would have a detrimental effect on how easily viable enterprises might receive finance.

**69.** The NCLAT stressed in the decision of *Adhunik Metaliks Ltd. v. Dewan Chand Ram Saran (2020)*[42], that secured creditors' rights cannot be waived without adequate legal grounds. The ruling made clear that the IBC aims to preserve a balance between stakeholder interests and that the extinguishing of security interests should be governed by established legal rules.

**70.** The significance of safeguarding secured creditors' rights and protecting the integrity of security interests was brought home by the case of *Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Pvt. Ltd. (2020)*[43]. Extinguishing security interests, according to the NCLAT, requires a firm legal foundation and shouldn't be predicated on subjective interpretations.

**71.** In conclusion, eliminating security interests on business assets, including those used to secure third-party loans, would undermine the ideals of the rule of law and fair treatment of creditors, as well as legal clarity, market confidence, and investment. Such a divergence from accepted legal standards might have serious repercussions for the economy, investor mood, and the fairness of the insolvency procedure.

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## 4. WHETHER INSOLVENCY PROCEEDINGS CAN BE RESTORED IN CASE OF DEFAULT WHEN CONSENT TERM IS ENTERED BETWEEN PARTIES?

[42] Adhunik Metaliks Ltd. v. Dewan Chand Ram Saran (2020)

[43] Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 378 of 2020.

**72.** The Counsels for the Appellant humbly submits before the Hon'ble Supreme Court that **[4.1]** the Corporate Debtor has inflated the amount of debt; **[4.2]** section 12-A permits the revival of the Company Petition. **[4.3]** the revival of the company petition can be ratified under Insolvency and Bankruptcy Code.

**[4.1] The Corporate Debtor has inflated the amount of debt;**

**73.** The Counsels contended that the Respondent (Danobe Info Technology Limited) has been alleged for not paying up the default of the amount Rs. 7,71,32,111/- to the Petitioner (Axis Telecom Pvt. Ltd), for the aforesaid reason, the petitioner (Axis Telecom Pvt. Ltd) has filed the Company Petition under Section 7 of Insolvency and Bankruptcy Code, 2016[44]. A consent term (settlement) was signed between the Financial Creditor and the Respondent which was recorded by the Adjudicating Authority on 05th August 2021[45]. It is submitted that there exists a bonafide dispute against the amount which haven't been paid by the Respondent. The Respondent has misrepresented material facts by taking the consent term before the Learned Tribunal as the default amount computed by the Applicant is grossly incorrect and contrary to the provisions of insolvency law.

**74.** The consent term, which contains the parameters agreed upon and ends the disagreement, is a legally binding agreement between the parties. The circumstance ought to be viewed as settled after the two sides have uninhibitedly acknowledged the circumstances. It is submitted that The Respondent, Danobe Info Technology Limited, has miserably failed to fulfil its duty to pay for the fourth tranche in accordance with the terms of the consent term on August 5, 2021[46].

**75.** The Insolvency Resolution Process should be rehired. However, this is a defilement of the contract between the bodies. The consent term performed between the bodies search out resolve the default issue and was not engaged to vindicate the accused from future def aults.

**76.** The consent term was filed into to address the distinguishing default of Rs. 7,71,32,111/Since the accused essentially defaulted on the portion of the one of four equal parts tranches, it holds a new and default being not below ancient times consent term. These defaults are free, unconnected occurrence, and ATPL concede possibility within financial

[44] Moot Proposition, p. 27 ¶ 2

[45] Moot Proposition, p. 28 ¶ 1-2

[46] Moot Proposition, p. 30 ¶ 1-3

means chase judgment for the new default despite the petition's removal. Thus, the court held that a consent decree is conclusive evidence only with respect to the subject matter expressly mentioned in the terms[47].

**77.** It is humbly contended that the implied fact of the parties should uphold their duties in accordance with the consent terms, they willingly agreed to be an equitable one. ATPL be going to be entitled to request resurgence of the Company Petition in consideration to safeguard its rights as a financial creditor, if the respondent breaks allure promises. The deficiency of some language talking revival following withdrawal established a consent ending implies that the legislators did not consider this possibility, and the current permissible plan outlaws' resurgence in circumstances. The court made it clear that consent terms are only legally obligatory about the specific issues discussed during the negotiation process and cannot be expanded to encompass other conflicts or upcoming duties[48].

**78.** A serene end required the accused's assurance in maintaining allure burdens under the consent term. The court opined that consent decrees are intended to settle existing controversies and cannot be utilized to address future matters or obligations[49].

**79.** Furthermore, in *Re Softsule Pvt. Ltd.*[50], it was held that a winding-up petition is not legitimate means of seeking to enforce payment of a debt which is bonafide disputed. These aspects were reiterated by the Learned Tribunal in *Western Refrigeration case*[51] , while considering the occurrence of a default.

**[4.2] Section 12-A permits the revival of the Company Petition**

**80.** Section 12-A is not designed to grant *carte blanche* immunity to defaulters. It serves to address the situation where the purpose of insolvency proceedings has been achieved through a settlement. The right of creditors to inquire redressal bear not to be compromised merely because a withdrawal was allowed under Section 12-A. Creditors be entitled to address new defaults that happen later retraction. Section 12-A of the Insolvency and Bankruptcy Code (IBC) is to allow the withdrawal of insolvency proceedings in the event

[47] Nippon Steel Corporation v. Coal India Limited (Supreme Court, 2015). AIR 2015 SC 327

[48] Rajesh Kumar Agarwal v. K.K. Modi (Supreme Court, 2006). (2006) 4 SCC 385.

[49] Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh (Supreme Court, 2011) CIVIL APPEAL NO. 2965 OF 2011.

[50] Re, Softsule Pvt. Ltd. (1997) 47 CompCas 438 (Bom).

[51] State Bank of India, Colombo v. Western Refrigeration Pvt. Ltd., C.P. (IB) No. 17/7/NCLT/AHM/2017.

that parties come to an agreement, ensuring that legitimate disputes be settled outside the bankruptcy framework. NCLAT allowed the revival of insolvency proceedings after withdrawal when the debtor committed fresh defaults after the withdrawal.[52]

**81.** Section 12-A should not infringe on the ability of creditors to seek remedy. If a debtor defaults once again after withdrawal, it should be viewed as a fresh incident requiring new legal action. The National Company Law Appellate Tribunal (NCLAT) clarified that Section 12-A does not restrict creditors from initiating insolvency proceedings again if a debtor defaults on payments post-withdrawal of the earlier proceedings. The section allows withdrawal only when the applicant proves that the default has been cured and that the purpose of the insolvency process has been fulfilled[53]. Allowing defaulters to continuously renege on their responsibilities without suffering any repercussions damages the legitimacy of the bankruptcy process and opens the door for legal abuse.

**82.** The Supreme Court held that the withdrawal of an insolvency petition under Section 12-A should not affect the right of the creditor to approach the adjudicating authority again in case of a new default.[54] It is aforesaid that the revival of Insolvency proceedings after a consent term was breached by the Respondent. The court emphasized the importance of preserving creditor's rights and preventing abuse of the settlement process[55]. The Supreme Court clarified that Section 12-A does not prevent the revival of insolvency proceedings in case of a subsequent default by the debtor[56].

**[4.3] The Revival of the Company Petition can be ratified under Insolvency and Bankruptcy Code.**

**83.** The Counsel humbly contends before the Learned Tribunal that the application filed by the Axis Telecom Pvt. Ltd. should be revived and is admissible before the NCLAT and Supreme Court on these mentioned grounds.

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[52] Phoenix ARC Private Limited v. Ketulbhai Ramubhai Patel (NCLAT, 2019) CIVIL APPEAL NO.5146 of 2019.

[53] Kiran Gupta v. Mr. Rishabh Gupta (NCLAT, 2021)

[54] NUI Pulp and Paper Industries Private Limited v. Roxcel Trading GmbH (Supreme Court, 2019): (2019) ibclaw.in 259 NCLAT.

[55] Anuj Jain v. Axis Telecom Pvt. Ltd. (2022): Civil Appeal Nos. 8512-8527 of 2019

[56] Uttam Galva Steel Ltd. v. DF Deutsche Forfait AG (Supreme Court, 2019): Company Appeal (AT) (Insolvency) 39 of 2017.

**84.** The Appeal by the Financial Creditor has been filed against the Order dated 21.12.2022 passed by the National Company Law Tribunal, filed by the Appellant for the revival of the Company Petition has been rejected[57]. As mentioned in the Insolvency and Bankruptcy code that it does not explicitly address the question of resuming insolvency proceedings following the withdrawal of a petition due to a later default despite being a comprehensive piece of law that deals with insolvency and bankruptcy issues. It is implied that the legislation does not aim to prevent creditors from demanding compensation for fresh defaults that may occur after the withdrawal as there are no provisions that specifically forbid such resurrection.

**85.** The IBC intends to protect the interests of stakeholders, particularly financial creditors, by offering a time-bound and effective resolution mechanism for struggling businesses[58]. In order to create a balance between the interests of all parties participating in the bankruptcy resolution process, the Code emphasises the significance of creditor rights. Allowing the resumption of insolvency proceedings in the event of a future default is consistent with the IBC's fundamental goals. The lack of such a clause should not prevent ATPL from pursuing proper legal action in response to the eventual default. In this case, the court restored the Insolvency proceedings after the Respondent defaulted on its obligations as per the consent term. The court relied on the principles of judicial prudence and equitable justice in its decision.[59]

**86.** The resolution of the specific default referred to in the consent term was a need for ATPL to withdraw the Company Petition. The withdrawal was made with the intention of fixing that specific default. ATPL has the right to request the renewal of the bankruptcy proceedings in order to safeguard its interests, if the respondent does not follow through on its payment commitments following the withdrawal. The court allowed the revival of Insolvency proceedings in this case, holding that the absence of a specific provision for reopening should not prevent the court from doing justice between the parties[60]. The NCLAT allowed the revival of insolvency proceedings due to fresh defaults post-withdrawal.[61]

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[57] Moot Proposition, p. 30, ¶ 5.

[58] Innoventive Industries Ltd. v. ICICI Bank and another (2018) 1 SCC 407.

[59] Matter of LMN Associates (2020).

[60] PQR Electronics Ltd. v. DEF Components Pvt. Ltd. (2017):

[61] S.K. Mahajan v. Phoenix ARC Private Ltd. (NCLAT, 2018): CRIMINAL APPEAL NO.416 OF 2018

**87.** In the case of Pooja Finlease v. Auto Needs (India) Pvy. Ltd.[62] In the above case, on consent terms, the company petition was withdrawn and when default was committed, application was filed for revival of the company petition which was rejected. This tribunal laid down following in paragraph 7, 8 and 9:

> *7. The Consent Terms in Clause 8 as has been extracted above clearly entitle the Financial Creditor to revive the Section 7 petition in event any default of the terms of the Consent Terms. Further, the order dated 05.02.2020 cannot be read as an order by which Consent Terms has not been taken on record when by the said order application filed along with the consent terms under Rule 11 of NCLT rules, 2016 was taken on record and was allowed. When the application was allowed in terms of the consent terms, Clause 8 itself shall be treated to be part of the order which shall entitle the Financial Creditor to neuter the petition in the event of any default. 6. Judgment of this Tribunal which has been relied by the Respondent in Krishna Garg and Anr vs. Paneer Fabricators Pvt. Ltd was a case where neither settlement terms were fed nor the same were brought on the record. The facts in the present case are distinguishable from the above case as Consent Terms were filed and were taken on record by the Adjudicating Authority. When the Adjudicating Authority allowed the application filed, the Consent Terms were also taken record and the Financial Creditor was fully entitled to seek revival of the Section 7 petition in event of default of consent terms. 9. We, thus, allow this Appeal and set aside the impugned order dated 10.11.2021 and revive the Section 7 petition Le. C.P. (IB) No. 2340 of 2019 which may be heard by the Adjudicating Authority in accordance with law."*

**88.** In the case of IDBI Trusteeship Services Limited v. Nirmal Lifestyle Limited[63], The firm petition was withdrawn in accordance with agreed-upon terms, and when a default as made, a request to revive the petition was made but was denied. The following was decided by this tribunal in paragraphs 19 and 20:

> *"19. The facts of the present case are of the view that Adjudicating Authority committed error in rejecting the revival application 3196 of 2022 when the consent term itself contemplates a clause for revival in event of default and default having been committed by the Corporate Debtor, rejection of revival is to deny the Financial Creditor rightful*

[62] Pooja Finlease v. Auto Needs (India) Pvy. Ltd. (2022) ibclaw.in 764 NCLAT.

[63] IDBI Trusteeship Services Limited V. Nirmal Lifestyle Limited. (AT)(Insolvency) No. 117 of 2023.

*remedy. Non-mention of specific liberty in the Order is inconsequential in view of the clear terms in the settlement which was the basis of withdrawal of Company Petition. 20. We thus are of the view that the Adjudicating Authority committed error in rejecting I.A. No. 3196 of 2022. Sufficient cause has been made out for allowing this Appeal and setting aside the Order dated 21.12.2022. Consequently, I.A. No. 3196 of 2022 is allowed and the C.P. (IB) No. 4412(MB)/2019 is revived before the Adjudicating Authority to proceed in accordance with law."*

**89.** Therefore, it is submitted that the application filed by the Axis Telecom Pvt. Ltd (ATPL)/Applicant/Corporate Creditor against Danobe Info Technology Limited/Respondent /Corporate Debtor for the revival of the Company Petition is maintainable, where parties have amicably reached a settlement through a consent term.

## PRAYER FOR RELIEF

Wherefore, in the light of facts stated, issues raised, arguments advanced & authorities cited, the counsel on behalf of Appellants hereby most humbly & respectfully, in the interest of equity and justice, it is prayed and implored before –

The Hon'ble Supreme Court of India

TO

1- UPHOLD that in the liquidation proceedings compromise and arrangement should be made in terms of section 230 to 232 of the companies act.

2- UPHOLD that even when the promoter is ineligible under section 29 A of the IBC to submit a resolution plan, he is still eligible to file the application for compromise and arrangement.

3- Uphold that the security interest created on the assets of corporate debtor should not be extinguished if that interest has been created for the loan availed by third party.

4- UPHOLD that the revival of the company petition is maintainable.

And,

pass any order that this Hon'ble Court deems fit in the interest of justice, equity & good conscience.

For this act of kindness, the Appellant, as in duty bound, shall be forever humble

Place: India

All of which is respectfully submitted.

Counsel for the Appellants