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

BEFORE THE HON'BLE SUPREME COURT OF MALTA

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)

PETITIONS FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA AND
SECTION 62 OF IBC

Written submission on the behalf of the Appellant

Counsel on the behalf of Appellant

TABLE OF CONTENTS

<u>S.NO.</u>	<u>TABLE OF CONTENTS</u>	<u>PAGE NO.</u>
1.	LIST OF ABBREVIATIONS	4-5
2.	INDEX OF AUTHORITIES	6-9
3.	STATEMENT OF JURISDICTION	10
4.	STATEMENT OF FACTS	11-12
5.	STATEMENT OF ISSUES	13
6.	SUMMARY OF ARGUMENTS	14-15
7.	ARGUMENTS ADVANCED	16-33
(1)	<p>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;</p> <p>1.1 person under 29A of the IBC are ineligible to propose a resolution plan are also barred under Section 230 to 232 of company act 2013 to make compromise and arrangement even under liquidation proceeding.</p> <p>1.2 Section 230 to 232 have certain restrictions for liquidator who cannot allow approval of compromise and arrangement.</p> <p>1.3 Expiry of approval of resolution plan going beyond 270 days is to be taken into consideration.</p>	16-20

<p>(2)</p>	<p>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’.</p> <p>2.1 IBC provisions limit individual filings, promoting collective resolution in compromises and arrangements</p> <p>2.2 Consistency in judicial decisions relies on uniform legal principles for predictability and fairness</p> <p>2.3 NCLAT decisions hold binding authority, setting legal precedents for subsequent cases.</p> <p>2.4 Statutory intent refers to the purpose and meaning that legislators intend when drafting and enacting laws.</p> <p>2.5 Amendment of Regulation 2B involves altering specific rules or provisions within the regulatory framework.</p> <p>2.6 Resolution plans and schemes of compromise differ in their approaches to corporate restructuring and debt resolution within separate legal frameworks.</p> <p>2.7 Protecting creditors ensures fair treatment and upholds their rights in insolvency proceedings.</p>	<p>20-24</p>
<p>(3)</p>	<p>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.</p> <p>3.1 Aligning with insolvency resolution goals is vital for effective secured transaction systems and equitable creditor satisfaction</p> <p>3.2 Mitigating preferential treatment risk maintains fairness in insolvency systems and creditor priorities</p>	<p>25-29</p>

	<p>3.3 Enabling comprehensive resolution plans means addressing legal, financial, and operational aspects effectively</p> <p>3.4 Incentivizing resolution applicants entails providing favourable terms to encourage active participation</p> <p>3.5 Preserving a corporate debtor's recovery involves maintaining value and enabling effective restructuring</p> <p>3.6 Preserving value for stakeholders involves optimizing assets, maximizing returns, and ensuring continuity.</p>	
(4)	<p>WHETHER INSOLVENCY PROCEEDINGS CAN BE RESTORED IN CASE OF DEFAULT WHEN CONSENT TERM IS ENTERED BETWEEN PARTIES?</p> <p>4.1 That whether the withdrawal of a Company Petition with permission serves as res judicata, establishing the dispute as legally binding and prevents the reinitiating of the insolvency process.</p> <p>4.2 That whether the lack of precedents or procedures in the IBC that would allow for the restarting of bankruptcy proceedings following a withdrawal with consent period.</p>	30-33
8.	PRAYER	34

TABLE OF ABBREVIATIONS

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

INDEX OF AUTHORITIES**A. LEGISLATIONS/CODES/STATUES:**

S.NO.	LEGISLATIONS/CODES
1.	THE INSOLVENCY AND BANKRUPTCY CODE, 2016.
2.	THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS, 2016.
3.	THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY PROFESSIONALS) REGULATIONS, 2016.
4.	THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (LIQUIDATION PROCESS) REGULATIONS, 2016.
5.	THE INDIAN CONTRACT ACT, 1872.

B. LEGAL DATABASE:

S.NO.	LEGAL DATABASE
1.	www.scconline.com
2.	www.lexisnexis.com
3.	www.mai.sci.gov.in
4.	www.westlaw.com
5.	https://ibbi.gov.in

C. OTHER AUTHORITIES:

S.NO.	OTHER AUTHORITIES
1.	INJETI SRINIVAS' REPORT OF THE INSOLVENCY LAW COMMITTEE [MARCH 2018], MINISTRY OF CORPORATE AFFAIRS.
2.	INJETI SRINIVAS' REPORT OF THE INSOLVENCY LAW COMMITTEE [FEBRUARY 2020], MINISTRY OF CORPORATE AFFAIRS.
3.	RAJESH VERMA'S REPORT OF THE INSOLVENCY LAW COMMITTEE [MAY 2022], MINISTRY OF CORPORATE AFFAIRS
4.	T.K. VISHWANATHAN'S REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE VOLUME I: RATIONALE AND DESIGN [NOVEMBER 2015].

D. BOOKS:

<u>S.NO.</u>	<u>BOOKS</u>
1.	ASHISH MAKHIJA, INSOLVENCY AND BANKRUPTCY CODE OF INDIA, LexisNexis, 2019.
2.	The COMPANIES ACT OF 2013
3.	THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (31 OF 2016) as amended by The Insolvency and Bankruptcy Code (Amendment) Act, 2021 (26 of 2021).

E. JUDICIAL DECISIONS:

<u>S.NO.</u>	<u>CASE LAWS</u>	<u>CITATIONS</u>
1.	SIDBI Vs Delicious Coco Water Park Ltd	CP No. (113) 575 (Nd) Of 2017

2.	ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2019)	Civil Appeal Nos.9402-9405 Of 2018.
3.	Sri Kashinath Dikshit v. Surgicals & Pharmaceuticals Company (Mysore) Limited .	Air 2003 Kar. Hcr (Noc) 55.
4.	Meghal Homes vs. Shree Niwas Girni K.K. Samiti	Appeal (Civil) 3179-3181 Of 2005
5.	Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta	Civil Appeal No. 8766-67 Of 2019
6.	Maheshwari Fuel Chem v. Union of India (Delhi High Court, 2018)	1989 Air 2138 1989 Scr (3)43 1990 Scc Supl. 440 Jt 1989 (2)338 1989 Scale (1)1353
7.	State Bank of India v. V. Ramakrishnan	Civil Appeal No. 3595 Of 2018.
8.	Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd	Civil Appeal No. 9405 Of 2017.
9.	Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd. (2020)	CIVIL APPEAL NO. 16929 OF 2017
10.	Monnet Ispat and Energy Ltd. v. Committee of Creditors	Civil Appeal No. 3285 Of 2009.
11.	Swiss Ribbons Pvt. Ltd. v. Union of India [2019]	(2019) 4 Scc 17
12.	Essar Steel India Ltd. v. Satish Kumar Gupta [2019]	Civil Appeal No. 8766-67 Of 2019
13.	Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel [2020].	Civil Appeal No.5146 Of 2019
14.	Chitra Sharma & Ors. v. Union of India & Ors. [2019]	Civil Appeal No. 6486 Of 2019
15.	Innoventive Industries Ltd. v. ICICI Bank & Anr. [2017]	Civil Appeal Nos. 8337-8338 Of 2017

16.	Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors. [2020].	Civil Appeal No. 3395 Of 2020
17.	V. Padmakumar v. Stressed Assets Stabilization Fund (2019)	Company Appeal (At) (Insolvency) No. 57 Of 2020.
18.	K. Sashidhar v. Indian Overseas Bank & Ors. (2019)	Civil Appeal No.10673 Of 2018
19.	R. Vijayan v. M. Ranganathan & Anr. (2018)	Civil Appeal No. 7108 Of 20
20.	M/s. Vishnu Kumar Agarwal v. Piramal Enterprises Ltd. & Anr. (2020)	Company Appeal (At) (Insolvency) No. 346 Of 2018.
21.	P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd. (2020)	Civil Appeal No.10355 Of 2018
22.	Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd	Civil Appeal No. 9405 Of 2017
23.	Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. (2017)	Civil Appeal No.15135 Of 2017
24.	Surendra Trading Company v. Juggilal Kamlatpat Jute Mills Company Ltd. (2019)	Civil Appeal No. 8400 Of 2017.
25.	Central Bank of India v. Resolution Professional of the Sirpur Paper Mills Ltd.	Company Appeal (At) (Insolvency) No. 526 Of 2018

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.

Section 62 of IBC, 2016.

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.

(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.

STATEMENT OF FACTS

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 submitted an application for a compromise and arrangement scheme under the 2013 Companies Act, but Singhanian 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 submitted an application 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 CONSIDERATION

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;

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'.

ISSUE-3

WHETHER SECURITY INTEREST CREATED ON THE ASSETS OF 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.

ISSUE-4

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

SUMMARY OF ARGUMENTS

1. In liquidation proceeding under IBC 2016- the scheme for compromise and arrangement cannot be made in terms of section 230-232 of the companies act.

The learned council hereby submit before this hon'ble court that the liquidation proceedings under insolvency and bankruptcy code, 2016 the procedure for compromise and arrangement cannot be made in terms of section 230 to 232 of the companies act and that the resolution plan by the promoter has also not been submitted to the authority because there exists section 29A of IBC.

[1.1] person under 29A of the IBC are ineligible to propose a resolution plan are also barred under Section 230 to 232 of company act 2013 to make compromise and arrangement even under liquidation proceeding.

[1.2] Section 230 to 232 have certain restrictions for liquidator who cannot allow approval of compromise and arrangement.

[1.3] expiry of approval of resolution plan going beyond 270 days is to be taken into consideration.

2. While he is ineligible under 29A of IBC to submit a Resolution Plan, the promoter is not eligible to file the application for compromise and arrangement.

It is consistent with the core goal of the IBC, which is to protect creditors' interests, to prohibit a promoter who is unqualified under Section 29A from proposing a scheme. Promoters who are unqualified to participate will undermine the goal of the IBC, which is to maximize value for creditors and ensure a fair resolution process. Additionally, maintaining the prohibition on ineligible promoters avoids exploitation of the bankruptcy resolution process and upholds the sanctity of the legislative objective underlying Section 29A. The resolution process becomes more effective, certain, and focused on viable resolution plans by excluding ineligible promoters from submitting proposals. To avoid undue influence and preserve the credibility of the insolvency process, it is essential to uphold this restriction.

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

Maximizing asset value, ensuring equitable distribution, and maintaining the established order of priority in insolvency proceedings are fundamental principles that must all be upheld, and this includes the extinguishment of security interests created on the assets of the corporate debtor for loans acquired by third parties. This viewpoint is consistent with the core goals of the Insolvency and Bankruptcy Code, which are to achieve the best results for all parties involved, maintain the intended hierarchy of payment, and, wherever possible, avoid the unfavourable conclusion of liquidation.

The bankruptcy resolution process can be shortened with a tighter emphasis on the inherent worth of the corporate debtor's assets by pushing for the removal of encumbrances imposed by third-party loans. This strategy makes it easier to create resolution strategies that are motivated by the primary goal of asset optimization, nurturing more potent systems for business revival and general financial stability.

4. Insolvency Proceedings cannot be restored in case of default when consent term is entered between parties.

The withdrawal of a Company Petition with consent should be treated as a binding resolution under the doctrine of res judicata. By ensuring closure and finality to conflicts, this concept prevents parties from reopening insolvency procedures after reaching a mutually agreeable resolution. The legislature and judiciary made a conscious decision to support effective and non-adversarial dispute resolution procedures, which is why there are no precedents or provisions in the IBC that permit the restart of bankruptcy proceedings following withdrawal with permission. Respecting the confidentiality of agreements made under consent circumstances encourages parties to work together and handle insolvency concerns outside of official bankruptcy procedures. The fundamental tenets of the IBC—finality, predictability, and time-bound resolution—would be compromised by allowing resurrection.

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 counsel for the respondent humbly submits that the scheme for compromise and arrangement cannot be made under the liquidation proceedings of IBC 2016, in terms of section 230 to 232 of the companies act. the contention is based on the resolution plan by the promoter has also not been submitted to the authority because there exists section 29A of IBC. The contention has certain arguments laid herein – **[1.1]** person under 29A of the IBC are ineligible to propose a resolution plan are also barred under Section 230 to 232 of company act 2013 to make compromise and arrangement even under liquidation proceeding. **[1.2]** Section 230 to 232 have certain restrictions for liquidator who cannot allow approval of compromise and arrangement. **[1.3]** expiry of approval of resolution plan going beyond 270 days is to be taken into consideration.

[1.1] Person under 29A of the IBC are ineligible to propose a resolution plan are also barred under 230 to 232 of the company acts, 2013 to make compromise and arrangement even under liquidation proceedings.

2. The Counsel for the respondent humbly claims that the plan for compromise and arrangement described in sections 230 to 232 of the company's act cannot be made in the liquidation proceedings under the IBC, 2016. A person who is ineligible under section 29A of the IBC, 2016 to submit a resolution plan is also prohibited from proposing a scheme of compromise and arrangement under section 230 of the Companies Act, according to an order made by the NCLAT on September 24, 2022, reversing the decision and allowing the appeal by the Singhanian group of companies¹. The scenario clearly states that Mr. Pipara, a promoter of the DNCL, is prohibited from presenting a scheme for compromise and

¹ Moot Proposition 7 ¶ 2-3

arrangement under Sections 230 to 232 of the Companies Act since he is unable to submit the resolution plan².

3. The Counsel claims that Mr. Shroff, a promoter, and the suspended member of Fu-Sam Power Systems Limited are ineligible under the resolution plan's order of September 24, 2022, and are prohibited under sections 230 to 232 of the IBC from moving forward with schemes of compromise and arrangements under liquidation proceedings³.
4. In the matter of *SIDBI Vs Delicious Coco Water Park Ltd [CP No. (113) 575 (ND) of 2017]*,⁴ a similar Scheme of Compromise and Arrangement was filed by a person other than the Liquidator with respect to a Company which was under liquidation. This Bench passed necessary directions for convening of meetings under the provisions of Section 230 of the Companies Act, 2013.
5. Furthermore, in the case of - *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2019)*⁵: This case clarified the eligibility criteria for resolution applicants under the IBC, emphasizing the importance of maintaining the integrity of the resolution process.
6. Since Mr. Pipara and Mr. Shroff are both ineligible to submit their resolution plans to the authority, they are also prohibited from making compromise and arrangement, according to my argument. If a person is ineligible to submit a resolution plan, they should also not be allowed to make a compromise and arrangement scheme under sections 230 to 232.

[1.2] Section 230 to 232 have certain restrictions for liquidator who cannot allow approval of compromise and arrangement.

7. The learned counsel asserts that Mr. Pipara is prohibited from drafting compromise and arrangement plans under 29A of the IBC and clause 7 of the section 230 of the Companies Act, 2013 which says that no compromise has been reached between them regarding any equity of shares, and it won't protect any class of creditors as he is ineligible to submit to the tribunal under this only when the compromise arrangement provides for the conversion of preference shares into equity shares; such preference shareholders shall be given the

² Moot Proposition 11 ¶ 1

³ Moot Proposition 18 ¶ 5-9

⁴ *SIDBI Vs Delicious Coco Water Park Ltd [CP No. (113) 575 (ND) of 2017]*

⁵ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2019) Civil Appeal Nos.9402-9405 Of 2018.*

- option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
8. Even if the creditors agree to a compromise under the conditions, any proceedings before the board for industrial and financial reconstruction established pursuant to Section 4 of the Sick Industrial Companies Act of 1985 shall be suspended. Additionally, the shareholder will not be permitted to submit his resolution plan while the NCLAT appeal is pending, and this compromise or arrangement may even change the shareholders' rights.
 9. In the matter of *SIDBI Vs Delicious Coco Water Park Ltd [CP No. (113) 575 (ND) of 2017]*,⁶ a similar Scheme of Compromise and Arrangement was filed by a person other than the Liquidator with respect to a Company which was under liquidation. This Bench passed necessary directions for convening of meetings under the provisions of Section 230 of the Companies Act, 2013.
 10. In fact, a similar scheme had arisen for consideration before this Court in the case of *Sri Kashinath Dikshit v. Surgicals & Pharmaceuticals Company (Mysore) Limited AIR 2003 Kar. HCR (NOC) 55*, except that the first petitioner therein was a shareholder. In the said case, the relevant contention (which is like the instant case) while opposing the scheme was as hereunder.⁷
 11. Therefore section 230 to 232 has certain restrictions which fulfil in the case of Mr. Pipara and Shroff and there forth both are being barred from compromising or arrangement scheme.

[1.3] Expiry of approval of resolution plan going beyond 270 days is to be taken into consideration.

12. The appellant has not provided any evidence of a compromise or arrangement plan that has been developed, is available for consideration, or has acquired the support of the secured creditors of the corporate debtor. Simply asking for a deadline extension without providing any proof of real and serious efforts made in the planning and implementation of such a scheme demonstrates that the request is not backed up by actual action. We firmly believe that the Adjudicating Authority did not error in approving the Impugned Order because the

⁶ *SIDBI Vs Delicious Coco Water Park Ltd [CP No. (113) 575 (ND)*

⁷ *Sri Kashinath Dikshit v. Surgicals & Pharmaceuticals Company (Mysore) Limited AIR 2003 Kar. HCR (NOC) 55,*

90-day period required by Regulation 2-B of the Liquidation Process Regulations, 2016, had passed 270 days after its expiration and no proof of the scheme's readiness had been presented.

13. Due to the little time available, the CoC did not accept any additional resolution plans. After 270 days had elapsed without a resolution strategy, the NCLT issued an order of liquidation on December 11, 2020⁸. Mr. Pipara filed an appeal with the NCLAT challenging the NCLT's liquidation order⁹. By order dated June 10, 2021, the NCLAT dismissed the appeal¹⁰. This Court received an appeal challenging the NCLAT's decision to dismiss the appeal, and on June 19, 2022, it gave DNCL notice of the case¹¹. Regulation 2B (1)¹², if the person is ineligible to submit resolution plan such person shall not be the party to the compromise or arrangement.
14. In *Meghal Homes vs. Shree Niwas Girni K.K. Samiti*¹³ court has considered the commercial morality and held that a scheme of compromise and arrangement under Section 391 of the Companies Act, 1956 (now section 230 of the Companies Act, 2013) must intend to facilitate revival of a company.
15. Mr. Arun Kumar Jagatramka¹⁴, Section 35(1)(f) of the IBC, 2016 which provides that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant. Thus, a person who is not eligible to participate in scheme of amalgamation and merger of the corporate debtor.
16. When a compromise or arrangement is proposed under Section 230 of the Act of 2013, it must be completed within ninety days following the order of liquidation under sub-Sections (1) and (4) of Section 33¹⁵, according to Regulation 2B (1)¹⁶, which was introduced on July

⁸ Moot Proposition, p 11 ¶ 3

⁹ Moot Problem, p 10 ¶ 1

¹⁰ Moot Proposition, p 11 ¶ 5

¹¹ Moot Proposition, p 11 ¶ 7

¹² Insolvency and Bankruptcy Code, 2016

¹³ *Meghal Homes vs. Shree Niwas Girni K.K. Samiti*. Appeal (Civil) 3179-3181 Of 2005

¹⁴ *Arun Kumar Jagatramka vs Jindal steel and power* Civil Appeal No. 9664 of 2019

¹⁵ Section 33 of Insolvency and Bankruptcy Code, 2016

¹⁶ Insolvency And Bankruptcy Board of India (Liquidation Process) Regulations, 2016

25, 2019. With effect from 6 January 2020, a proviso to Regulation 2B¹⁷ has been added to state that anyone who is ineligible under the IBC to submit a resolution plan for the corporate debtor's insolvency resolution shall not participate in any way in such compromise or arrangement.

17. Based on the analysis, we conclude that the prohibition contained in Sections 29A and 35(1)(f) of the IBC must also apply to a compromise or arrangement made under Section 230 of the Companies Act of 2013, when the company is going through IBC-authorized liquidation. As a result, the proviso to Regulation 2B (1) and Regulation 2B (2) of the Liquidation Process Regulations are both constitutionally valid. We have determined that the appeals and the writ petition have no validity for the reasons listed above. Considering the above contention, the civil appeals ought to be rejected.

¹⁷ Insolvency And Bankruptcy Board of India (Liquidation Process) Regulations, 2016

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’.

18. 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, 2016 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).

19. 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 scheme¹⁸.

20. The Counsel from the Respondent side humbly submits before the Hon’ble Supreme Court that [2.1] IBC provisions limit individual filings, promoting collective resolution in compromises and arrangements, [2.2] Consistency in judicial decisions relies on uniform legal principles for predictability and fairness, [2.3] NCLAT decisions hold binding authority, setting legal precedents for subsequent cases, [2.4] Statutory intent refers to the underlying purpose and meaning that legislators intend when drafting and enacting laws. [2.5] Amendment of Regulation 2B involves altering specific rules or provisions within the regulatory framework, [2.6] Resolution plans and schemes of compromise differ in their approaches to corporate restructuring and debt resolution within separate legal frameworks. [2.7] Protecting creditors ensures fair treatment and upholds their rights in insolvency proceedings.

2.1 IBC provisions limit individual filings, promoting collective resolution in compromises and arrangements.

¹⁸ Moot Proposition 10 ¶ 1

21. The interpretation of Section 35(f) of the IBC outlines the liquidator's authority to sell a corporate debtor's assets, subject to the condition that ineligible individuals under Section 29A, such as promoters, are barred from seeking Compromise and Arrangement to reclaim those assets.

35. Powers and duties of Liquidator. -(1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties,

namely: --

(f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified.

22. Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.”
23. From the aforesaid provision, the Promoter, if ineligible under Section 29A of the IBC, 2016 cannot make an application for Compromise and Arrangement for taking back the immovable and movable property or actionable claims of the 'Corporate Debtor'.”

2.2 Consistency in judicial decisions relies on uniform legal principles for predictability and fairness.

24. It was stressed by the Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*¹⁹ that the IBC must be interpreted and applied consistently and uniformly. It was decided that in order to eliminate ambiguity and guarantee predictability, court decisions needed to establish consistent standards. Considering this, the process of compromise and arrangements should be made more certain by maintaining the consistent understanding that an ineligible promoter cannot propose a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013. According to Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC), the appellant, Mr. Shroff, is ineligible to submit a resolution plan for the corporate debtor (Fu-Sam Power Systems Ltd.). Promoters who have committed certain offenses or are connected to other entities that are

¹⁹ Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta. Civil Appeal No. 8766-67 Of 2019

ineligible under this section are among the promoters who are disqualified under Section 29A of the IBC, 2016 from applying for a resolution. Mr. Shroff is unable to suggest any resolution plan or scheme for the Corporate Debtor because he is ineligible under Section 29A.

2.3 NCLAT decisions hold binding authority, setting legal precedents for subsequent cases.

25. The Delhi High Court maintained the binding character of NCLAT rulings on the NCLT in *Maheshwari Fuel Chem v. Union of India*²⁰. It was decided that NCLT should abide by NCLAT's orders, and that any disputes should be brought up for review by higher courts. According to this theory, the NCLT is bound by the NCLAT's ruling in the Singhanian Group of Companies case, and the Liquidator did the right thing by denying Mr. Shroff's plea. The Liquidator's assessment should thus be upheld since it complies with the law. In addition to the ruling by the NCLAT in the Singhanian Group of Companies case, several additional judicial precedents have consistently supported the idea that a person who is ineligible under Section 29A of the IBC, 2016 cannot submit a plan of compromise and arrangement under Section 230 of the Companies Act, 2013. The decisions confirm the legislature's goal of preventing ineligible people from abusing other legal measures to get around their ineligibility.

26. In the case of *Singhanian Group of Companies v. Mr. Pipara*,²¹ the National Company Law Appellate Tribunal (NCLAT) has already rendered a decision holding that a person who is ineligible under Section 29A of the IBC, 2016 cannot propose a scheme of compromise and arrangement under Section 230 of the Companies Act, 2013. The NCLAT's ruling in the appellant's case is comparable to that in this case, hence the same rule ought to be followed.

2.4 Statutory intent refers to the purpose and meaning that legislators intend when drafting and enacting laws.

²⁰ Maheshwari Fuel Chem v. Union of India. 1989 Air 2138 1989 Scr (3)43
1990 Sc Supl. 440 Jt 1989 (2)338
1989 Scale (1)1353

²¹ Moot Proposition, p 7 ¶ 1

27. The purpose of implementing Section 29A of the IBC, 2016 was to guarantee that only qualified and reliable applicants for resolution take part in the insolvency resolution process. By prohibiting ineligible people from gaining control of a firm and advancing the interests of creditors and stakeholders, this provision intends to ensure rapid and successful resolution of distressed assets. The fundamental intent of Section 29A of IBC, 2016 would be defeated if an ineligible individual, such as Mr. Shroff or Mr. Pipara, was permitted to offer a compromise and arrangement under Section 230 of the Companies Act, 2013. In *State Bank of India v. V. Ramakrishnan*²², the Supreme Court noted that the IBC was enacted with the goal of promoting time-bound resolution of stressed assets and preventing defaulting promoters from reclaiming control of the corporate debtor. The court found that Section 29A of the IBC, 2016 was put into place to stop these promoters from taking part in the resolution process and stressed the need of maintaining the sanctity of that process. Considering this justification, it cannot be permitted for Mr. Shroff to propose a plan under Section 230 of the Companies Act, 2013 as he is an ineligible promoter under Section 29A of the IBC, 2016.

2.5 Amendment of Regulation 2B involves altering specific rules or provisions within the regulatory framework

28. Regulation 2B was amended by a notification 24 dated 6 January 2020, by which a proviso was added to Sub-section (1) of Regulation 2B²³, which provides that a party ineligible to propose a resolution plan under the IBC cannot be a party to a compromise or arrangement. Regulation 2B, in its present form, reads as follows:

“2-B. Compromise or arrangement. — (1) Where a compromise or arrangement is proposed under Section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety days of the order of liquidation under sub-sections (1) and (4) of Section 33: Provided that a person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor, shall not be a party in any manner to such compromise or arrangement.”

²² State Bank of India v. V. Ramakrishnan. Civil Appeal No. 3595 Of 2018

²³ Insolvency And Bankruptcy Board of India (Liquidation Process) Regulations, 2016

29. This provision confirms that in the Liquidation process, person who is not eligible to under 29A of IBC, 2016, cannot file application for Compromise and Arrangement under Section 230 of the Companies Act of 2013.

2.6 Resolution plans and schemes of compromise differ in their approaches to corporate restructuring and debt resolution within separate legal frameworks.

30. The IBC and the Companies Act are two independent laws that have different purposes. In contrast to the system of compromise and arrangement under the Companies Act, which deals with compromises between a company and its creditors/shareholders for restructuring or revival purposes, the insolvency resolution procedure under the IBC requires an application and approval of resolution plans. The requirements of the IBC would become unsuccessful if promoters who are not qualified were permitted to get over Section 29A's limitations through the Companies Act. In the landmark case of *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.*²⁴ the court held that the scheme of arrangement proposed under Section 230 of the Companies Act, 2013, must be within the framework of the IBC and cannot override the provisions of the IBC. In the case of *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.*²⁵, the NCLAT held that the IBC is a complete code and operates as a standalone legislation for insolvency resolution and liquidation proceedings. Allowing promoters who are ineligible under Section 29A of the IBC, 2016 to propose schemes of compromise and arrangement under the Companies Act would amount to bypassing the eligibility criteria set forth in the IBC. The court reaffirmed that the provisions of the IBC must be given primacy in such proceedings.

2.7 Protecting creditors ensures fair treatment and upholds their rights in insolvency proceedings.

31. The Counsel contends that protecting the rights of creditors is one of the main goals of the Insolvency and Bankruptcy Code, 2016 (IBC). This goal would be compromised if promoters who are disqualified as per Section 29A of the IBC, 2016 were permitted to suggest compromise and arrangement plans. Allowing such promoters to take part in the

²⁴ Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. Civil Appeal No. 9405 Of 2017

²⁵ Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd. CIVIL APPEAL NO. 16929 OF 2017

resolution process would not protect the interests of creditors because they may have been the cause of the corporate debtor's financial hardship. In order to prohibit anyone with a history of misconduct or financial fraud from taking advantage of the resolution process, the IBC's eligibility requirements, including Section 29A of the IBC, 2016, were created. To guarantee that the interests of creditors are sufficiently safeguarded, it is crucial to uphold the prohibition against unsuitable promoters from presenting schemes. The NCLAT held in the case of *Monnet Ispat and Energy Ltd. v. Committee of Creditors* ²⁶(2020), that in order to prevent those with disqualifications from taking part in the resolution process, Section 29A of the IBC, 2016 was enacted. It would be contrary to the intent of Section 29A and damaging to creditors' interests to permit unqualified promoters to submit compromise and arrangement plans. The court highlighted that the eligibility requirements set forth by the IBC must be rigorously followed and that the resolution process must be performed in a fair and transparent way.

- 32.** In conclusion, the eligibility requirements outlined in Section 29A, of the IBC, 2016 must be strictly followed to prevent ineligible promoters from taking part in the resolution process through schemes of compromise and arrangement under the Companies Act. The IBC must be upheld as the primary legislation governing insolvency resolution and liquidation proceedings. The Companies Act should not be utilized to get around the limitations and requirements outlined in the IBC.

²⁶ *Monnet Ispat and Energy Ltd. v. Committee of Creditors*. Civil Appeal No. 3285 Of 2009

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

33. The issue concerning how security interests formed on a corporate debtor's assets for loans obtained from other parties should be handled in bankruptcy proceedings is of utmost significance. This situation highlights the difficult balancing act that must be performed between protecting the interests of creditors—secured and unsecured—and increasing the value of the corporate debtor's assets. The Insolvency and Bankruptcy Code (IBC), which aims to promote equality and fairness among stakeholders, aims to offer an efficient method for settlement. Extinguishing such security interests, according to the petitioner, is not only consistent with the fundamental tenets of the IBC but also essential to the effective resurrection of the corporate debtor and the fair distribution of assets among creditors.

34. The Counsel from the Respondent side humbly submits before the Hon'ble Supreme Court that [3.1] Aligning with insolvency resolution goals is vital for effective secured transaction systems and equitable creditor satisfaction, [3.2] Mitigating preferential treatment risk maintains fairness in insolvency systems and creditor priorities, [3.3] Enabling comprehensive resolution plans means addressing legal, financial, and operational aspects effectively, [3.4] Incentivizing resolution applicants entails providing favourable terms to encourage active participation, [3.5] Preserving a corporate debtor's recovery involves maintaining value and enabling effective restructuring, [3.6] Preserving value for stakeholders involves optimizing assets, maximizing returns, and ensuring continuity.

3.1 Aligning with insolvency resolution goals is vital for effective secured transaction systems and equitable creditor satisfaction

35. The Insolvency and Bankruptcy Code of 2016's main goal is to make sure that stressed corporate debtors are resolved quickly and effectively. Extinguishing security interests held

by third-party lenders contributes to this goal by facilitating a quick settlement. The goal of the IBC will be defeated if third-party security interests are allowed to continue to complicate and drag out the settlement procedure.

36. The IBC attempts to achieve a balance between the interests of many stakeholders, including creditors, shareholders, and employees, as the Supreme Court's ruling in the case of *Swiss Ribbons Pvt. Ltd. v. Union of India* [2019]²⁷, underscored. Extinguishing third-party security interests is in accordance with this concept since it advances the overarching objectives of organizational renewal and value maximization while upholding justice and fairness among stakeholders.
37. **Doctrine of Value Maximization:** The Doctrine of Maximum Value highlights the basic goal of the IBC, which is to maximize the value of the corporate debtor's assets. Extinguishing security interests on assets makes ensuring that resolution plans are created with an accurate estimation of the value of the asset base, free of encumbrances from third parties. This theory is in line with the IBC's objective of attaining the best result for all parties involved through efficient resolution.

3.2 Mitigating preferential treatment risk maintains fairness in insolvency systems and creditor priorities.

38. The Counsel submits that to avoid the possibility of giving certain creditors a preference over others, third-party security interests must be extinguished. Third-party lenders' security interests might be retained, which would go against the IBC's core tenet of equal treatment and result in an unfair distribution of insolvency profits. The extinguishment of these interests upholds the integrity of the bankruptcy resolution procedure and guarantees that all creditors are treated equally and impartially.
39. In the matter of *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [2019]²⁸, The Supreme Court stressed the significance of treating creditors fairly throughout the resolution process. According to the decision made by the court, the distribution of insolvency profits should be done on a pro rata basis, and all financial creditors should be given the same treatment. This principle's logical extension, the

²⁷ *Swiss Ribbons Pvt. Ltd. v. Union of India* [2019] (2019) 4 Scc 17

²⁸ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* [2019] Civil Appeal No. 8766-67 Of 2019

extinguishment of third-party security interests, guarantees that no creditor will be given preferential treatment.

40. Principle of Equitable Distribution: The Principle of Equitable Distribution is central to the insolvency regime's philosophy. Extinguishing third-party security interests promotes equity among all creditors by preventing the treatment of some creditors preferentially. This concept is respected and the interests of creditors are handled equally by ensuring that resolution applicants begin on an equal footing without the weight of third-party encumbrances.

3.3 Enabling comprehensive resolution plans means addressing legal, financial, and operational aspects effectively.

41. It is crucial to eradicate third-party security interests in order to make the creation and execution of comprehensive resolution plans easier. Such obstacles might make it more difficult for resolution applicants to develop comprehensive plans that deal with the corporate debtor's fundamental problems. Resolution applicants can entirely utilize the assets of the corporate debtor to achieve a sustainable revival and optimize benefits for all stakeholders by waiving these security interests.

42. In the landmark judgement of *Swiss Ribbons Pvt. Ltd. v. Union of India* [2019]²⁹, The Supreme Court stressed that the corporate debtor's resurrection and the enhancement of its asset worth are the IBC's main goals. The court indicated that the extinguishment of third-party security interests is consistent with the overarching objective of obtaining a resolution that is in the best interests of all stakeholders by recognizing the relevance of flexibility and discretion in resolution planning.

43. The Supreme Court emphasized that the IBC's goal in the case of *State Bank of India v. V. Ramakrishnan & Anr.* [2018]³⁰, is to encourage settlement and resurrection rather than liquidation. The court highlighted that while creating a resolution plan, consideration must be given to the interests of the stakeholders in the corporate debtor. Extinguishing third-party security interests enables resolution applicants to formulate comprehensive plans that

²⁹ *Swiss Ribbons Pvt. Ltd. v. Union of India* [2019] [2019] (2019) 4 Scc 17

³⁰ *State Bank of India v. V. Ramakrishnan & Anr.* [2018] Civil Appeal No. 3595 Of 2018.

give top priority to the resuscitation of the corporate debtor and its activities, therefore maximizing benefits to all parties.

3.4 Incentivizing resolution applicants entails providing favourable terms to encourage active participation.

44. If the corporate debtor's assets are subject to third-party security interests, potential resolution applicants may be discouraged from participating. By eliminating these interests, the corporate debtor becomes more appealing to potential buyers, resulting in more workable resolution strategies and better outcomes for all parties.

45. In the decision of *Essar Steel India Ltd. v. Satish Kumar Gupta* [2019]³¹, the Supreme Court acknowledged the value of recruiting resolution applicants by maintaining a competitive market. The notion that eliminating third-party security interests fosters wider investor engagement, so encouraging competition and raising the likelihood of a successful settlement, is in line with the court's emphasis on preserving a fair playing field.

3.5 Preserving a corporate debtor's recovery involves maintaining value and enabling effective restructuring.

46. The successful revival of the corporate debtor may depend on the extinguishment of third-party security interests. The corporate debtor may utilize its assets more efficiently and adopt a resolution strategy that prioritizes operational recovery and financial stability without the burden of security interests.

47. The case of *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel* [2020]³², demonstrated that, rather than liquidation, the IBC's goal is to establish a feasible settlement of the corporate debtor. The corporate debtor's assets are intended to be valued at their current level for the benefit of its stakeholders, the Supreme Court noted. This goal is furthered by eliminating third-party security interests, which enables resolution seekers to create strategies that maximize the worth and potential of these assets.

48. In the decision *Chitra Sharma & Ors. v. Union of India & Ors.* [2019]³³, the Supreme Court acknowledged the importance of defending homebuyers' interests during the bankruptcy

³¹ *Essar Steel India Ltd. v. Satish Kumar Gupta* [2019]. Civil Appeal No. 8766-67 Of 2019

³² *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel* [2020]. Civil Appeal No.5146 Of 2019

³³ *Chitra Sharma & Ors. v. Union of India & Ors.* [2019]. Civil Appeal No. 6486 Of 2019

resolution process. The IBC is meant to safeguard the interests of all parties, including purchasers who put their hard-earned money into construction projects, the court noted. This goal is supported by the extinguishment of third-party security interests, which enables resolution applicants to offer plans that give priority to completing delayed projects and delivering houses to purchasers.

49. The Supreme Court emphasized in the judgment of *Innoventive Industries Ltd. v. ICICI Bank & Anr. [2017]*³⁴, that the IBC's goal is to secure the corporate debtor's business's resuscitation. Extinguishing third-party security interests is essential to attaining this goal because it enables resolution applicants to use the corporate debtor's assets for operational needs, facilitating a more efficient and long-lasting revival.

3.6 Preserving value for stakeholders involves optimizing assets, maximizing returns, and ensuring continuity.

50. The maximizing of the value of the corporate debtor's assets becomes achievable by the release of encumbered assets, which is advantageous to all parties involved, including operational creditors, workers, financial creditors, and shareholders. This is in line with the overriding objective of obtaining the greatest result for all parties concerned.
51. In the matter of *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors. [2020]*³⁵, the Supreme Court emphasized the need of giving homebuyers' interests priority in the bankruptcy resolution procedure. The IBC is designed to safeguard the interests of all parties, including homebuyers who commit their hard-earned cash to real estate projects, the court acknowledged.
52. Extinguishing third-party security interests helps to safeguard homebuyers' rights because it enables resolution applicants to create elaborate plans that place a high priority on finishing blocked projects and delivering the houses that have been pledged to buyers. The idea that extinguishing security interests is consistent with the general objective of preserving the rights of diverse stakeholders is supported by this body of case law.

³⁴ *Innoventive Industries Ltd. v. ICICI Bank & Anr. [2017]* Civil Appeal Nos. 8337-8338 Of 2017

³⁵ *Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. & Ors. [2020]*, Civil Appeal No. 3395 Of 2020

53. The case of *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel [2020]*³⁶ demonstrated that, rather than liquidation, the IBC's goal is to establish a feasible settlement of the corporate debtor. The corporate debtor's assets are intended to be valued at their current level for the benefit of its stakeholders, the Supreme Court noted. This goal is furthered by eliminating third-party security interests, which enables resolution seekers to create strategies that maximize the worth and potential of these assets.
54. **Subordination Principle:** According to the Subordination Principle, certain creditors, particularly those with subordinate claims, should be paid after others in order of precedence. Third-party creditors cannot advance in the priority hierarchy and maybe receive preferential treatment over other creditors by extinguishing security interests allied with third-party loans. This concept underlines the need of adhering to the established payment structure during settlement.
55. In conclusion, the advancement of the guiding principles of the IBC requires the extinction of third-party security interests. It encourages fair creditor treatment, simplifies the bankruptcy resolution process, and improves the chances of company resurrection. The extinguishment of these interests ensures a strong and effective mechanism for resolving financial distress and protecting the interests of all stakeholders by enabling comprehensive resolution plans, luring viable resolution applicants, and maintaining the integrity of the insolvency framework.
-

³⁶ Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel [2020] Civil Appeal No.5146 Of 2019

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

56. The Counsels for the Appellant humbly submits before the Hon'ble Supreme Court that [4.1] the withdrawal of a Company Petition with permission serves as res judicata, establishing the dispute as legally binding and prevents the reinitiating of the insolvency process, [4.2] That whether the lack of precedents or procedures in the IBC that would allow for the restarting of bankruptcy proceedings following a withdrawal with consent period.

4.1. The withdrawal of a Company Petition with permission serves as res judicata, establishing the dispute as legally binding and prevents the reinitiating of the insolvency process

57. It is humbly submitted to the Learned Tribunal that when a Company Petition is withdrawn in an insolvency action based on an agreement between the parties, it might be considered an adjudication of the issue, although one reached by consent. The consent term is a resolution of the dispute between the petitioner (in this case, Axis Telecom Pvt. Ltd.) and the respondent (Danobe Info Technology Limited), settling the claimed default³⁷. The assent term, which contains the boundaries settled upon and closes the conflict, is a lawfully official understanding between the parties. The circumstance ought to be viewed as settled after the two sides have openly acknowledged the circumstances.

58. According to the res judicata concept, once a case has been decided by a court with appropriate authority, it is deemed final and conclusive, and the same parties should not be

³⁷ Moot Proposition

permitted to reopen the case and commence fresh litigation with the same issue³⁸. Res judicata gives legal conflicts a definitive resolution, which reduces needless and redundant litigation and increases judicial effectiveness.

- 59.** The applicability of the principle of res judicata in insolvency matters, highlighting that once a matter has been decided by the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT), it cannot be reopened or re-litigated³⁹. A resolution plan is approved and implemented, the rights and liabilities of the parties are extinguished, and there can be no revival of insolvency proceedings⁴⁰. Withdrawal of insolvency proceedings is a valid and final decision if done with the requisite consent, and such withdrawal operates as res judicata, preventing revival of the proceedings. NCLAT reiterated that the withdrawal of a Company Petition with consent is a conclusive decision, and res judicata prevents any attempts to revive the proceedings after withdrawal⁴¹.
- 60.** The Counsel contends that the parties considered as voluntarily accepting the conditions of the settlement and opting not to continue the bankruptcy proceedings by withdrawing the Company Petition based on the consent term. As it settles the disagreement in a way which is acceptable to all the parties, this choice is comparable to a court's judgement or order. Reviving the petition after the dispute has been resolved and the Company Petition has been withdrawn is not an option according to the doctrine of res judicata in this situation. According to the rules of the settlement agreement, the petitioner has essentially decided not to move through with the bankruptcy procedure by withdrawing with permission. A Company Petition cannot be revived once it has been withdrawn based on a consent term, as it would go against the principles of finality and closure⁴².

³⁸ V. Padmakumar v. Stressed Assets Stabilization Fund (2019). Company Appeal (At) (Insolvency) No. 57 Of 2020.

³⁹ State Bank of India v. V. Ramakrishnan & Anr. Civil Appeal No. 3595 Of 2018

⁴⁰ K. Sashidhar v. Indian Overseas Bank & Ors. (2019). Civil Appeal No.10673 Of 2018

⁴¹ Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel (2019) Civil Appeal No.5146 Of 2019

⁴² R. Vijayan v. M. Ranganathan & Anr. (2018) Civil Appeal No. 7108 Of 20

61. The principles of finality and res judicata would be violated if it was to resume bankruptcy proceedings after a withdrawal based on a consent term. It would provide parties a chance to keep bringing up disagreements even after coming to an amiable agreement, which would result in needless and protracted litigation. If a Company Petition is withdrawn after obtaining consent from the creditors, it cannot be restored, as the withdrawal based on consent operates as res judicata.⁴³
62. In conclusion, the parties' agreement to withdraw a company petition should be viewed as a binding judgement, and the res judicata principle should be applied to preclude any subsequent attempts to reopen the insolvency proceedings. This supports the swift and effective settlement of disputes within the bounds of the law and guarantees that the parties are held accountable for the settlement they voluntarily engaged into.

4.2. The lack of precedents or procedures in the IBC that would not allow for the restarting of bankruptcy proceedings following a withdrawal with consent period.

63. It is humbly submitted before the Learned Supreme Court that the absence of any precedents or provisions in the Insolvency and Bankruptcy Code (IBC) suggesting that bankruptcy proceedings cannot be reopened after withdrawal based on a consent term. The IBC is a comprehensive piece of law that specifies processes and deadlines for addressing bankruptcy cases in an effort to speed up the insolvency resolution process. The IBC provides a time-limited resolution procedure for troubled enterprises with the goal of promoting efficiency, transparency, and predictability in insolvency proceedings. The constitutionality of the IBC and stressed the importance of time-bound resolution and the non-adversarial nature of the insolvency process⁴⁴.
64. The whole foundation of the IBC, which places a strong emphasis on speedy resolution and finality, would be undermined if the withdrawal of a Company Petition based on a consent term could be readily overturned or reinstated. The goal of having a well-structured

⁴³ M/s. Vishnu Kumar Agarwal v. Piramal Enterprises Ltd. & Anr. (2020) Company Appeal (At) (Insolvency) No. 346 Of 2018.

⁴⁴ Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors. (2019). (2019) 4 Scc 17.

bankruptcy resolution procedure would be defeated by allowing resurrection after withdrawal, which would lead to uncertainty and encourage parties to participate in unending rounds of litigation. Courts frequently look on previous decisions to interpret and apply the law where there are no specific requirements. However, in this specific situation, courts have not felt the need to make exceptions to the rule that consent terms are final because there have been no judicial rulings in favour of revival following withdrawal with a consent term. The NCLAT held that the withdrawal of a Company Petition is permissible under Section 12A, and once withdrawn, it cannot be revived⁴⁵. In the case NCLAT held that once a company petition is dismissed as withdrawn with consent, the same cannot be revived merely because one party alleges a default on the part of the other party⁴⁶.

- 65.** A key foundation of modern jurisprudence is the concept of res judicata. It forbids the same parties from rehashing a dispute that has already been resolved by a court of competent jurisdiction. The theory of res judicata would be undermined and the idea of finality would be undermined if insolvency procedures could be restarted after withdrawal with a consent period. For creditors and other stakeholders that depend on the settlement agreement and the withdrawal of the company petition to make financial choices and change their positions appropriately, allowing resurrection would likewise cause uncertainty. In such situations, revival can compromise the parties' financial security and plans. The NCLAT ruled that if the petitioner has voluntarily withdrawn the insolvency application, it cannot be restored unless there is evidence of fraud or collusion⁴⁷.
- 66.** The Counsel contends that a strong legislative and judicial desire to maintain the sanctity of settlements achieved under consent conditions is indicated by the absence of precedents or clauses enabling resurrection in comparable circumstances. The IBC encourages parties to establish amicable agreements and offers an incentive for creditors and debtors to cooperate in order to resolve insolvency difficulties outside of the official bankruptcy procedure by omitting an avenue for revival. The NCLAT ruled that once a Company Petition is withdrawn by the petitioner, it cannot be revived, and the case should be

⁴⁵ P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd. (2020) Civil Appeal No.10355 Of 2018.

⁴⁶ Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 12 of 2017)

⁴⁷ Macquarie Bank Limited v. Shilpi Cable Technologies Ltd. (2017) Civil Appeal No.15135 Of 2017.

considered closed⁴⁸. In the case, NCLAT reiterated that once a company petition is withdrawn with consent, the same cannot be revived on the ground of default in making payments as per the settlement⁴⁹.

- 67.** In conclusion, the absence of precedents and explicit provisions in the IBC regarding the continuation of insolvency proceedings following withdrawal based on a consent term reflects a decision made by the legislature and the judiciary to uphold the finality of settlements and deter pointless and drawn-out litigation.
- 68.** Therefore, the insolvency proceedings cannot be revived in situations where parties have amicably reached a settlement through a consent term.

⁴⁸ Surendra Trading Company v. Juggilal Kamlapat Jute Mills Company Ltd. (2019) Civil Appeal No. 8400 Of 2017.

⁴⁹ Central Bank of India v. Resolution Professional of the Sirpur Paper Mills Ltd. (Company Appeal (AT) (Insolvency) No. 392 of 2019)

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 not 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 not eligible to file the application for compromise and arrangement.
- 3- *UPHOLD* that the security interest created on the assets of corporate debtor should be extinguished as that interest has been created for the loan availed by third party.
- 4- *UPHOLD* that the revival of the company petition is unmaintainable.

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 Respondent, as in duty bound, shall be forever humble

Place: India

All of which is respectfully submitted.

Counsel for the Respondent.

