2026 LiveLaw (SC) 203

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.
FEBRUARY 26, 2026.

CIVIL APPEAL NO.6094 OF 2019
ICICI BANK LIMITED *versus* **ERA INFRASTRUCTURE (INDIA) LIMITED**

CIVIL APPEAL NOS.827-828 OF 2021
ANUBHAV ANILKUMAR AGARWAL *versus* **BANK OF INDIA & ANR.**

CIVIL APPEAL NO.6093 OF 2019
ICICI BANK LIMITED *versus* **HYDERABAD RING ROAD PROJECT PRIVATE LIMITED**

SLP (C.) NO.21778 OF 2019
INTERNATIONAL FINANCE CORPORATION *versus* **PUNJ LLOYD UPSTREAM LIMITED**

CIVIL APPEAL NO.40 OF 2020
PHOENIX ARC PRIVATE LIMITED *versus* **G.R.K. REDDY & ORS.**

CIVIL APPEAL NO.2715 OF 2020
STATE BANK OF INDIA *versus* **BIJAY KUMAR AGARWAL & ANR.**

CIVIL APPEAL NO.4018 OF 2023
MOHAN NATHURAM SAKPAL *versus* **STATE BANK OF INDIA & ANR.**

CIVIL APPEAL NO.7231 OF 2024
NOIL CHRISTURAJ, SUSPENDED DIRECTOR, M/S. FOSSIL LOGISTICS PRIVATE LIMITED *versus* **STATE BANK OF INDIA & ANR.**

Insolvency and Bankruptcy Code, 2016 – Sections 7, 60(2), and 60(3) – Simultaneous Proceedings – Maintainability of Corporate Insolvency Resolution Process (CIRP) against Principal Debtor and Corporate Guarantor – Held: Simultaneous proceedings for CIRP under the IBC against both the principal debtor and its corporate guarantor (or vice-versa) are maintainable - The liability of a surety is co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872 - The IBC permits separate or simultaneous proceedings to be initiated by a financial creditor against both entities.

Doctrine of Election – Applicability to IBC Claims – Held: The doctrine of election is not attracted in the context of filing claims against both the debtor and the guarantor - Restricting a creditor to elect between the two would defeat the purpose of a guarantee and potentially lead to the loss of rights under the "clean slate" principle if the full debt is not claimed in a concluding CIRP - There is no statutory proscription in the IBC against filing such simultaneous claims.

Double Enrichment – Safeguards under 2016 Regulations – Held: While concerns regarding double enrichment (recovering more than the total debt) are well-founded, they do not justify a bar on simultaneous proceedings - Sufficient safeguards exist in Regulation 12A (obligation of the creditor to update claims upon partial satisfaction from any source) and Regulation 14 (duty of the Resolution Professional to revise admitted claim amounts based on new information) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Discretion of Adjudicating Authority (NCLT) – Section 7 vs. Section 9 – Held: The use of the word "may" in Section 7(5)(a) confers a degree of discretion upon the NCLT to admit a financial creditor's application, whereas "shall" in Section 9(5)(a)

for operational creditors is mandatory - this discretion must be exercised reasonably and not arbitrarily – Noted that the NCLT should admit a Section 7 application upon satisfaction of financial debt and default, unless there are "good reasons" to the contrary. *[Relied on BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr. (2025) 1 SCC 456; Maitreya Doshi v. Anand Rathi Global Finance Ltd. (2023) 17 SCC 606; Axis Bank Ltd. v. Vidarbha Industries Power Ltd. (2022) 8 SCC 352; Paras 77-104]*

For Appellant(s) : Ms. Surabhi Khattar, Adv. Mr. Shivansh Vishwakarma, Adv. Mr. Vikash Kumar Jha, Adv. Ms. Komal Mundhra, AOR Mr. Anant Merathia, Adv. Mr. Saurabh Agrawal, Adv. 3 Mr. Aniket Bhattacharyya, Adv. Mr. Ashutosh Singh Rana, Adv. Mr. Rishay Raj, Adv. Ms. Laxita Upadhyay, Adv. M/S. Cyril Amarchand Mangaldas, AOR Mr. Karun Mehta, AOR Mr. Diwakar Maheswari, Adv. Mr. Pratiksha Mishra, Adv. Mr. Rajiv Shakdher, Sr. Adv. Mr. Sanjay Kapur, AOR Mr. Surya Prakash, Adv. Ms. Shubhra Kapur, Adv. Ms. Mahima Kapur, Adv. Mr. Abhishek Tiwari, Adv. Mr. Gopal Sankaranarayanan, Sr. Adv. Mr. Abhijeet Sinha, Sr. Adv. Mr. Vipul Jai, Adv. Mr. Soayib Qureshi, AOR Mr. Vishal Sinha, Adv. Mr. Neha Nagpal, Adv. Mr. Saikat Sarkar, Adv. Mr. Puneet Singh Bindra, Adv. Ms. Neha Nagpal, Adv. Mr. Anirudh Purshottaman, Adv. Ms. Saumya Juneja, Adv. Mr. Suresh Dutt Dobhal, AOR Mr. Shikhar Kumar, Adv. Mr. Abhinav Sharma, Adv.

For Respondent(s) :Mr. Ankur Mittal, AOR Ms. Muskan Jain, Adv. Mr. Jayant Mehta, Sr. Adv. Ms. Savita Nangare, Adv. Mr. Vinod Nangula, Adv. Mr. Vikramaditya Sanghi, Adv. Mr. Tungesh, AOR Mr. Gp. Capt. Karan Singh Bhati, AOR Mr. Vaibhav Manu Srivastava, AOR Ms. Kaveri Rawal, Adv. Mr. Apoorv Agarwal, Adv. Mr. Soumya Dutta, AOR Mr. Prabhat Ranjan Raj, AOR 4 Mr. T. Ravichandran Thru Vc, Adv. Mr. K. V. Mohan, AOR Mr. K.v. Balakrishnan, Adv. Mr. Devesh Kr. Khanduni, Adv. Mr. Prabhat Kaushik, AOR Mr. Venkata Subramanian, Adv. Mr. Maneesh Arora, Adv. Mr. Lakhan Singh, Adv. Mr. Rajesh Kumar Gautam, AOR Mr. Anant Gautam, Adv. Mr. Deepanjal Choudhary, Adv. Ms. Likivi Jakhalu, Adv. Mr. Rishi Chauhan, Adv. Mr. Hanu Parashar, Adv. Ms. Azal Aekram, Adv. Ms. Pallavi Pratap, AOR Mr. Amjid Maqbool, Adv. Ms. Prachi Pratap, Adv. Dr. Prashant Pratap, Adv. Mr. Vinayak Mehrotra, AOR Mr. Gagan Gupta, Sr. Adv. Mr. Ashish Aggarwal, Adv. Ms. Ramya Aggarwal, Adv. Ms. Tanya Aggarwal, Adv. Mr. Kaushik Poddar, AOR Mr. Akash Dalal, Adv. Mr. Mohd. Hanzala Reza, Adv. Mr. Siddharth Sharma, AOR Ms. Ishika Chauhan, Adv. Mr. B. K. Satija, AOR Mr. Maninder Singh, Sr. Adv. Mr. Gautam Narayan, Sr. Adv. Ms. Asmita Singh, Adv. Mr. Kanishk Khetan, Adv. Mr. Shashwat Anand, AOR Mr. Rishab Kumar, Adv. Mr. Pankaj Bhagat, AOR M/S. Dua Associates, AOR Mr. Samar Vijay Singh, AOR Mr. Shashwat Parihar, Adv. Mr. Vaibhav Vikram Singh, Adv. Mr. T. V. Surendranath, Adv. Mr. Ramendra Nath Makhal, Adv. Mr. Surajit Basu, Adv. Ms. Soumyadeep Chatterjee, Adv. Ms. Aarti Harish Bhandari, Adv. Ms. Aparna Bhat, Sr. Adv. Mr. Mayank Sapra, Adv. Mr. Sulaiman Bhimani, Adv. Ms. Lalima Das, Adv. Mr. Snehasish Mukherjee, AOR Mr. Brijesh Kumar Tamber, AOR.

J U D G M E N T

DIPANKAR DATTA, J.

I. INTRODUCTION

The Judge is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness.[1]

1. These appeals, arising out of different orders of the National Company Law Appellate Tribunal[2] and the National Company Law Tribunal[3], raise a common question of law; one which would appear to be well settled, yet, has been canvassed before us in its entirety.

2. The issue, at large, is, whether simultaneous proceedings for Corporate Insolvency Resolution Process[4] under the Insolvency and Bankruptcy Code, 2016[5] against the principal debtor as well as its corporate guarantor, or vice-versa, are maintainable?

3. It would seem, as has been mentioned earlier, that the issue stands squarely covered by a decision of this Court in ***BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr.***[6]. However, since elaborate arguments were advanced spanning over a couple of days, covering a wide array of arguments, we have considered the matter in some depth.

4. It is also imperative to mention, in all fairness to learned senior counsel/counsel for either side, that we are not tasked with assessing the correctness of ***BRS Ventures Investments Ltd.*** (supra). The submissions have been made, and so does this judgment proceed, on the premise of the law as it stands to-date. Thus, being bound by Article 141 of the Constitution, we proceed to analyze the facts and submissions in view of the law laid down by this Court so far and render our opinion touching the points raised.

II. THE IMPUGNED ORDERS

A. IMPUGNED ORDER IN CIVIL APPEAL NO. 6094 OF 2019

5. In the lead appeal, the order impugned has been passed by the NCLT, Principal Bench, Delhi dated 7th May 2019. Appellant herein, ICICI Bank[7], sought initiation of CIRP as the Financial Creditor against the respondent, ERA Infrastructure (India) Limited, the Corporate Debtor.

6. ICICI had advanced loans to group/related companies of Era Infra Engineering Private Limited, namely, the respondent i.e. ERA Infrastructure (India) Limited, Hyderabad Ring Road Project Private Limited, Apex Buildsys Limited, Dehradun Highway Projects Limited, Gwalior Bypass Project Limited. For the credit facilities granted to these companies, the parent company, Era Infra Engineering Private Limited, gave certain guarantees and contractual comforts.

7. Of these group companies, ERA Infrastructure (India) Limited, the respondent, was sanctioned a loan of Rs. 300 crore by a Credit Arrangement Letter[8], which was subsequently reduced to Rs. 200 crore. Era Infra Engineering Private Limited entered into an arrangement[9] with ICICI wherein, upon occurrence of a default by ERA Infrastructure (India) Limited, Era Infra Engineering Private Limited guaranteed payment to ICICI. Era

---

[1] Eera v. State (NCT of Delhi), (2017) 15 SCC 133 (Nariman, J. quoting Cardozo, *Nature of Judicial Process*, p. 141)
[2] NCLAT
[3] NCLT
[4] CIRP
[5] IBC or Code, used interchangeably
[6] (2025) 1 SCC 456
[7] ICICI
[8] CAL
[9] Loan Purchase Agreement

Infra Engineering Private Limited also entered into a Non-Disposal Undertaking/Arrangement[10] whereby 30% shares of ERA Infrastructure (India) Limited were placed in a designated Non-Disposal Undertaking Account, along with a power of attorney in favor of ICICI, which allowed it sell, transfer, assign, dispose, or encumber these shares.

8. Pursuant to a default by ERA Infrastructure (India) Limited, a Joint Lenders' Forum[11] came to be formed by ICICI along with Yes Bank, which restructured the account while continuing the securities and guarantees.

9. ICICI claimed that, *first*, Era Infra Engineering Private Limited failed to comply with the NDU arrangement, despite being called upon to do so, and *secondly,* ERA Infrastructure (India) Limited and Era Infra Engineering Private Limited, both failed to comply with its payment obligations under the restructured facility. Thus, Era Infra Engineering Private Limited was declared Non-Performing Asset[12].

10. Era Infra Engineering Private Limited, under the Loan Purchase Agreement, was called upon to purchase the Restructured Facilities at a price of Rs.199.5 crore which, ICICI claims, it failed to comply with. ICICI then invoked a recall-cum-invocation of guarantee notice to Era Infra Engineering Private Limited to pay the entire liability of 198.8 crore with interest and charges.

11. On 8th May 2018, CIRP came to be initiated against Era Infra Engineering Private Limited. ICICI lodged its claim under the Loan Purchase Agreement, based on the guarantee. The claim was initially rejected by the Resolution Professional[13], after which ICICI approached the NCLT against the rejection which was allowed and the claim was admitted; consequently, ICICI was permitted to participate in the Committee of Creditors[14].

12. After having its claim admitted against Era Infrastructure Engineering Private Limited, ICICI then filed an application under section 7 of the IBC for initiation of CIRP against ERA Infrastructure (India) Limited. Relying on a judgment of the NCLAT in ***Vishnu Kumar Agarwal v. M/s Piramal Enterprises Ltd***[15], the NCLT, vide the impugned judgment, rejected the application on the grounds that based on the same facts and documents, a fresh section 7 application could not be filed.

B. IMPUGNED ORDER IN CIVIL APPEAL NO. 6093 OF 2019

13. The facts giving rise to this civil appeal are similar to Civil Appeal No.6094 of 2019. ICICI filed an application under section 7 of the IBC against Hyderabad Ring Road Project Private Limited. It claimed that Hyderabad Ring Road Project Private Limited owed an amount of Rs. 193,60,00,000/- under various facilities, including interest and other payables. Here too, as is the case above, Era Infrastructure Engineering Private Limited had provided corporate guarantees to Hyderabad Ring Road Project Private Limited.

14. When CIRP was initiated against Era Infrastructure Engineering Private Limited, ICICI lodged its claim on the strength of the corporate guarantee. This claim came to be admitted by the Interim Resolution Professional[16] for Era Infrastructure Engineering

[10] NDU
[11] JLF
[12] NPA
[13] RP
[14] CoC
[15] 2019 SCC OnLine NCLAT 81
[16] IRP

Private Limited. Later, ICICI approached the NCLT, Principal Bench, seeking initiation of CIRP against Hyderabad Ring Road Project Private Limited.

15. The NCLT, vide impugned order dated 23rd May, 2019, rejected the application while relying on ***Vishnu Kumar Agarwal*** (supra) on the ground that once a claim, based on the same facts and documents, was admitted, no such claim could have been made against another entity.

16. At this juncture, we may add that in civil appeal nos. 6093 of 2019 and 6094 of 2019 applications were filed by the respective respondents being interim application nos. 146714 of 2025 and 146674 of 2025, respectively. These applications by the respondents were filed to bring on record a settlement between them and ICICI. When the settlement was put to the counsel for ICICI during the course of hearing, she denied having such instructions on the settlement. We granted liberty to the parties to move the Court in case there was an agreement on the settlement, however, no such agreement has been brought forth. Thus, we have proceeded to adjudicate the matter on the presumption that no such settlement has been entered between the parties.

C. IMPUGNED ORDER IN CIVIL APPEAL NOS. 827 – 828 OF 2021

17. Bank of India[17] filed an application under section 7 of IBC against RNA Corp. Pvt. Ltd.[18] before the NCLT, Mumbai Bench. NCLT, *vide* its order dated 26th November, 2019, allowed the application for initiation of CIRP. Against the order initiating CIRP, the appellant herein, Anubhav Kumar Agarwal, filed an appeal before the NCLAT.

18. The appeal before NCLAT was primarily on two grounds. First, the application under section 7 was barred by limitation, which the NCLAT negatived. Second, that CIRP had already been initiated based on the same debt against one M/s Chamber Constructions, a guarantor to RNA. Thus, a further CIRP based on the same debt could not be initiated against another entity.

19. Both these contentions came to be rejected vide the impugned order dated 7th February, 2020 passed by the NCLAT. While a review against the order was preferred on second ground, i.e., simultaneous proceeding against the guarantor, the same was rejected. This is also challenged in the present appeal.

D. IMPUGNED ORDER IN SPECIAL LEAVE PETITION NO. 21778 OF 2019

20. International Finance Corporation, the appellant, granted a loan of USD 25,000,000/- to Punj Lloyd Upstream Limited, under a Loan Agreement[19], of which 12,500,000/- came to be disbursed to Punj Lloyd Upstream Limited. Punj Lloyd Limited stood guarantor to the transaction. On 8th March 2019, CIRP came to be initiated against Punj Lloyd Limited by ICICI. Upon invitation of claims, International Finance Corporation filed its claim with the Resolution Professional based on the Loan Agreement.

21. International Finance Corporation then filed an application under section 7 of the IBC seeking initiation of CIRP against Punj Lloyd Upstream Limited, which was rejected vide the impugned order dated 13th May, 2019 citing ***Vishnu Kumar Agarwal*** (supra).

22. International Finance Corporation, instead of filing an appeal before the NCLAT, has filed an SLP against the impugned order of the NCLT.

E. IMPUGNED ORDER IN CIVIL APPEAL NO. 40 OF 2020

---

[17] BoI
[18] RNA
[19] Loan Agreement dated 6th June 2008

23. NCLT, by its order dated 29th May 2019, directed initiation of CIRP against Marg Limited at the instance of ICICI, against which its promoter, Mr. G.R.K. Reddy filed an appeal before the NCLAT. During the hearing of the appeal, the NCLAT was informed that the promoter had settled its dues under section 12A of the IBC, which was also confirmed by the IRP that 95.96% of the CoC had approved the settlement.

24. Intervention applications came to be filed by SREI Equipment Finance Limited and Phoenix Arc Limited, alleging that their claims were not redressed by Mr. G.R.K. Reddy. NCLAT, however, vide the impugned order dated 30th September, 2019, allowed the limited prayer of ICICI to withdraw the section 7 application and set aside the CIRP initiated against Marg Limited. NCLAT permitted SREI Equipment Finance Limited and Phoenix Arc Limited to negotiate the matter with Marg Limited independently and directed it to grant the same treatment as was given to other financial creditors within 2 months.

25. Phoenix Arc Limited challenges this order on the ground that the NCLAT incorrectly permitted withdrawal of the application under section 7, IBC without properly examining whether 90% of the CoC had indeed assented to such withdrawal in terms of section 12A thereof. It is Phoenix's contention that the IRP incorrectly rejected its claim against Marg Limited which arose out of a Corporate Guarantee given to New Chennai Township Private Limited, which was already undergoing CIRP. Due to this rejection, its voting share in the CoC was reduced substantially and this led the CoC to approve the withdrawal of CIRP. Had its claim been allowed, it is contended, Phoenix would have had more than 10% voting share in the CoC, specifically, 10.57%. Consequently, it could have objected to the settlement.

F. IMPUGNED ORDER IN CIVIL APPEAL NO. 2715 OF 2020

26. By an order dated 2nd August 2019, the NCLT initiated CIRP against Greengrow Commercial Pvt Ltd[20] against which its ex-director, Bijay Kumar Agarwal, filed an appeal before the NCLAT. Greengrow had extended a corporate guarantee to Gee Pee Infotech Pvt Ltd[21] against the facilities given by State Bank of India[22].

27. Relying on ***Vishnu Kumar Agarwal*** (supra), the NCLAT allowed the appeal on the ground that an application by SBI against Gee Pee already stood admitted and, in such circumstances, CIRP against the guarantor *viz*. Greengrow could not have been initiated at all. Thus, all proceedings under section 7, IBC against Greengrow stood closed. Another ground that was taken by the appellant was that the application before the NCLT was time barred. However, in view of the adjudication of the first issue in favor of the appellant before the NCLAT, the same did not consider the issue of limitation.

G. IMPUGNED ORDER IN CIVIL APPEAL NO. 4018 OF 2023

28. SBI advanced cash credit facilities to A A Estates Private Limited for Rs. 70 crore. The facilities granted by SBI were secured by, among others, a corporate guarantee by RNA Corp Pvt Ltd.

29. When A A Estates Private Limited defaulted in paying the loan, SBI, after having the account declared as NPA, filed an application under section 7, IBC. NCLT admitted the application and initiated CIRP against the corporate debtor.

30. Appeal came to be filed by the director of A A Estates Private Limited on the grounds that the corporate guarantor, RNA Corp Pvt Ltd, had been admitted in CIRP and SBI had

[20] Greengrow
[21] Gee Pee
[22] SBI

already filed a claim of Rs. 137,55,54,367/-. with the Resolution Professional, which stood admitted. Relying on ***Vishnu Kumar Agarwal*** (supra), it was contended that simultaneous applications could not have been filed against the debtor and the guarantor. Another ground of limitation also came to be raised by the appellant before the NCLAT, claiming that the date of default in the application filed by SBI was mentioned as 1st June 2015, whereas, the application came to be filed on 15th January, 2021; it is thus barred by limitation.

31. On the count of limitation, it was held that by a letter dated 31st January, 2018, A A Estates Private Limited had not only acknowledged the debt within the existing limitation period (3 years from 1st June, 2015, ending on 1st June 2018) but had also proposed a settlement. Thus, the NCLAT held that the limitation period stood revived from 31st January, 2018 and the application was within time.

32. On the count of simultaneous proceedings, the NCLAT differentiated ***Vishnu Kumar Agarwal*** (supra) from the facts of the present case, in as much as in ***Vishnu Kumar Agarwal*** (supra) simultaneous proceedings were filed against two guarantors whereas, in the present case, simultaneous proceedings were filed against the debtor and the guarantor. To support this finding, reliance was placed on ***SBI v. Athena Energy Ventures (P) Ltd.***[23]. The appeal was dismissed by the impugned order dated 31st May, 2023.

H. IMPUGNED ORDER IN CIVIL APPEAL NO. 7231 OF 2024

33. SBI, as part of a consortium, granted certain loans and facilities to Coastal Energen Private Ltd of about Rs.1,139.84 crore. Against the facilities granted to Coastal Energen Private Ltd., Fossil Logistics Private Ltd. extended corporate guarantees. When Coastal Energen Private Ltd defaulted on the loans, its account came to be classified as NPA.

34. Coastal Energen Private Ltd. having failed to pay its dues despite being classified as NPA, SBI filed an application under section 7, IBC against it before the NCLT, which was admitted on 4th February, 2019. CIRP came to be initiated. Subsequently, SBI also filed an application against Fossil Logistics Private Ltd., which came to be admitted by the NCLT on 15th June, 2023, and CIRP came to be initiated.

35. Challenging the order of initiation of CIRP against Fossil Logistics Private Ltd., the suspended director of Fossil Logistics Private Ltd. claimed that the application could not have been admitted since CIRP already stood initiated against Coastal Energen Private Ltd. While so claiming, he relied on ***Vishnu Kumar Agarwal*** (supra). Negativing the contention *vide* the impugned order, the NCLAT dismissed the appeal and held that the liability of a guarantor and principal debtor is co-extensive.

III. SUBMISSIONS BY COUNSEL

36. We have heard extensive and elaborate arguments from learned senior counsel/counsel on either side. A perusal of the impugned orders would show that certain appellants in the batch of matters are aggrieved by the initiation of CIRP, whereas others against the denial thereof. Departing from the conventional manner of setting out submissions by the appellants and respondents *ad seriatim*, the arguments have instead been arranged in favour of and against the proposition of simultaneous proceedings. All other consequential arguments flow from this glacier and are set out under the same head.

A. SUBMISSIONS OPPOSING SIMULTANEOUS PROCEEDINGS

[23] (2021) 226 Comp Cas 744

37. It has been argued that the question which ought to be answered in these appeals is not whether a financial creditor can maintain a claim against the principal borrower and a guarantor in insolvency proceedings, rather, the Court may answer, to what extent can such claim be maintained.

38. Much emphasis is laid on the object of the resolution proceedings under the IBC, and the scope of inquiry by the adjudicating authority/ tribunal at the time of admitting the application.

39. While referring to the inceptive judgments of this Court which analyzed the insolvency jurisprudence under the IBC, it is argued that proceedings thereunder are not mere recovery proceedings but are meant to maximize the value of assets of all persons and balance the interests of the stakeholders. Reference is made to ***Mobilox Innovations v. Kirusa Software***[24], ***Dena Bank v. C. Shivakumar Reddy***[25], ***Ebix Singapore (P.) Ltd. v. Educomp Solutions Ltd. (CoC)***[26], ***HPCL Bio Fuels Ltd v. Shahaji Bhanudas Bhad***[27] and ***Transmission Corpn. Of A.P. Ltd. v. Equipment Conductors & Cables Ltd.***[28].

40. Interpreting the word default as defined in sub-section (12) of section 3, and used in various provisions of the IBC, as well as its interpretation by this Court, it is argued that the default by a corporate debtor must be quantified. Without the default being crystalized, the CIRP cannot be initiated. Form C as mentioned in regulation 8 and set out in Schedule I of the Insolvency And Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016[29] also provide that the specific amount of claim must be mentioned.

41. The financial creditor must exercise the doctrine of election at the time of filing an application for CIRP. Adopting the reasoning set out in ***Vishnu Kumar Agarwal*** (supra), it is argued that while the financial creditor has a co-extensive claim, the extent of such claim must be clear and defined. If this is not done, inequitable consequence is likely to follow. First, the creditor would have much larger voting share in the CoC resulting in a disproportionate resolution. Second, the likelihood of payment being received by the creditor from more than one source, essentially receiving more than what the creditor is entitled to, may lead to unjust enrichment. Third, the practice of impermissible duplication of the same claim in multiple CIRPs was deprecated by the NCLAT in ***Moneywise Financial Services Pvt Ltd v. Arunava Sikdar***[30].

42. Countering the argument that the creditor is bound to update its claims under regulation 12A of the 2016 Regulations, it is contended that non-compliance of these regulations has no serious consequences, except for a fine up to Rs. 2 crores as per section 235A, IBC. The fine is not a sufficient deterrent against duplication of claims. Further, there is no requirement to refund the money.

43. Thus, the financial creditor must elect the extent of claim sought from the debtor and the surety. Drawing support from ***Tettempudi Salalith v. SBI***[31], it is contended that the doctrine of election applies even to IBC proceedings.

---

[24] (2018) 1 SCC 353
[25] (2021) 10 SCC 330
[26] (2022) 2 SCC 401
[27] 2024 SCC OnLine 3190
[28] (2019) 12 SCC 697
[29] 2016 Regulations
[30] 2025 SCC OnLine NCLAT 1127
[31] (2024) 1 SCC 24

44. To this effect, intervention of this Court is sought to lay down appropriate principles and guidelines for, what is termed as group insolvency. Illustrations are drawn from the judgment of the NCLT in ***SBI v. Videocon***[32], referred by the NCLAT in ***Radico Khaitan Ltd. v. BT & FC (P) Ltd.***[33]. In ***Videocon*** (supra), the NCLT, for the first time, mooted the concept of substantial consolidation of CIRPs with a common information memorandum and a common resolution professional to address the current problem. The relevant portion of ***Videocon*** (supra) reads thus:

78. Before arriving at any conclusion on 'Consolidation', the existence of certain ingredients are necessary to be examined, viz.; (1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5) Inter-dependence, (6) Interlacing of finance, (7) Pooling of resources, (8) Co-existence for survival, (9) intricate link of subsidiaries 10) inter-twined of accounts, 11) interlooping of debts, 12) singleness of economics of units, 13) cross shareholding, 14) Inter dependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc. This is not an exhaustive list and cannot be. These are the elementary governing factors, prima-facie to activate the process of 'consolidation'. At first glance the existence of these rudimentary points are required to be seen to examine whether in a particular case the question of 'consolidation' is worth consideration or not? It is also necessary to put it on record at this juncture when entering to start the investigation that it is a cumbersome exercise which require time and patience. Whether the case in hand can fit into these basic criterion is to be scrutinised in the following paragraphs.

45. Among other things, a direction is also sought for disclosure of claims to the Resolution Professional as well as to the debtor, to create a transparent process. Terming the penalty under section 235A, which shall not be less than Rs. 1 lakh but may extend to Rs. 2 crore, as insufficient, emphasis is laid for regulations to address the same and in the interregnum, guidelines are sought to enable refund of excess recovery by the creditor by the appropriate authority.

46. At the stage of filing of claims, either by filing an application under section 7 or by filing the claim as per Form C of the 2016 Regulations, the creditor is not bound to disclose claims made against coborrowers or guarantors. It is contended that a guideline to this effect, mandating disclosure of parallel claim, is necessary to facilitate effective CIRP proceedings for the resolution professional as well as other stakeholders.

B. SUBMISSIONS IN SUPPORT OF SIMULTANEOUS PROCEEDINGS

47. At the very outset, it is contended that the issue stands settled in view of ***BRS Ventures Investments Ltd.*** (supra). The primary contention hinges on section 60(2), IBC which reads thus:

60. Adjudicating authority for corporate persons —

****

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

****

[32] 2019 SCC OnLine NCLT 34792
[33] 2021 SCC OnLine NCLAT 55

48. Thus, it is contended that section 60(2), IBC enables the adjudicating authority, being the NCLT, before which the application of the principal debtor is pending, to adjudicate the application of the corporate or personal guarantor as well.

49. Learned senior counsel supporting the proposition of simultaneous proceedings would primarily argue that under the common law principles as well as under section 128 the Indian Contract Act, 1872[34], the liability of the surety or the guarantor is co-extensive with that of the principal debtor. Reliance is placed on ***Bank of Bihar Ltd. v. Damodar Prasad & Anr.***[35], ***State Bank of India v. Indexport Registered and Ors.***[36], ***Industrial Investment Bank v. Bishwanath Jhunjhunwala*** and ***State Bank of India v. V. Ramakrishnan***[37].

50. They have argued that the very object of guarantee is to be a failsafe mechanism against the default of the principal debtor. The purpose of a guarantee would be rendered futile if the creditor is to wait for the process against the principal debtor is over. The interpretation in that case would mean that the guarantor would be exempt, in the interregnum, from paying the debt, which the IBC does not provide for.

51. Countering the contention of election of claims, it has been contended that the law does not require the creditor to elect its claims. CIRP initiated at the behest of any creditor would require the financial creditor who is owed a financial debt, either under a guarantee or principal debt, to file entire of its claim. If the creditor does not file its entire claim, the right to recover that part of the debt would be lost forever.

52. In view of the 'clean slate' principle as postulated in ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[38] and ***Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta***[39], no part of debt of the debtor can continue once the CIRP is completed. Thus, if claim is not submitted or a part of it is submitted, the creditor would be relinquishing its part of the claim against the corporate debtor.

53. It was also argued that the creditor cannot be asked to wait or defer the initiation of proceedings while the proceedings against the principal debtor or the guarantor is completed. A creditor who is legally entitled to initiate proceedings against the debtor or the guarantor, cannot be deprived of such right.

54. IBC as well as the 2016 Regulations, it was next contended, provide sufficient mechanisms to avoid unjust enrichment. The duty is cast upon the Resolution Professional to maintain an updated list of creditors and adjust the list according to the modification, and the consequential change in voting rights.

55. Opposing the argument in relation to the doctrine of election, reliance was placed on ***A.P. State Financial Corporation v. M/s Gar Rerolling Mills & Anr***.[40] to contend that the doctrine does not apply in the present case. For the doctrine of election to be applicable, three conditions, as laid down in ***Transcore v. Union of India***[41] would be necessary, *viz*. (i) existence of two or more remedies, (ii) inconsistency between such remedies, and (iii) a choice of one of them. It was contended that in the present case,

---

[34] Contract Act
[35] AIR 1969 SC 297
[36] AIR 1992 SC 1740
[37] (2018) 17 SCC 394
[38] (2021) SCC 9 657
[39] (2020) 8 SCC 531
[40] (1994) 2 SCC 647
[41] (2008) 1 SCC 125

none of the elements are applicable. The relevant portion of ***Transcore*** (supra) reads thus:

64. In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply. According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.

(emphasis by counsel)

56. The lack of inconsistency between the two proceedings would make the doctrine of election inapplicable. It was thus the contention that doctrine of election has no relevance in the present case.

IV. ANALYSIS

57. Having heard and considered the submissions advanced by learned senior counsel/counsel for the parties, we now proceed to analyse the law at hand.

58. The common thread that runs through each of the impugned orders is one of guarantee. In all these orders, the NCLAT or the NCLT, has either rejected or permitted initiation of CIRP against the corporate debtor in question. The underlying corporate debtor is either the principal debtor in a guarantee or the surety/guarantor itself. Thus, all the issues herein run within the four corners of guarantee and the IBC.

A. HISTORY OF LAWS RELATING TO INSOLVENCY, RECONSTRUCTION, RECOVERY OF DUES, ETC. AND THE OBJECTS/PURPOSES OF THE IBC

59. It would not be inapt at this stage to trace the objects/purposes the IBC seeks to achieve and the history of the laws in India in related fields.

60. IBC is a comprehensive legislation which has ushered in a regulatory regime governing all aspects of insolvency and bankruptcy and providing for insolvency resolution of all entities in India, be it corporate or individual.

61. The preamble of the IBC introduces it is an *"Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto*."

62. The key objectives of the IBC, evident from its preamble, are as follows:

i) to consolidate and amend the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals to provide for a time bound insolvency resolution mechanism;

ii) to ensure maximization of value of assets;

iii) to promote entrepreneurship;

iv) to increase availability of credit;

v) to balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues;

vi) to establish an Insolvency and Bankruptcy Board of India as a regulatory body; and

vii) to provide procedure for connected and incidental matters.

63. Historically, prior to the enactment of the IBC, several laws pertaining to insolvency and recovery were in operation in different fields throughout the country. While the IBC subsumed most of them, the expanse of the remaining few have been limited to recovery only subject to certain provisions of the IBC.

64. To wit, the Presidency Towns Insolvency Act, 1909 was there for the three-presidency towns of Calcutta, Madras and Bombay and the Provincial Insolvency Act, 1920 covered areas beyond the presidency towns. These two legislations governed individuals and partnerships. However, they stand repealed with the enactment of the IBC. Insolvency of corporate entities was dealt with initially under the Companies Act, 1956 and thereafter under its successor legislation, i.e., the Companies Act, 2013. It is however, important to note that the provisions relating to winding up and liquidation of a company in the new avatar of the Companies Act, i.e., the Act of 2013 were not notified and therefore till the time of enactment of the IBC, the provisions of the earlier version of the Companies Act, i.e., the Act of 1956 governed proceedings for winding up and liquidation of companies. Yet another legislation called the Sick Industrial Companies (Special Provisions) Act, 1985[42] was enacted with the stated purpose of timely detection of sick and potentially sick industrial companies and speedy determination of remedial and/or preventive measures. Though the repealing Act of SICA was enacted much earlier, it was notified upon the IBC coming into effect.

65. Two other legislations, viz. the Recovery of Debts Due to Banks and Financial Institutions Act, 1993[43] and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[44] were suitably amended to ensure that the provisions of the IBC held sway over the provisions thereof. Interestingly, the DRT Act was rechristened to Recovery of Debts and Bankruptcy Act, 1993[45] symbolizing that recovery and bankruptcy i.e., insolvency resolution) were to go hand in hand. In fact, Debt Recovery Tribunals have been specified or designated to be the Adjudicating Authorities in Part III of the IBC for insolvency resolution of individuals and partnership firms.

66. The need for enactment of the IBC may be noted, briefly. As outlined above, prior to the advent of the IBC, the insolvency regime was multi-pronged and highly fragmented. The two Insolvency Acts of 1909 and 1920, apart from being archaic, posed practical difficulties inasmuch as the two created different fora and different procedures for insolvency adjudication of similarly circumstanced persons at two different places. There was one set of procedure and fora for the Presidency towns of Calcutta, Bombay and Madras and another for the rest of India. The same failed to adapt to the needs of the quickchanging commercial world, leading to delays in adjudication. Insofar as the Companies Act, 1956 is concerned, the same provided for initiation of proceedings for winding up of a company if the company was unable to pay its debt; and if a petition for winding up were admitted by the Company Court, liquidation was inevitable unless a viable

[42] SICA
[43] DRT Act
[44] SARFAESI Act
[45] RDB Act

scheme for restructuring and repayment passed muster before such Court. There was no provision mandating resolution of insolvency prior to liquidation. Furthermore, there was no timeline within which even liquidation of the company was to be accomplished. This too led to delays. SICA also proved to be ineffective. Dishonest persons at the helm of the sick industrial company took advantage of the suspension of all legal proceedings against the subject company coupled with the procedural delays in conclusion of the proceedings before the two Boards (i.e., the Board for Industrial and Financial Reconstruction and the Appellate Authority Industrial and Financial Reconstruction) and continued to remain in control of the subject company. The worth of the company in almost all such cases got eroded to such an extent that revival became impossible. The DRT/RDB Act and the SARFEASI Act also failed to achieve timely recovery despite statutorily prescribed timelines. This led to the deterioration of the value of assets of the debtor, which were the ultimate security for the debts owed by the secured creditor.

67. The aforesaid drawbacks in the then existing bankruptcy framework necessitated a more unified and focused legislation which ultimately took the shape of the present Code. There are numerous judgments by now starting from ***Innoventive Industries Limited v. ICICI Bank***[46] that have touched upon the scheme of the IBC and provided an overview thereof. The same is, thus, not being repeated here again.

68. It has consistently been found that recovery is not the object of proceedings under the IBC. We propose to discuss this in some detail, in a later segment. Suffice to observe, the idea behind such a statement is that a proceeding under the IBC is primarily focused on insolvency resolution of the debtor (whether corporate or otherwise) and although recovery is incidentally effected, the proceeding is actually not meant to facilitate recovery of dues only of the person who initiated the proceeding. The expression "*availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India"* in the preamble indicates that only. In fact, it is a time bound composite process involving insolvency resolution and recovery upon shifting the control of the corporate debtor and its assets from the hands of its promoters/directors to a Resolution Professional, who is ultimately guided by the Committee of Creditors, such that the interests of all stakeholders are balanced.

69. However, if an application for initiation of CIRP is filed, it would be nigh impossible for one to probe the mental process or thought of any applicant and ascertain as to what drove him/her/it to file the application. This is so because any proceeding based on an application either under section 7 or section 9 of the IBC for initiation of a CIRP would necessarily be summary in nature and is, therefore, to be decided on the basis of affidavit evidence. In such a situation, if an application filed by either a financial creditor under section 7 of the IBC or an operational creditor under section 9 thereof is otherwise fit to be admitted, can the Adjudicating Authority (NCLT) refuse to admit such an application on the ground that the object of the said application was recovery?

70. Pertinently, the common ground provided under both section 7 as well as section 9 for lodging an application before the Adjudicating Authority (NCLT) is default only. None of the two sections bar approach to the NCLT for the purpose of recovery. At the same time, it cannot be gainsaid that there can also be malicious proceedings aimed at arm twisting the debtors whether corporate or otherwise.

---

[46] (2018) 1 SCC 407

71. The question as to whether or not an application under section 7 or section 9 should be admitted, would have to be answered upon an analysis of two major aspects, i.e., default and legally enforceable debt, i.e., debt that has fallen due. As already indicated by this Court in ***Innoventive Industries Limited*** (supra), the test for admission of an application under section 7 is different from that under section 9 of the IBC, i.e., if there is a *bona fide* dispute as regards the debt due, an application under section 9 would not be admitted; however, presence of such dispute is inconsequential insofar as an application under section 7 is concerned. If the analysis of the aforesaid two aspects leads to affirmative results, i.e., if the records before the NCLT convincingly demonstrate default and legally enforceable debt (which is not disputed in case of operational creditor), admission would be inevitable irrespective of the motive with which the application might have been filed.

72. The fact that recovery is as central to the process of insolvency resolution as resolution itself would also be evident from the fact that upon an application under section 7 or section 9 being admitted, the decision as regards the viability of the resolution plan which, *inter alia*, provides for payment of the dues of the creditors is taken by the CoC, which is constituted chiefly by the financial creditors. It is any body's guess that decision taken by the creditors would be in their best interest, i.e., to bolster recovery. In fact, it cannot be denied that maximization of the value of the corporate debtor's assets is also to enure to the benefit of creditors.

B. RE: SIMULTANEOUS PROCEEDINGS

73. In cases where the application was rejected, reliance was chiefly placed on ***Vishnu Kumar Agarwal*** (supra). The relevant portion from such decision reads thus:

32. There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company.

74. It was, thus, held that once an application stood admitted, either against the principal borrower or the guarantor, no further application could be maintained against the guarantor or co-guarantor or principal borrower. Following this, the impugned orders too, were passed by the respective tribunals, rejecting the initiation of CIRP.

75. An appeal was carried to this Court from ***Vishnu Kumar Agarwal*** (supra); however, the parties having reached a settlement, the appeal [47] stood disposed of without expression of any opinion on the merits thereof.

76. Conversely, the impugned order(s) allowing CIRP to be initiated simultaneously placed reliance on a judgment of the NCLAT in ***Athena Energy Ventures*** (supra). NCLAT in ***Athena Energy Ventures*** (supra) preferred not to follow ***Vishnu Kumar Agarwal*** (supra) for the reason as under:

[47] Order dated 16th December, 2024 in Civil Appeal No. 878 of 2019.

19. It is clear that in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The law as laid down by the Hon'ble High Courts for the respective jurisdictions, and law as laid down by the Hon'ble Supreme Court for the whole country is binding. In the matter of Piramal, the Bench of this Appellate Tribunal "interpreted" the law. Ordinarily, we would respect and adopt the interpretation but for the reasons discussed above, we are unable to interpret the law in the manner it was interpreted in the matter of Piramal. For such reasons, we are unable to uphold the Judgement as passed by the Adjudicating Authority.

77. The reasoning against simultaneous proceedings, at first blush, would seem simple: one debt, one proceeding. However, this reasoning was considered and negatived by this Court in ***BRS Ventures*** (supra), which held as under:

28. Sub-section (2) of Section 60 contemplates separate or simultaneous insolvency proceedings against the corporate debtor and guarantor. Therefore, sub-section (3) of Section 60 provides that if CIRP in respect of the corporate guarantor is pending before an adjudicating authority and if the CIRP against the corporate debtor is pending before another adjudicating authority, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before whom CIRP in respect of the corporate debtor is pending. Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is coextensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 by a financial creditor against the corporate debtor and the corporate guarantor.

78. Thus, the question, whether simultaneous proceedings against the corporate debtor and/or the guarantor(s) can be maintained or not, is no longer *res integra*. All the arguments that have been canvassed before us, including the interpretation of sub-section (8) of section 5 and sub-section (2) of section 60 of the IBC, as well as regulation 8 of the 2016 Regulations read with Schedule-I, Form C, have been considered by the coordinate bench in ***BRS Ventures Investments Ltd.*** (supra).

79. The appeals could be disposed of on this finding itself. However, there is something more that lies ahead. The aggrieved parties urge us to go beyond merely restating the law and applying it to the dispute at hand, asserting that this by itself would be inadequate. What they call upon us is to lay down further modalities and restrictions governing the process. We consider these submissions hereafter.

C. RE: IBC AS RECOVERY PROCEEDINGS

80. The arguments against simultaneous proceedings are also premised on the contention that the process under the IBC is not intended to be converted to recovery proceedings. To initiate insolvency against several companies for recovery of just one debt would be against the object and ethos of the Code.

81. That the IBC is not purely recovery proceedings has been noticed. In view of the preamble of the Code which envisions *maximization of value of assets*, principles of the Contract Act cannot be made applicable to the IBC *stricto sensu*. Reliance has been placed on ***Swiss Ribbons (P) Ltd. v. Union of India***[48] and ***Essar Steel (India) Ltd. Committee of Creditors v. Satish Kumar Gupta***[49].

82. This submission is further buttressed by the discretionary powers vested with the adjudicating authority, being the NCLT, at the time of admission of a petition by the financial creditor. The use of 'may' in section 7 as against 'shall' in section 9 — its analogous provision — signifies that the adjudicating authority can and must consider circumstances beyond the obvious debt, default, and the conditions prescribed under section 7. Should

[48] (2019) 4 SCC 17
[49] (2020) 8 SCC 531

the adjudicating authority consider, in its prudence, not to initiate proceedings against the creditor, it may decline admission of the petition. To further this contention, reliance is placed on ***Axis Bank Ltd. v. Vidarbha Industries Power Ltd.***[50], relevant portion whereof reads thus:

76. The fact that Legislature used 'may' in Section 7(5)(a) of the IBC but a different word, that is, 'shall' in the otherwise almost identical provision of Section 9(5)(a) shows that 'may' and 'shall' in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary. An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

77. On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.

78. The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor.

79. As observed above, the financial strength and nature of business of Financial Creditors and Operational Creditors being different, as also the tenor and terms of agreements/contracts with financial creditors and operational creditors, the provisions in the IBC relating to commencement of CIRP at the behest of an Operational Creditor, whose dues are undisputed, are rigid and inflexible. If dues are admitted as against the Operational Creditor, the Corporate Debtor must pay the same. If it does not, CIRP must be commenced. In the case of a financial debt, there is a little more flexibility. The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid.

***

86. Even though Section 7 (5)(a) of the IBC may confer discretionary power on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

87. Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the

[50] (2022) 8 SCC 352

existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.

88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative.

83. ***Vidarbha Industries Power Ltd.*** (supra) is a decision which expounds the law in great detail, *inter alia*, by considering the modal verbs "may" and "shall" in sections 7(5)(a) and 9 (5)(a), IBC, respectively, in the context of the only question arising for decision, i.e., whether section 7(5)(a) is mandatory or a discretionary provision (paragraph 57 of the report) and stresses on a reasonable and wellfounded, not arbitrary or capricious, judgment in the exercise of discretion under section 7(5)(a) by the adjudicating authority.

84. We read in such decision abidance by the fundamental principle of statutory interpretation: that the plain language of the statute governs its express terms with all other interpretive aids, including the preamble and the secondary sources serving only to clarify, and not contradict, that meaning. In simple terms, when the words of statute are clear and unambiguous, it must be given effect to as it stands. A right created by statute cannot be restricted or taken away, except by express statutory provision or necessary implication.

85. Having said so, if the rigours and conditions prescribed by the statute are met, it must be left to the wisdom of the adjudicating authority to admit a petition for initiation of CIRP. Precedents of this Court which interpret section 7 to confer discretion upon the adjudicating authority, have laid down the limitations thereto in considerable detail. This view stands further fortified by this Court's recent decision, pronounced after orders were reserved in the present appeals, in ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan (Interim Resolution Professional of Hiranmaye Energy Ltd.)***[51].

86. Thus, whilst approving that the IBC is not a recovery proceeding, we negate the contention that CIRP can be prohibited against a guarantor or co-borrower only on that ground. It seems prudent that the rationale of a creditor obtaining a guarantee for its debt must be realized to its fullest. A financial creditor, vested with rights under the Code, must be able to exercise it. Equally so, the adjudicating authority has the obligation to examine the application independently, on its own merits.

D. RE: ELECTION OF CLAIMS

87. The submissions extrapolated hereinabove would also raise a seminal issue – one of election. It is settled law that a creditor can pursue proceedings against multiple debtors, simultaneously. The question is how the debt gets split. Can the creditor be compelled to claim part against the debtor and the rest against the guarantor?

88. The argument before us has been that letting the creditor claim 100% of the debt from both the principal debtor and the guarantor would invariably allow the creditor two shots at recovery and voting rights in two CoCs. This is against the object of the IBC.

89. We are not impressed and find no reason to accept this argument.

---

[51] 2026 SCC OnLine SC 248

90. Restricting the claim of a creditor against a debtor or a guarantor is likely to defeat the purpose of a guarantee. Since a guarantor's liability is co-extensive, forcing the creditor to elect would essentially make it sacrifice part of its claim. This is not how a guarantee works, particularly when the Code does not provide for such election.

91. Contentions were rightly advanced on the 'clean slate' doctrine under the IBC. Reliance was placed on ***Ghanshyam Mishra*** (supra) and ***Essar Steel*** (supra). If the argument is accepted that a creditor must elect which part of the debt to enforce against the debtor or the guarantor, the creditor might lose the right to claim the remaining debt from either party after the CIRP concludes.

92. When election of remedies or claims is intended by the statute, such a provision must be expressly provided for. For instance, under the Motor Vehicles Act, 1988, claimants must choose between seeking compensation under Section 163A (structured formula) or Section 166 (fault-based claim), as both are alternative and not cumulative remedies. Section 163A provides no-fault liability, enabling claimants to receive compensation on a fixed formula based on the second schedule without proving negligence or wrongful conduct of the driver or owner, whereas Section 166 requires the claimant to prove negligence and just compensation is then determined as per the guidance provided by judicial decisions pronounced from time to time.

93. The conspicuous absence of any such provision in the IBC implies that no such restriction can be imposed on the creditor. The effect of imposing a mandatory election of claims upon the creditor would effectively take away the statutorily vested right to approach the NCLT against one or both. In the absence of any statutory proscription against filing such a claim, it would be unwarranted for this Court to impose such a restriction.

94. Further, the argument that the creditor gets double voting power in each of the CoCs is also incorrect. *Albeit* true that the creditor could have such a benefit, but it must be borne in mind that such benefit is in respect of separate CoCs for different debtors. The proceedings against the guarantor and the debtor are separate and independent.

95. We, thus, agree with the contention advanced on behalf of the creditors. The doctrine of election is not attracted since the prerequisites therefor are not satisfied.

E. RE: DOUBLE ENRICHMENT

96. If a creditor is permitted to initiate CIRP against multiple debtors, an apprehension is raised that it might lead to recovery of dues more than what it is entitled and, thereby, doubly enriching itself. It is contended that the Code, as it stands today, does not envisage a mechanism for prohibition of such double enrichment. There lies no onus upon the creditor to disclose recovery of the debt or a part thereof due to the debtor, from any other sources. Thus, the argument flows, that permitting simultaneous proceedings against the corporate debtor and the guarantor(s) would lead to a situation where the creditor may realize more than what is due.

97. The concern underlying this submission is well founded. However, to entirely bar proceedings against guarantors solely on this ground would be an overextension of the principle. That apart, we are of the view that sufficient safeguards exist as on date to prevent such double enrichment. Regulation 12A of the 2016 Regulations sets up an obligation upon the creditor to update its claim as and when it is satisfied, either partly or fully, from any other source. Regulation 12A reads as under:

12A. Updation of claim.

A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

98. In addition to regulation 12A, obligation is also cast upon the resolution professional to independently assess and update the claims from time to time. Reference may be made to regulation 14 of the 2016 Regulations, which reads as under:

14. Determination of amount of claim:

(1) Where the amount claimed by a creditor is not precise due to any contingency or other reason, the interim resolution professional or the resolution professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him.

(2) The interim resolution professional or the resolution professional, as the case may be, shall revise the amounts of claims admitted, including the estimates of claims made under subregulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

99. Profitable reference may also be made to the decision of this Court in ***Maitreya Doshi v. Anand Rathi Global Finance Ltd.***[52] where it was held:

37. If there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount cannot be realised from both the Corporate Debtors. If the dues are realised in part from one Corporate Debtor, the balance may be realised from the other Corporate Debtor being the co-borrower. However, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over.

100. To reiterate, the contention that simultaneous proceedings must be necessarily barred apprehending double enrichment is far-fetched and stands rejected, particularly in view of the safeguards mentioned hereinabove.

F. THE NEED FOR REFORM

101. It cannot be gainsaid that the issue of simultaneous proceedings has gained traction only recently in view of judgments of this Court. Submissions have been advanced by the learned senior counsel/counsel regarding the absence of modalities for simultaneous proceedings or group insolvency which are, according to them, of considerable significance. Consequently, during the course of arguments, we were urged to lay down guidelines and modalities for the path ahead. These submissions, though not directly determinative of the present controversy, could assume considerable importance in addressing the broader issue involved.

102. What, however, cannot be ignored is that the legislature as well as the Insolvency and Bankruptcy Board of India[53] are aware of the pitfalls and lacunae that follow. The Insolvency Law Committee in its Report of February, 2020[54] had also noted the issue. The report was referred by the NCLAT in ***Athena Energy Ventures*** (supra). We find it apposite to refer to the relevant portion of the report as under:

7. ISSUES RELATED TO GUARANTORS

7.1. Under Section 128 of the Indian Contract Act, 1872, the liability of a surety towards a creditor is coextensive with that of the principal borrower. When a default is committed, the

---

[52] (2023) 17 SCC 606

[53] IBBI

[54] Insolvency and Bankruptcy Board of India, Report of the Insolvency Law Committee (Mar. 2021), available at https://ibbi.gov.in/uploads/whatsnew/7c9bde175431a4abb8c33bb105e1f2dd.pdf. (last accessed on 24th December, 2025)

principal borrower and the surety are jointly and severally liable to the creditor, and the creditor has the right to recover its dues from either of them or from both of them simultaneously.[55] The Committee discussed whether in light of this rule of co-extensive liability of the surety and the principal borrower, a creditor should be permitted to initiate CIRP against both the principal borrower and its surety and whether it should be permitted to file its claims in the CIRPs of both the principal borrower and its surety. Initiation of Concurrent Proceedings against the Principal Borrower & the Guarantor

7.2. The Committee noted that the Appellate Authority, in Dr. Vishnu Kumar Agarwal v M/s. Piramal Enterprises Ltd.,[56] has prevented admission of multiple CIRP applications which were filed by the same creditor for the same set of claims against different corporate debtors by holding that: "However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower')."[57]

7.3. The Committee noted that while, under a contract of guarantee, a creditor is not entitled to recover more than what is due to it, an action against the surety cannot be prevented solely on the ground that the creditor has an alternative relief against the principal borrower.[58] Further, as discussed above, the creditor is at liberty to proceed against either the debtor alone, or the surety alone, or jointly against both the debtor and the surety.[59] Therefore, restricting a creditor from initiating CIRP against both the principal borrower and the surety would prejudice the right of the creditor provided under the contract of guarantee to proceed simultaneously against both of them.

7.4. Further, Section 60(2) of the Code provides that when a CIRP or liquidation process against a corporate debtor is pending before an Adjudicating Authority, any insolvency resolution, liquidation or bankruptcy proceeding against any guarantor of that corporate debtor should also be initiated before the same Adjudicating Authority. Similarly, Section 60(3) requires transfer of any such proceeding which may be pending before any court or tribunal to the Adjudicating Authority dealing with the CIRP or liquidation process of the corporate debtor. Therefore, as the Code does require proceedings against a corporate debtor and its guarantors to be simultaneously heard by the same Adjudicating Authority, the Committee was of the view that the Code in fact, envisages initiation of concurrent proceedings against both a corporate debtor and its sureties. **Given this, the Committee recommended that a creditor should not be prevented from proceeding against both the corporate debtor and its sureties under the Code.**

7.5. However, the Committee noted that the Appellate Authority has, in certain cases, taken a view contrary to its decision taken in the Piramal Enterprises Ltd.[60] case. For example, in Edelweiss Asset Reconstruction Company Limited v Sachet Infrastructure Pvt. Ltd. & Ors.,[61] the Appellate Authority has permitted simultaneous initiation of CIRP against the principal borrower and its corporate guarantors. Further, the Appellate Authority has also admitted a petition to review its aforesaid judgement in the Piramal Enterprises Ltd. case.[62] **Given this, the Committee**

---

[55] Pollock and Mulla, Indian Contract and Specific Relief Acts vol. II (12th edn., LexisNexis Butterworks 2006) p. 1814-1816

[56] Company Appeal (AT) (Insolvency) No. 346/2018, NCLAT. Decision Date - 8 January 2019

[57] Dr. Vishnu Kumar Agarwal v M/s. Piramal Enterprises Ltd, Company Appeal (AT) (Insolvency) No. 346/2018, NCLAT. Decision Date - 8 January 2019

[58] Bank of Bihar Ltd v Damodar Prasad & Another AIR 1969 SC 297

[59] State Bank of India v Indexport Registered and Ors. AIR 1992 SC 1740; Jagannath Ganeshram Agarwala v Shivnarayan Bhagirath AIR 1940 Bom 247

[60] Dr. Vishnu Kumar Agarwal v M/s. Piramal Enterprises Ltd., Company Appeal (AT) (Insolvency) No. 346/2018, NCLAT. Decision date – 8 January 2019

[61] Company Appeal (AT) (Insolvency) No. 377/2019, NCLAT. Decision date – 20 September 2019

[62] TUF Metallurgical Pvt. Ltd. v Wadhwa Glass Processors Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 611/2019, NCLAT. Decision date – 31 May 2019

decided that no legal changes may be required at the moment, and this issue may be left to judicial determination.

7.6. It was also represented before the Committee that in certain cases creditors extend loans to a debtor solely by relying on the contract of guarantee provided by a thirdparty surety, and without considering the commercial viability of the debtor and its ability to repay the debt. The Committee deprecated this practice, and agreed that creditors should necessarily carry out adequate due diligence regarding the debtor's financial position and should not extend a loan solely by relying on a contract of guarantee without assessing the financial and technical feasibility of the respective project.

Filing of Claims by a Creditor in Proceedings of the Principal Borrower & the Guarantor

7.7. The Committee further discussed whether, in cases where CIRP has already been initiated against the principal borrower and the surety, a creditor should be allowed to file claims (with respect to the same set of debts) in the CIRP of both the corporate debtors. The Appellate Authority, in Dr. Vishnu Kumar Agarwal v M/s. Piramal Enterprises Ltd.,[63] had opined that "*for same set of debt, claim cannot be filed by same 'Financial Creditor' in two separate 'Corporate Insolvency Resolution Processes*'".

7.8. However, as discussed above, the principal borrower and the surety being jointly and severally liable to the creditor is a key feature of a contract of guarantee. Therefore, the very object of a contract of guarantee would be prejudiced if the creditor is prohibited from filing claims in the CIRP of both the principal borrower and the surety.[64] Even in the First ILC Report, this Committee, while discussing the scope of moratorium under Section 14 *vis-à-vis* the assets of a surety of the corporate debtor, had observed that the "*characteristic of such contracts i.e. of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended.*"[65] If a creditor is denied the contractual right to proceed simultaneously against the corporate debtor and the surety, the ability of the creditor to recover its debt may be seriously impaired.

7.9. **As the right to simultaneous remedy is central to a contract of guarantee, the Committee suggested that in cases were both the principal borrower and the surety are undergoing CIRP, the creditor should be permitted to file claims in the CIRP of both of them. Since, as the Code does not prevent this, the Committee recommended that no amendments were necessary in this regard.**

7.10. It was brought to the Committee that this right may be misused by a creditor to unjustly enrich herself by recovering an amount greater that what is owed to her. However, the right to simultaneous remedy under a contract of guarantee does not entitle a creditor to recover more than what is due to her, and **the Committee agreed that upon recovery of any portion of the claims of a creditor in one of the proceedings, there should be a corresponding revision of the claim amount recoverable by that creditor from the other proceedings.**

(in-line citations and emphasis in original)

103. Considerable jurisprudence of the IBC, including concepts such as simultaneous proceedings and group insolvency has flowed from judgments of this Court as well as of the NCLAT and the NCLT, the legislature as well as the IBBI has been receptive to the judicial nudges and has brought out necessary policy changes from time to time.

---

[63] ibid
[64] Bank of Bihar Ltd v Damodar Prasad & Another AIR 1969 SC 297
[65] Ministry of Corporate Affairs, Report of the Insolvency Law Committee (2018) para 5.9, accessed 26 November 2019

104. We, however, decline to lay down guidelines as proposed; and for good reason. IBC is a product of a well-thought, deliberated, and extensively researched policy framework. The rules and regulations, too, are framed thereunder after rigorous research. Furthermore, though the IBC primarily operates in the judicial and *quasi*-judicial arena, its effects are far reaching, often affecting banking, economy, and other sectors. To venture into unchartered territories, wearing the legislative hat, would be nothing short of judicial exploration, which we do not propose to do. We leave it to the wisdom of the legislature and the IBBI to frame appropriate policy framework and guidelines with an inclusive consultative process of all the stakeholders, if so required.

V. CONCLUSION

105. In view of the foregoing reasons, Civil Appeal Nos. 6093 of 2019, 6094 of 2019, and 2715 of 2020 are allowed and the orders impugned therein are set aside.

106. For the same reasons, leave is granted in SLP (C) No. 21778 of 2019 and the appeal stands allowed.

107. Civil Appeal Nos.827-828 of 2021, 4018 of 2023 and 7231 of 2024, however, stand dismissed.

108. Keeping in mind that a settlement was entered by the impugned order in Civil Appeal No. 40 of 2020 before the NCLAT, and the civil appeal hinges on the narrow compass of constitution of CoC which approved the withdrawal of petition filed by ICICI, we are inclined to dismiss the civil appeal. Accordingly, the civil appeal stands dismissed. However, if so advised, the appellant may pursue independent proceedings before the Adjudicating Authority in accordance with law.

109. Since we have restricted ourselves to the point of law while deciding the appeals, all contentions on merits are kept open to be adjudicated by the adjudicating authority.

110. Pending interim applications stand disposed of. Interim orders, if any, stand vacated.

111. We record our appreciation for the assistance rendered by learned senior counsel/counsel for the parties.