

**REGULATORY OVERLAP AND CONFLICT: A LEGAL  
ANALYSIS OF IBC AND SEBI**



**Dissertation submitted in partial fulfilment of the requirement  
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Corporate and Commercial Laws**

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## **DECLARATION**

I, **HARILAKSHMI P.V.** hereby declare that the Dissertation work titled **“REGULATORY OVERLAP AND CONFLICT: A LEGAL ANALYSIS OF IBC AND SEBI”** is an original work done by me under the supervision of Dr. Harshita Kulkarni, Assistant Professor, Supervisor and Mr. Arpit, Assistant Professor, Co-Supervisor, School of Law, Governance and Public Policy, Chanakya University, Bangalore.

I further declare that to the best of my knowledge this LL.M. Dissertation does not contain any part which has been submitted for the award of any degree either in this University or in any other Institutions without proper citations. It is further declared that all the sources of information used in the dissertation have been duly acknowledged. I understand that the dissertation may be electronically checked for plagiarism by anti-plagiarism software to assess the originality of the submitted work.

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This is to certify that the dissertation titled, “**REGULATORY OVERLAP AND CONFLICT: A LEGAL ANALYSIS OF IBC AND SEBI**” submitted by **Ms. Harilakshmi P.V.** bearing **Registration Number 24PG00007** in partial fulfilment of the requirements for the award of the **Master of Laws (LL.M.) in Corporate and Commercial Laws**, at **Chanakya University, Bengaluru**, is an original work carried out under my guidance and supervision.

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## TABLE OF CONTENTS

SL.NO	CONTENTS	PAGE NO
<b>1</b>	<b>Chapter-1</b>	1
1.1	Introduction	1-4
1.2	Statement of problem	4
1.3	Hypothesis	4-5
1.4	Aims & objectives	5
1.5	Review and literature	5-8
1.6	Research methodology	8
<b>2</b>	<b>Chapter-2</b> <b>Background of the research</b>	9
2.1	Introduction	9-12
2.2	“The Indian Insolvency Regime”	12-13
2.3	“The corporate insolvency resolution process”	13-14
2.4	The simultaneous evolution of these two crucial laws.	14-18
2.5	The clash of imperatives moratorium under IBC Vs. SEBI’s enforcement actions.	18-19
2.6	The “Clean Slate” principle Vs. Pre CIRP liabilities & SEBI’s claims	19-21
2.7	The practical challenges and legal uncertainties arising from such conflicts.	21-26
<b>3</b>	<b>Chapter-3</b> <b>The Moratorium U/s 14 of the IBC and Its ambit and purpose</b>	27
3.1	Introduction to the moratorium	27-29
3.2	Commencement and duration of the moratorium	29-33
3.3	Historical background and rationale for it’s introduction in the IBC	33-37
3.4	Identify the actions prohibited during the moratorium period	37-39

3.5	Ambit and scope of moratorium	39-44
<b>4</b>	<b>Chapter-4</b> <b>Scope of the term “other authority” as used in Section. 14 of the IBC</b>	45
4.1	Interpretation of “other authority”	45-46
4.2	The principle of statutory interpretation, particularly “ejusdem generis” & purposive interpretation	46-47
4.3	Judicial interpretation of “other authority”	48-50
4.4	Conclusion on other authority	50-51
<b>5</b>	<b>Chapter-5</b> <b>Conflict and consequences of “Non-obstante clauses” under SEBI &amp; IBC</b>	52
5.1	Introduction to the “non-obstante clauses”	52-56
5.2	“Non-obstante clauses” in IBC	56-65
5.3	“Principle of resolving conflict”	65-70
5.4	Introduction to the effect of the report of the Insolvency Law Committee	71-79
5.5	The “Clean slate” principle	79-86
<b>6</b>	<b>Chapter 6</b> <b>Conclusion and Suggestions</b>	87-98

## TABLE OF CASES

<u>Sl.No</u>	<u>Case</u>	<u>Citation</u>
1	SEBI V. Monnet & Energy Ltd.	SCC 2019 (10) 146
2	SEBI V. Rohit Sehgal &Ors	Civil A. No: 5089 of 2019
3	SEBI V. Rajoil Mills Ltd	SAT Mumbai, Appeal No: 54 of 2019
4	Dewan Housing Finance Co.Ltd & ors V. SEBI&Ors	(2017) 209 comp case 473 (SAT)
5	Jagmohan Bajaj case V. Shivam Fragrances Pvt. Ltd. & Anr.,	(2019) 258 DLT 171.
6	Swiss Ribbons Pvt.Ltd& Anr V. UOI & Ors	SCC 2019(4) 17
7	Innoventive Industries Ltd. V. ICICI Bank Ltd	SCC 2017 (1) 148
8	SEBI V. Monnet Ispat and Energy Ltd.	SAT Mumbai, Appeal No: 238 of 2020
9	Essar Steel India Ltd V. Satish K Kumar Gupta &Ors	CoC – Civil Appeal No : 8766-67 of 2019
10	Anju Agarwal V. Bombay Stock Exchange	92 (AT) (Insolvency) No: 734 of 2018 NCLAT
11	Harsha Mehtha V. SEBI	Writ Petition No: 4844 of 2024
12	Alchemist Asset Reconstruction Co. Ltd V Hotel Gaudavan Pvt. Ltd.	2018 (6) SCC 94
13	Canara Bank V. Deccan Chronicle Holdings Ltd.	SCC online 2017 NCLAT 255
14	Canara Bank Ltd. Deccan Chronicle Holdings Ltd.	AT (Insolvency) No: 147 of 2017
15	Anil Agarwal V. SEBI	SAT Appeal No: 240 of 2019

16	P. Mohanraj V. Shah Brothers Ispat Pvt. Ltd	SCC 2021 (6) 258 of 2019
17	Anand Rao Korada R.P of M/S GMR Hyderabad International Airport Ltd. V. SEBI	AIR 2020 SC 222
18	Duncan Industries Ltd. V . A.J Agrochem	SCC 2019 (9) 725
19	Ganashyam Mishra & Sons Pvt. Ltd. V. Edelweiss Aseet Reconstruction Co. Ltd.	SCC 2021 (9) 657
20	Bhanu Ram & Ors. V. HBN Diaries & Allied Ltd.	(2019) ibclaw.in 858 NCLAT.
21	Monnet Ispat & Energy Ltd. V, Union Of India	Civil Appeal No: 3285 of 2009
22	Power Grid Co. of India Ltd V. Jyothi Structures	(2018) 246 DLT 485
23	Employees Provident Fund V. Jaykumar Pesumal Arlani	2025 ibclaw.in 10 NCLAT
24	Manish Kumar V. Union of India	SCC 2021 Online SC 30

## ABBREVIATIONS

SEBI	Securities and Exchange Board of India
IBC	Insolvency and Bankruptcy Code, 2016
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
SC	Supreme Court
SAT	-Securities Appellate Tribunal
“CoC”	“Committee of Creditors”
“CIRP”	Corporate Insolvency Resolution Process
RP-	Resolution Professional
IRP	Interim Resolution Professional
IBBI	Insolvency and Bankruptcy Board of India
MCA	Ministry of Corporate Affairs
IPO	Initial Public Offering
SCRA	Securities Contracts (Regulation) Act
AIR	All India Reporter
SCC	Supreme Court Cases
Comp Cas	Company Cases

# CHAPTER-1

## INTRODUCTION

### 1.1 Introduction

The government of India passed the “Insolvency and Bankruptcy Code in 2016”, combining laws pertaining to individual, corporate insolvency and bankruptcy. This law created the “Insolvency & Bankruptcy Board of India” and the NCLT “(National Company Law Tribunal)” as regulatory bodies for the purpose of the management of India's bankruptcy and insolvency procedures. The SEBI (“securities and Exchange Board of India”) oversees “the securities market of India”. In 1992 it was founded with the intention of safeguarding securities investors' interests and advancing the growth of the securities industry. Among SEBI's responsibilities are securities market regulation, securities market intermediary registration, and enforcement of securities law compliance. The similarities and differences between IBC and SEBI, as well as the ways in which they interact, would be the main topics of a comparative study. The goal of both SEBI and IBC legislation is to safeguard stakeholders' interests. While SEBI seeks to safeguard the interests of securities investors, IBC seeks “to protect the interests of creditors”, employees, & shareholders throughout insolvency and bankruptcy resolution process. “Under Section 28A of The Securities and Exchange Board of India Act, 1992 states that the profits of debtors may be recovered through the attachment of bank accounts, immovable and movable property, etc., to satisfy penalties or to guarantee adherence to SEBI rules and guidelines”. However, it is not possible to read this SEBI provision in isolation or without interpreting it in conjunction with Sections 14 and 238 of the “Insolvency and Bankruptcy Code, 2016”. Section 14 of “IBC” addresses the declaration of a moratorium on the start of the “CIRP (Corporate Insolvency Resolution Process)”. “It states that after the CIRP has been started, no new lawsuit should be filed or an existing lawsuit should be continued in any court, tribunal, or arbitration

panel”. “According to under Section 238 of the Insolvency Bankruptcy Code, provisions of the other laws must not conflict with one another”.

The conflict between interests of the creditors and investors:

Recently in the case of *SEBI v. IBC*, the judiciary has adopted a varying stance regarding the application of section 238's non-obstante clause, which grants an IBC provision precedence over any other statute. The majority of judicial rulings regarding the supreme authority of the “Insolvency Bankruptcy Code” and its provisions related to moratorium have been consistent. However, when the SEBI attempted to start proceedings for enforce “the recovery of amounts against the corporate debtor, while a moratorium was in effect, a number of contradictory rulings were recently observed”. Authorities like the SAT (“Securities Appellate Tribunal”), NCLT (“National Company Law Tribunal”), and NCLAT (“National Company Law Appellate Tribunal”) are the source of the rulings. To support its actions, SEBI cited under Sections 28-A and 11-B SEBI Act. Section 28-A, subsection (1), provides SEBI has the authority to seize and sell someone's property which are movable and immovable in order to collect a penalty. This provision is strengthened by subsection (3), which includes a non-obstante clause, which states that the penalty that SEBI can recover against an individual under Section 28-A of the Act will take the precedence over "any other claim" against that individual. The question arising that which law will take the precedence emerges from this conflict between the authority of SEBI authority to collect penalties (“sometimes by seizing the property of corporate debtor”) and the provisions related to moratorium under the Insolvency Bankruptcy Code, which are strictly forbid any such actions. Supreme Court of India has yet to rule on this matter in petitions of three, ie; “*SEBI v. Monnet Ispat and Energy Limited*<sup>1</sup>”, “*SEBI v. Rohit Sehgal & Ors*<sup>2</sup>” and “*SEBI v Raj OIL Mills*<sup>3</sup>” “Explaining on the legal

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<sup>1</sup> (2019) 10 SCC 146.

<sup>2</sup> (Civil Appeal No: 5089 of 2019).

<sup>3</sup> SAT Appeal No. 54 of 2019

conflict between the several tribunals and the regulatory authorities”. “As stated in the cases of Anju Agarwal and Bohar Singh, the SEBI retains the right to pursue a penalty claim against an operational creditor”. The rejecting the contention of SEBI, the SAT in ‘*Dewan Housing Finance\_Corporation Ltd. and Ors. v. SEBI& Ors.*<sup>4</sup>’, stated that “the provisions of under Section 14 of the SEBI were patently clear and simple with no degree of ambiguity”. This was concluded by depending on an outside source such as “the Insolvency Law Committee Report” was a mistake in the absence of any doubt. Additionally, it was decided that the clause was unambiguous in stating that no proceedings could be started or ongoing. Consequently, Section 14 prohibited a petition to assess or determine the liability. Furthermore, the SAT ruled that the SC had made direct decisions regarding the moratorium's superseding nature, and it would be contemptuous to rely on outside assistance above those decisions. Therefore, it can be said that SEBI is breaking the law by using the Insolvency Law Committee Report to support its actions. In the case of “*Jagmohan Bajaj v. Shivam Fragrances Pvt. Ltd & Anr.*<sup>5</sup>”, held that the pendency of disputes between the corporate debtor directors, particularly about the oppression and mismanagement under the Companies Act, cannot defeat the initiation of the “Corporate Insolvency Resolution Process” under the IBC. The “NCLT” emphasized that the “Insolvency and Bankruptcy Code” is a special law with an overriding effect, as mandated by Section 238 of the code, and financial creditor’s statutory rights cannot be made subservient to proceedings under the Companie’s Act.

This dissertation examines the contradictions between The IBC & SEBI Act, analysing areas where regulatory overlap creates legal ambiguity. It investigates notable cases and regulatory stances that illustrate the complexities of resolving these conflicts and highlights the broader implications for corporate governance and investor confidence. In doing so, it

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<sup>4</sup> (2017) 209 Comp Cas 473 (SAT).

<sup>5</sup> (2019) 258 DLT 171.

aims to contribute to policy recommendations that promote harmonious co-existence and clearer demarcations of regulatory authority. This research is vital in shaping a balanced regulatory framework that advances India's financial stability without compromising market integrity.

## **1.2 Statement of problem**

The overlapping and often contradictory provisions of the SEBI & IBC particularly concerning the moratorium of "Section 14 of the IBC" and the recovery mechanisms "under Section 28A of SEBI Act" have led to significant legal uncertainty. "The imposition of a moratorium under Section 14 of the IBC" aims to ensure a calm period for insolvency resolution, yet its ambit, especially regarding "other authorities" like "SEBI" remains ambiguous. Conflicting "non-obstante clauses" in the "SEBI Act" and "IBC" raise jurisdictional concerns. The initiation of the "Corporate Insolvency Resolution Process" and subsequent approval of resolution plans may restrict the enforcement powers of "SEBI". While the "Insolvency Law Committee Reports" offer interpretive guidance, uncertainties persist. This research seeks to analyse these legal overlaps, their implications on regulatory powers, and the need for coherent legislative and judicial harmonization.

## **1.3 Hypothesis**

- i. Jurisdictional Conflict Between SEBI and IBC: In the context of enforcement and recovery actions under SEBI-regulated Collective Investment Schemes (CIS), there is a legal battle over whether the provisions of "the Insolvency and Bankruptcy Code (IBC)" supersede those of the "SEBI Act".
- ii. Contradiction in Between "Section 28A of the SEBI Act" and "Section 14 of the IBC", the former gives "SEBI" the authority to recoup funds by seizing and selling the assets of the defaulting company, while the latter places a stop to such recovery efforts as soon as insolvency proceedings are initiated.

- iii. IBC as an Evolving Framework with Prevailing Effect: The application of Section 14's moratorium over SEBI's recovery mechanisms signals an evolutionary expansion in the scope of the IBC, indicating that the Code may prevail over sector-specific statutes in matters of corporate insolvency and resolution.

#### **1.4 Aims and objectives**

- i. To study which are the contradictory provisions under IBC and SEBI Act.
- ii. To understand the impact of these conflict between IBC and SEBI on stakeholders including creditors, investors and distressed companies.
- iii. To understand the conflict and consequences of “Non-Obstante clauses” under ‘IBC’ and ‘SEBI Act’.
- iv. To learn the scope of the term “other authority” as mentioned ‘under Section 14 of the IBC’.
- v. To study the judicial interpretations and rulings that have sought to resolve conflicts between IBC and SEBI provisions.

#### **1.5 Literature review**

##### **Books**

##### **“Insolvency and Bankruptcy Code,2016” By Taxmann’s Editorial Board**

“The Insolvency and Bankruptcy Code 2016”, along with its corresponding Rules, Regulations, & RBI directives, are updated, revised, and annotated in this book. A brief commentary and amendments are also included. A brief, carefully chosen Guide to ‘the Insolvency and Bankruptcy Code’ is also provided to the researcher. The current publication, which is in its sixth edition, was updated as of June 10, 2024.

##### **Securities Regulations and corporate Laws By Taxmann.**

This book extensively covers SEBI regulations, securities law and the SEBI Act, with commentary on SEBI's role in ensuring transparency, preventing insider trading, and regulating listed companies. It includes detailed

discussions on SEBI's mandates in relation to the financial markets, focusing on regulatory enforcement actions and investor protection. Taxmann's analysis of SEBI circulars, guidelines and enforcement case studies offers insights into areas where SEBI's role can conflict with the IBC, especially in matters of disclosure obligations, trading suspensions and the rights of minority shareholders. This book provides a foundation for examining SEBI's regulatory objectives and the challenges posed when IBC processes influence listed entities.

**Higher Judiciary on SEBI Act,1992 & Allied laws by Chaundhary Suraj Surjith.**

This book provides a thorough analysis of the Higher Judiciary's judicial precedents concerning securities laws, company law, taxation, consumer protection, and other topics. It is an exhaustive treatise on the SEBI Act, 1992. A thorough examination of significant rulings made by the Honourable Securities Appellate Tribunal is also included in this book. Bloomsbury Publishing India Pvt. Ltd. released this book on January 25, 2021.

**The Securities and Exchange Board of India Bare Act with Short Notes, Universal's Publications.**

**The role of "National Company Law Appellate Tribunal (NCLAT)" and "Supreme Court":**

Decision by the Honourable Supreme Court and NCLAT have attempted to balance the objectives of both acts, creating jurisprudence on how companies in insolvency interact with SEBI regulations. Articles examining these rulings are instrumental in understanding how Indian law views the reconciliation of competing statutes

## **‘The IBC’ v. ‘SEBI’ : ‘critical analysis of moratorium under IBC by Pooja Rajawat & Jayam Jha’<sup>6</sup>**

This article provides a clear picture of what are the contradictory provisions under IBC and SEBI Act and it’s affected.

### **Tussle over jurisdictional primacy: IBC v. SEBI by Prabhakar Yadhav**

This article analyse the tension between regulatory powers of SEBI and provisions under the IBC. ‘Citing the non-obstante clause in section 238 of the IBC’, ‘the National Company Law Tribunal’ decided that in conflicts, the ‘IBC’ would take precedence over the ‘SEBI Act’. Yadav contends that because the IBC and SEBI address different goals—debt recovery and market regulation, respectively—this decision ignores possible ways to harmonise the two statutes. The article emphasizes that the courts should apply a conflict of purpose test to decide the jurisdictional boundaries, concluding that while IBC has primacy in debt recovery, regulations of SEBI should still hold sway in cases specific to market control issues.

### **BLOG: The contested supremacy of IBC on pleaders.**

This blog provides multiple cases where the IBC’s moratorium period clashed with SEBI’s enforcement powers, especially regarding asset attachment and recovery of funds. The article explains how the judiciary has generally sided with intent to expedite corporate debt solution of IBC. It emphasizes cases where attachment orders of SEBI on companies under insolvency were deemed void to ensure asset availability for resolution proceedings. The analysis also touches upon the laws affected by the non-obstante clause of IBC, showing a pattern of judicial preference for IBC in overlapping jurisdiction cases.

### **Analysing the overriding effect of the IBC in law review**

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<sup>6</sup> ‘The IBC’ v. ‘SEBI’ : ‘critical analysis of moratorium under IBC by Pooja Rajawat & Jayam Jha’ - [www.livelaw.com](http://www.livelaw.com)

This review clearly explains the principle of legislative intent behind Section 238 of the IBC, detailing how its non-obstante clause aims to prioritize insolvency resolutions over potentially conflicting statutory provision should be interpreted restrictively to avoid undermining SEBI's regulatory scope unnecessarily. It reviews various cases and legal theories arguing for a balanced approach that respects independent regulatory role of SEBI while still prioritizing the IBC for debt recovery.

### **1.6 Research Methodology**

The researcher methods adapted to carry-out the research work are doctrinal in nature. The research is primarily relied on secondary sources. Case laws, Bare acts, websites, Articles will be referred during the course of study.

## CHAPTER- 2

### BACKGROUND OF SEBI & IBC

#### 2.1 Introduction

The SEBI and the Indian Financial Regulatory environment India's financial regulatory environment is complex, with multiple organizations monitoring distinct market sectors. Of these, the Securities and Exchange Board of India is the main watchdog over the securities industry. Protecting the interests of securities investors, fostering the growth and regulation of the securities market, and handling matters related or incidental thereto are the main goals of SEBI, which was founded in 1988 as a non-statutory organization and given statutory authority by the Securities and Exchange Board of India Act, 1992<sup>7</sup>Origins and Development: The Capital Issues (Control) Act, 1947, established the Controller of Capital Issues (CCI) as the regulator of the capital markets before SEBI was founded. For a market that was changing quickly, this system was mainly insufficient and restrictive. A strong and independent market regulator was required as a result of the early 1990s reforms, which included economic liberalization. As a result, SEBI gained the authority to deal with problems like insider trading and market manipulation and to guarantee equity and openness in the securities sector.

SEBI has a broad range of duties that include executive, legislative, and quasi-judicial functions. Among it's main duties are: Protecting Investor Interests: This fundamental mandate is accomplished by a number of strategies, including requiring disclosures, offering grievance redressal procedures, and conducting investor education initiatives. Stockbrokers, share transfer agents, sub-brokers, merchant bankers, depositories, custodians, credit rating agencies, and foreign institutional investors are among the market intermediaries that SEBI registers and regulates<sup>8</sup>. It establishes standards of behaviour and keeps track of adherence to them. Fostering Market

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<sup>7</sup> Section 11B of The Securities and Exchange Board of India Act, 1992

<sup>8</sup> Section 15 T of The Securities and Exchange Board of India Act, 1992,

Development: Through encouraging ethical behaviour, effective market mechanisms, and the launch of new financial goods and services, SEBI has a critical role in the growth of the ‘securities market’. ‘Regulating Securities Issuers’: It supervises rights issues, private placements, and public offerings (IPOs and FPOs), making sure that disclosure standards are followed. Preventing Unfair Trade Practices: ‘Insider trading, market manipulation, and other unfair and dishonest business practices that jeopardise the integrity of the market may be investigated and dealt with by SEBI’.

SEBI has the power to adjudicate cases, impose penalties, and pass various directions and orders, including disgorgement, suspension of trading, and banning entities from the securities market. Appeals against SEBI's orders lie with the “Securities Appellate Tribunal”.

SEBI enforces its mandate through a comprehensive framework of regulations, guidelines, and circulars<sup>9</sup>. Some key regulations include:

“SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018”

The procedures by which Indian companies raise funds from the general public and disclose information during these procedures are governed by the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. These rules preserve the integrity of the securities market, guarantee transparency, and safeguard investor interests. They address rights issues, bonus issues, qualified institutional placements (QIPs), preferential allotments, and public issues (such as IPOs and FPOs). Specific rules pertaining to financial disclosure, risk assessment, and profit utilisation must be adhered to by businesses. “The Securities and Exchange Board of India (SEBI)” is responsible for enforcing these rules, which are updated on a regular basis to reflect changes in the market and international best practices.

“SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015”

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<sup>9</sup> List of all SEBI Regulations - <https://www.sebi.gov.in/legal/regulations.html>.

The listing and disclosure requirements for Indian listed companies were streamlined and consolidated with the introduction of the ‘SEBI’ ‘(Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR)’. These rules are intended ‘to safeguard the interests of investors’, increase transparency, and strengthen corporate governance. They cover topics like shareholding patterns, material events, and financial results disclosure, and they are applicable to all listed companies. To guarantee that investors make well-informed decisions, the LODR requires stock exchanges to provide timely and accurate disclosures. The duties of the board of directors and important managerial staff are also described. For companies to remain listed on Indian stock exchanges, they must adhere to these standards. Penalties, trading suspensions, or even the delisting of securities may result from noncompliance.

“SEBI (Prohibition of Insider Trading) Regulations, 2015”

It aims to preventing insider securities markets in India. These rules forbid anyone with unpublished price sensitive information from trading in proposed-to-be-listed securities. The company directors, staff members, and anybody else with access to UPSI because of their affiliation with the business are considered "insiders." According to the regulations, UPSI is information that is not generally available but it has the potential to significantly impact the price of the securities. Businesses must keep an organised digital database of the individuals they share UPSI with. Insider trading is prohibited during sensitive times, like before financial results, by a trading window mechanism. Disclosure requirements require insiders to report their holdings and trades both initially and continuously.

“SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011”

The shares purchase, voting rights, & control over Indian listed companies are governed by the ‘SEBI’ ‘(Substantial Acquisition of Shares and Takeovers) Regulations, 2011’. Transparency, safeguarding the interests of public shareholders, and offering a fair exit opportunity when control shifts are the

goals of these regulations. They require an acquirer to make an open offer to purchase at least 26% more shares from public shareholders after surpassing the 25% shareholding threshold. The rules also apply when an acquirer takes over a business through management rights or board representation without surpassing the 25% threshold. SEBI establishes comprehensive procedural rules for pricing, timelines, disclosures, and open offer procedures.

“SEBI (Delisting of Equity Shares) Regulations, 2021”

A listed company may choose to delist its equity shares from Indian stock exchanges either voluntarily or in accordance with the ‘SEBI (Delisting of Equity Shares) Regulations, 2021’. In addition to guaranteeing openness, equity, and sufficient exit options for public shareholders, these rules seek to safeguard investor interests. At least 90% of public shareholders must agree for a company to voluntarily delist its shares, and the exit price must be decided using a reverse book building procedure. SEBI has the authority to take action in cases of mandatory delisting brought on by non-compliance, and promoters may be prohibited from using the securities market. Additionally, the regulations include provisions for delisting through schemes of arrangement and relaxed norms for small company delisting.

## **2.2 Indian Insolvency Regime: Insolvency and Bankruptcy Code, 2016**

Insolvency laws in India are governed by “the Insolvency and Bankruptcy Code, 2016”. It aims to streamline the process which are resolving insolvency and partnership. The laws that are comprised the maze included the “Recovery of Debts Due to Banks and Financial Institutions Act, 1993”, “the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”, and “the Sick Industrial Companies (Special Provisions) Act, 1985”. The IBC aiming for better recoveries for creditors and prioritizes maximizing the value of assets during “the resolution process”. This structured framework resolving financial distress, and encouraging entrepreneurship and reducing the stigma associated with business failure. An efficient and transparent process of insolvency can improve confidence of lender and increase the availability of credit. The genesis and purpose of the

IBC are: Time-bound Resolution: to guarantee that liquidation or resolution procedures are finished on time. It aims for the better recoveries for the creditors.

Maximization of Asset Value: The IBC prioritize maximising the asset's value during the process of resolution. Promoting Entrepreneurship & Availability of Credit: By providing a predictable exit mechanism for failed businesses, the IBC encourages risk-taking and improves access to credit. Balancing Stakeholders' Interests: The major aim of IBC is, balance 'the interest of all the stakeholders'. "Shift from 'Debtor in Possession' to 'Creditor in Control'": The IBC fundamentally shifts control of the insolvent company from its board of directors to a "Committee of Creditors" during "the corporate insolvency resolution process". The pillars of the "IBC" include: Qualified specialists who supervise the insolvency process, verify claims, and help with its resolution are now insolvency professionals (IPs). Insolvency Professional Agencies (IPAs) are self-regulatory organisations that enrol, regulate, and oversee IPs. Information Utilities (IUs): Electronic databases that provide verified evidence of defaults and contain financial and debt information. The adjudicating authorities are the "Debt Recovery Tribunal for individuals & partnership firms" and "the National Company Law Tribunal" for corporations & and limited liability partnerships. "The National Company Law Appellate Tribunal (NCLAT)" hears appeals before the Honourable Supreme Court.

### **2.3 The Corporate Insolvency Resolution Process (CIRP):**

The IBC prescribes a detailed process for corporate insolvency resolution, which typically involves; Initiation, Admission and Moratorium, Appointment of Interim Resolution Professional (IRP), Constitution of the "CoC", Resolution Plan, and Liquidation.

- i. Initiation: Applications can be filed by financial creditors (Section 7), operational creditors (Section 9), or the corporate debtor itself (Section 10) upon default.

- ii. Admission and Moratorium: Under IBC, admission indicates that a formal acceptance of an application to initiate a process of resolution for a financially distressed company, whereas moratorium is a legally mandated period where certain actions against the company are suspended to facilitate the process of resolution.
- iii. Appointment of Interim Resolution Professional (IRP): It is an important step in the CIRP “under IBC”. When an application for “CIRP” is admitted by the adjudicating authority such as “NCLT”.
- iv. Constitution of the “CoC”: The Constitution of Committee, is made up the financial creditors, is tasked with making important choices about the resolution procedure, such as approving a resolution plan.
- v. Resolution Plan: Resolution plans, which outline how the corporate debtor's business will be revived or its assets liquidated, are submitted by prospective resolution applicants. 66% of the CoC must approve a plan (by voting share), and the NCLT must then approve it.
- vi. Liquidation: The SEBI and the IBC are crucial parts of India's current financial and economic regulatory framework. SEBI preserves the effectiveness and integrity of the securities market by safeguarding investors and ensuring fair play. The IBC, on the other hand, provides a robust and time-bound procedure for resolving corporate distress with the objectives of maximising asset value and fostering a credit-friendly environment. Despite having different goals, their areas of operation usually overlap, especially when market intermediaries or listed companies are experiencing financial difficulties. The main focus of this dissertation is the intersection that frequently results in complexities and contradictions, especially when it comes to the applicability of the IBC's moratorium and the superseding effects of their respective statutory provisions.

#### **2.4 The simultaneous evolution of these two crucial laws.**

The legal framework that oversees India's financial markets and corporate restructuring has been significantly impacted by the concurrent, albeit often

conflicting, development of two foundational laws: the SEBI Act, 1992 and IBC, 2016. This dissertation explores the intricate web of "contradictory provisions" that emerged from the simultaneous enactment and implementation of these significant laws, as well as their implications for stakeholders, the effectiveness of regulations, and the general status of the economy. Before the IBC was passed, India's bankruptcy system was infamously disjointed, with various laws that frequently resulted in lengthy delays and low rates of recovery for creditors. During this period, SEBI had already established itself as the primary guardian of India's capital markets, meticulously crafting regulations to ensure investor protection, market integrity, and transparency. Its journey from a non-statutory body to a powerful regulator armed with the SEBI Act in 1992 marked a significant step towards creating a robust securities market. Over the years, SEBI's regulatory ambit expanded to encompass diverse areas like insider trading, fraudulent and unfair trade practices, collective investment schemes, and substantial acquisition of shares and takeovers, all aimed at fostering investor confidence and market discipline.

However, IBC implementation in 2016 brought about a paradigm shift in India's approach to corporate distress. In order to maximise asset value, streamline the process, and promote entrepreneurship by providing failing businesses with a clear route out, the IBC was created as a comprehensive and time-bound bankruptcy and insolvency resolution mechanism. This ambitious legislation introduced the 'creditor-in-control' model, a moratorium on legal proceedings, the CIRP, and the critical role of the "CoC" in determining the fate of the 'corporate debtor'.

There have unavoidably been points of contention as a result of these two strong laws operating simultaneously, each with unique goals and broad regulatory authority. The IBC places a higher priority on the prompt resolution of insolvency and frequently requires a moratorium that stops all such legal and recovery actions, whereas SEBI promotes investor protection and market discipline, frequently through punitive actions and recovery proceedings against defaulting entities. This fundamental difference in methodology has

resulted in a complex interplay of provisions that are frequently seen as contradictory, especially with regard to the treatment of claims, enforcement actions, and the "clean slate" principle under the IBC. The purpose of this dissertation is to methodically locate, examine, and assess these conflicting clauses, looking at the court rulings that have attempted to resolve them and suggesting possible avenues.

The legal framework governing India's financial markets and corporate restructuring has been significantly impacted by the concurrent, albeit often conflicting, development of two fundamental laws: the SEBI Act, 1992 & IBC, 2016. This dissertation looks at the intricate web of "contradictory provisions" that emerged from the simultaneous enactment and implementation of these significant laws, as well as how they affected stakeholders, the effectiveness of regulations, and the state of the economy as a whole. Before the IBC was passed, India's insolvency system was infamously disjointed, with various laws that frequently resulted in lengthy delays and low rates of recovery for creditors.

During this period, SEBI had already established itself as the primary guardian of India's capital markets, meticulously crafting regulations to ensure investor protection, market integrity, and transparency. Its journey from a non-statutory body to a powerful regulator armed with the SEBI Act in 1992 marked a significant step towards creating a robust securities market. Over the years, SEBI's regulatory ambit expanded to encompass diverse areas like insider trading, fraudulent and unfair trade practices, collective investment schemes, and substantial acquisition of shares and takeovers, all aimed at fostering investor confidence and market discipline. However, India's approach to corporate distress underwent a paradigm shift in 2016 with the introduction of IBC. The Code was designed as a time-bound bankruptcy and insolvency resolution mechanism with the purpose of maximising asset value, streamlining the process, and encouraging entrepreneurship by giving failing companies a clear path out. The 'creditor-in-control' model, a moratorium on legal proceedings, "the Corporate Insolvency Resolution Process (CIRP)", and

the crucial role of “the Committee of Creditors (CoC)” in deciding the corporate debtor's fate were all introduced by this ambitious legislation.<sup>10</sup> This new system was further cemented with the introduction of “the Insolvency and Bankruptcy Board of India”, which serves as the main oversight body for ‘insolvency professionals’ and procedures.<sup>11</sup>

There have unavoidably been points of contention as a result of these two strong laws operating simultaneously, each with unique goals and broad regulatory authority. The IBC places a higher priority on the prompt resolution of insolvency and frequently requires a moratorium that stops all such legal and recovery actions, whereas SEBI promotes investor protection and market discipline, frequently through punitive actions and recovery proceedings against defaulting entities<sup>12</sup>. This fundamental difference in methodology has resulted in a complex interplay of provisions that are frequently seen as contradictory, especially with regard to the treatment of claims, enforcement actions, and the "clean slate" principle under the IBC. The point where the IBC's moratorium and resolution goals meet SEBI's pre-insolvency regulatory authority is where the possibility of regulatory overlap and outright conflict arises. The purpose of this dissertation is to systematically identify, analyse, and critically evaluate these contradictory provisions, examining the judicial interpretations that have sought to reconcile them, and proposing potential pathways for greater regulatory harmony and clarity in the future.

In addition, the SEBI Act,1992 & IBC,2016 are two fundamental pillars of corporate governance and financial system in India, have coincidentally created a complicated web of legal and regulatory issues. Despite the fact that each law seeks to achieve significant but distinct public policy objectives, SEBI safeguards investor interests and maintains the integrity of the capital market, while the IBC expedites the time-bound, value-maximizing resolution of corporate insolvency. The core problem statement

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<sup>11</sup> S. Mahendra Dev, “Financial Sector Reforms and Regulation in India,” *Indian Journal of Public Administration*, Vol. 56, No. 2 (2010), pp. 201-219.

<sup>12</sup> *Innovative Industries Limited v. ICICI Bank*

lies in the inherent existence of directly contradictory provisions and fundamental philosophical divergences between SEBI regulations and the IBC, which collectively engender substantial ambiguities, impede efficient legal processes, and generate pervasive regulatory uncertainty for all stakeholders.

## **2.5 The Clash of Imperatives: Moratorium under IBC vs. SEBI's Enforcement Actions**

This represents perhaps the most direct and frequently encountered contradiction.

IBC's Moratorium (Section 14): The implementation of any judgement, decree, or order, the sale of assets, the enforcement of security interests, and the institution of new lawsuits or the continuation of existing lawsuits or proceedings against the corporate debtor are all expressly prohibited by the IBC. By safeguarding the assets of corporate debtor, halting their depletion, & allowing the CIRP to proceed without external intervention, the objective is to increase the possibility of a successful resolution or liquidation. Giving the distressed entity a "breathing space" is the aim of this clause. SEBI's Regulatory and Enforcement Powers, In stark contrast, SEBI, armed with extensive powers under the SEBI Act and its myriad regulations, routinely initiates enforcement actions, issues show-cause notices, passes disgorgement orders, imposes monetary penalties, and directs attachment of assets for violations of securities laws. These actions are crucial for deterring market misconduct, protecting investors from fraudulent schemes, and ensuring market discipline. The Point of Conflict, The contradiction becomes acutely apparent when a corporate debtor, already facing SEBI-initiated proceedings for violations such as fraudulent practices, insider trading, or non-compliance with listing regulations, enters into CIRP. SEBI's imperative to enforce market discipline and recover ill-gotten gains from such violations directly collides with the IBC's moratorium, which aims to halt all such proceedings<sup>13</sup>. The

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<sup>13</sup> SEBI v. Rohit Sehgal & Ors.

critical question that repeatedly surfaces is whether SEBI's regulatory and recovery actions are subject to the IBC moratorium, and if so, to what extent.

## **2.6 The "Clean Slate" Principle vs. Pre-CIRP Liabilities and SEBI's Claims**

Another fundamental philosophical divergence lies in the "clean slate" principle of the IBC and its impact on outstanding claims, particularly those of a regulatory nature. The "Principle of clean slate" has been firmly established by the 'Honourable Supreme Court of India' in seminal rulings ie; "*Essar Steel India Ltd. v. Satish Kumar Gupta & Ors.*" This doctrine states that the corporate debtor has been granted a fresh start, free from any pre-CIRP claims that are not covered by the NCLT-approved Resolution Plan. The idea is to make sure the resolved entity can function profitably without being constrained by legacy issues. Claims are deemed extinguished if they are not specifically addressed in the resolution plan. SEBI's regulatory and enforcement actions often result in monetary claims, disgorgement orders, or penalties against corporate entities for violations that occurred prior to the commencement of CIRP. If these claims, due to their unique nature (often treated as statutory or public dues rather than typical financial or operational debts), are not adequately factored into the resolution plan or are significantly haircut, the "clean slate" principle can effectively extinguish SEBI's ability to recover these amounts. This leads to a significant discrepancy. It may be more difficult for SEBI to adequately punish wrongdoers and protect investors if the insolvency process inadvertently acts as a cover for earlier violations. From the corporate debtor's perspective and the applicant of resolution, a successful turnaround requires a "clean slate," and any lingering pre-CIRP claims including those from SEBI would defeat the purpose of the resolution. Finding a balance between the need for a fresh start and the need to hold those accountable for market misconduct is the difficult part here. Even though under Section 238, IBC clearly indicates that its provisions will take precedence over any conflicting provisions in other laws, its actual

implementation with regard to a specialised regulator such as SEBI is a constant source of discussion and legal disputes. Section 238 of IBC is designed to provide supremacy to the IBC in case of a conflict with other laws. SEBI operates under a distinct legislative mandate to regulate capital markets, which involves highly specialized knowledge and expertise. Its powers are not merely to recover debts but to enforce market discipline, prevent fraud, and ensure investor confidence. The question often arises whether the IBC's overriding effect extends to the entirety of SEBI's regulatory functions, or only to those aspects that directly impede the insolvency resolution process. A "turf war" between the regulators and drawn-out legal disputes result through the lack of clear legislative guidelines that clearly define boundaries of authority when a company is simultaneously under the investigation/ enforcement of SEBI and the insolvency proceedings of IBC. This ambiguity requires frequent judicial intervention, which does not create a consistent, all-encompassing framework for smooth coordination even though it offers clarity on the basis of case-by-case. This issue made worse through absence of a set "pecking order" <sup>14</sup>for specific regulatory claims or actions. While less direct, procedural contradictions related to information sharing and confidentiality also contribute to the overall problem.

The IBC framework mandates extensive information disclosure to the Committee of Creditors and other stakeholders to ensure informed decision-making during CIRP. SEBI's investigations often involve sensitive, market-moving information that must be kept confidential to prevent market manipulation or pre-emption of enforcement actions. The exchange of information between the Resolution Professional/IBBI and SEBI, especially concerning ongoing investigations or enforcement actions against the corporate debtor or its promoters, presents a practical challenge. Balancing the need for transparency in insolvency proceedings with the confidentiality requirements of regulatory investigations requires careful harmonization of procedures. Discrepancies in data access, reporting requirements, and inter-

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<sup>14</sup> The term "pecking order" refers to the lack of a statutory hierarchy or clear precedence between SEBI and IBC in cases of regulatory overlap, which leads to disputes over which regulator's actions.

agency communication protocols can hinder both effective insolvency resolution and timely regulatory action.

The core issue stems from the existence of deep-seated contradictions between the fundamental principles, objectives, and specific provisions of the SEBI Act and the IBC. These are not mere administrative overlaps but structural conflicts that impact the fundamental rights of creditors, the ability of regulators to enforce laws, and the overall efficiency of India's corporate governance and financial redressal mechanisms. Understanding these contradictions is paramount to analysing their implications and proposing viable solutions for a more synergistic legal framework.

### **2.7 The practical challenges and legal uncertainties arising from such conflicts.**

Ironically, a complicated web of legal and regulatory issues has arisen as a result of the SEBI Act, 1992 and the IBC, 2016 are two essential pillars of India's financial and corporate governance architecture, operating concurrently. Although both laws are intended to accomplish important but different public policy goals—SEBI to protect investor interests and preserve capital market integrity, and the IBC to expedite time-bound, value-maximizing corporate insolvency resolution—the main issue is that there are provisions that are directly contradictory and fundamentally different in philosophy between SEBI regulations and the IBC. These differences, taken together, create significant ambiguities, obstruct effective legal procedures, and create wide spread regulatory uncertainty for all parties involved.

The implementation of any judgement, decree, or order, the sale of assets, the enforcement of security interests, and the institution of new lawsuits or the continuation of existing lawsuits or proceedings against the corporate debtor are all expressly prohibited by the IBC. The goal is to maximise the likelihood of a successful resolution or liquidation by protecting corporate debtor's asset, preventing their depletion, and enabling “the Corporate Insolvency Resolution Process (CIRP)” to continue without outside intervention. The purpose of this

clause is to give the distressed entity a "breathing space."<sup>15</sup> In stark contrast, SEBI, armed with extensive powers 'under the SEBI Act' and its myriad regulations, routinely initiates enforcement actions, issues show-cause notices, passes disgorgement orders, imposes monetary penalties, and directs attachment of assets for violations of securities laws. These actions are crucial for deterring market misconduct, protecting investors from fraudulent schemes, and ensuring market discipline.

'A corporate debtor' enters "Corporate Insolvency Resolution Process" after already being the subject of SEBI-initiated proceedings for infractions like insider trading, fraudulent practices, or non-compliance with listing regulations, the contradiction becomes glaringly obvious. The IBC's moratorium, which attempts to stop all such proceedings, directly conflicts with SEBI's need to enforce market discipline and recover ill-gotten gains from such violations. Whether or not SEBI's regulatory and recovery actions are covered by the IBC moratorium, and if so, to what degree, is the crucial question that keeps coming up. Another fundamental philosophical divergence lies in the "clean slate" principle of the IBC and its impact on outstanding claims, particularly those of a regulatory nature.

**Key Areas of Conflict and Their Resolution:** The primary battleground for these contradictions has been moratorium under IBC (Section 14) vs. SEBI's Recovery Powers (Section 28A SEBI Act). When CIRP is initiated, Section 14 of the IBC places a moratorium on any actions taken against the corporate debtor, including those taken by "any other authority." SEBI has extensive recovery powers under Section 28A, which include the ability to seize assets and sell them for fines or investor reimbursements. The question is whether SEBI's recovery actions can continue during the IBC moratorium<sup>16</sup>. The judiciary has generally upheld the IBC's moratorium's supremacy, especially

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<sup>15</sup> It is intended to provide the corporate debtor with temporary relief from creditor actions, allowing for the orderly and efficient conduct of the process of insolvency under the supervision of the professional of resolution.

<sup>16</sup> "Navigating the Interplay Between IBC and SEBI in Corporate Insolvency" (IBCLaw.in, April 2025)

the NCLAT and, in some cases, the Supreme Court. Judgments in cases like “*Anju Agarwal v. Bombay Stock Exchange*”<sup>17</sup> and “*HBN Dairies & Allied Limited*”<sup>18</sup> have held that under the IBC Section 14, r/w its overriding Section of 238, prevails over “Section 28A of the SEBI Act”. This means “SEBI” cannot initiate or continue recovery proceedings against a corporate debtor once CIRP is underway. It's important to note that while recovery actions are stayed, the determination of liability for pre-CIRP offenses by SEBI might not be entirely barred. The moratorium primarily protects the asset of corporate debtor for a collective resolution, not necessarily absolving it of regulatory misconduct inquiries.

- i. Clean Slate Principle (Section 32A IBC) vs. SEBI's Continuing Action; If the resolution plan has been approved, Under IBC Section 32A was created for the purpose of providing effective resolution applicants a "clean slate," protects the assets from prosecution in crimes committed before CIRP and the corporate debtor. Protecting investors and maintaining market integrity are part of SEBI's mandate, and this may entail taking legal action against businesses even after they have been declared insolvent. Recent judgments, including those from High Courts (e.g., Bombay High Court in *Harsh Mehta vs. SEBI*),<sup>19</sup> have consistently upheld the clean slate principle. This significantly curtails SEBI's ability to pursue recovery or penal action for past transgressions against the rehabilitated entity.
- ii. Collective Investment Schemes (CIS) and Investor Status; Companies operating unauthorized CIS often face SEBI orders for investor refunds. When such a company enters CIRP, the status of these investors (as financial creditors or otherwise) and the mechanism for their recovery become contentious. SEBI's refund orders often aim for full restitution, while the IBC's waterfall mechanism prioritizes

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<sup>17</sup> (2011) 103 SCL 13 (SAT)

<sup>18</sup> Civil Appeal No: 268/2023, Supreme Court of India

<sup>19</sup> Writ petition No: 4844 of 2024, SEBI Enforcement Division

creditors<sup>20</sup>, with investors/shareholders often at the lower end. The question of whether money obtained through an unauthorised CIS qualifies as "financial debt" under the IBC has been debated by courts. The trend has shifted towards acknowledging investors in such schemes as financial creditors, enabling them to initiate CIRP, despite early opinions that the relationship was not solely a lender-borrower one. In contrast to the complete refund SEBI may request, their place in the IBC's waterfall mechanism is still a practical challenge.

- iii. Minimum Public Shareholding (MPS) and Delisting; An approved resolution plan can drastically alter the shareholding pattern of a listed corporate debtor, potentially falling below SEBI's MPS requirements or necessitating delisting. SEBI has specific delisting regulations, which may not always align seamlessly with the timelines and commercial realities of an IBC resolution.<sup>21</sup> The courts have generally acknowledged that the IBC's resolution goal comes first. The Honourable Bombay High Court in the *Harsh Mehta v. SEBI* case shows that the IBC's provisions take precedence over SEBI's general delisting guidelines in situations where the IBC process results in delisting.
- iv. Impact on Corporate Debtors; Protection from Asset Stripping and Piecemeal Litigation: The overriding effect of the IBC's moratorium prevents SEBI (and other authorities) from undertaking independent recovery actions or attaching assets during CIRP. This is crucial for the corporate debtor, as it allows for the consolidation of assets under the Resolution Professional's control, preventing value erosion and enabling a holistic resolution. For corporate debtors (and prospective resolution applicants), Section 32A of the IBC offers a great deal of consolation. It guarantees that the company can emerge from insolvency free from the burden of pre-CIRP regulatory offences and liabilities after a resolution plan is approved. This promotes fresh

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<sup>20</sup> Section 53 of SEBI

investment and offers a real chance for a new beginning. By consolidating all claims and proceedings under the NCLT, the corporate debtor faces a single forum for its financial distress, as opposed to battling multiple regulatory agencies simultaneously. This should lead to a more streamlined process, though initial jurisdictional tussles can cause delays. Certainty in Priority of Claims, the IBC's waterfall mechanism (Section 53) provides a clear framework for the distribution of liquidation proceeds. While this provides clarity, it also means that creditors, including those seeking redressal under SEBI regulations, must align their claims within this hierarchy. The overlap may put retail investors in a difficult situation, particularly in CIS cases. Even though the IBC may classify them as financial creditors, their recovery may be less than the direct refunds that SEBI requires in situations other than insolvency. This demonstrates the continuous difficulty of providing sufficient protection for small investors in the event of corporate insolvency. Given the "clean slate" principle and the moratorium, creditors benefit from the fact that resolution proceeds are not diverted to pay pre-CIRP regulatory penalties that would otherwise have been imposed by SEBI. Resolution applicants may find the corporate debtor a more appealing target due to the clarity that the IBC's supremacy provides, especially with regard to the clean slate and delisting. Better resolution strategies and greater recoveries for creditors may follow from this.

- v. Initial Delays Due to Jurisdictional Battles: Historically, the "non-obstante" battle between SEBI and IBC has led to significant judicial pronouncements and appeals, causing delays in specific CIRP cases. Each new facet of the conflict has required judicial interpretation, slowing down the overall process.
- vi. Enhanced Predictability (Post-Judicial Clarity): While initial conflicts caused delays, the accumulating body of judicial precedents, particularly those from the Honourable Supreme Court, has provided increasing clarity on the hierarchy and interplay of the two laws. By

lowering uncertainty for all parties involved, this predictability is essential for increasing the resolution process's efficiency.

- vii. Facilitating a "Clean Slate" and Attracting Bidders: The consistent affirmation of the "clean slate" principle under Section 32A by courts has significantly boosted the confidence of resolution applicants. They are more willing to acquire distressed assets without the fear of inheriting pre-CIRP regulatory liabilities, thereby fostering greater participation in the resolution market and improving the chances of successful resolutions.
- viii. Need for Continued Inter-Regulatory Dialogue: Despite judicial clarity, the inherent tension between the mandates of SEBI and IBBI (the regulator under IBC) necessitates ongoing dialogue and coordination. Formal mechanisms for inter-regulatory consultation could proactively address potential conflicts and ensure smoother implementation of both laws. By largely affirming the IBC's supremacy in the context of resolution, the legal framework is increasingly aligned with the IBC's core objective. This systematic approach, as opposed to fragmented regulatory actions, generally leads to more efficient outcomes for the economy as a whole.

In conclusion, although the conflicting provisions of the SEBI and IBC have historically presented difficulties, the growing body of jurisprudence has essentially solidified the IBC's standing as the most important law in cases involving corporate insolvency. This has brought much-needed clarity, shielded corporate debtors during resolution, streamlined creditor recovery, and ultimately helped India's insolvency regime become more effective albeit still developing.

## CHAPTER-3

# THE MORATORIUM UNDER SECTION 14 OF IBC: AMBIT AND PURPOSE

### 3.1 Introduction to the moratorium

In the context law of insolvency, a "moratorium" is a legally required suspension or prohibition of specific actions or proceedings against a debtor following the initiation of an insolvency process. It serves as a brief "breathing space" or "calm period," when the debtor's asset is shielded from individual creditor's action, enabling a methodical and group approach to settlement. Although many insolvency statutes ie; Indian Insolvency and Bankruptcy Code, 2016—IBC<sup>22</sup> do not define term specifically, certain provisions and court rulings define its scope and intent.

The concept of a moratorium is central to modern insolvency regimes worldwide, including those in the UK, the US (Bankruptcy Code), and India (IBC). Its implementation marks a significant departure from traditional individualistic debt recovery mechanisms, ushering in a collective, value-maximizing framework.<sup>23</sup>

**Objectives of the Moratorium:** The moratorium serves several critical objectives, which are fundamental to the success of any insolvency resolution process:

- i. **Asset Protection and Preservation:** This is the main goal. Individual creditors attempting to enforce their claims are prohibited by the moratorium from dissipating, alienating, or dismembering the corporate debtor's assets. Without a moratorium, creditors might

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<sup>22</sup> "The Moratorium in Insolvency Law: A comparative analysis of the UK, US, and Indian frameworks"

<sup>23</sup> "Breathing space or Legal Shield? The role and scope of Moratoriums in Modern Insolvency Systems"

participate in a "race to the bottom," taking possession of assets according to priority, which would reduce the debtor's estate's total worth and jeopardise the interests of all parties.

- ii. **Breathing Space for Resolution/Reorganization:** It provides a period free from the pressure of ongoing litigation, recovery efforts, and enforcement actions. This allows the management/Resolution Professional to focus on assessing the financial health, preparing a resolution plan, or engaging in restructuring efforts without distractions.
- iii. **Facilitating Collective Action:** The moratorium shifts the paradigm from individual creditor action to collective decision-making. By halting all external proceedings, it forces creditors to channel their claims through the formal insolvency process, typically through a Committee of Creditors (CoC). This ensures equitable treatment of similarly situated creditors and promotes a consensual resolution that maximizes value for all<sup>24</sup>.
- iv. **“Maintaining the Debtor as a Going” The Moratorium’s Paradigm Shift: Prioritizing Collective Creditor Action in Insolvency Law”** concern: For a resolution process to be successful, it is often critical to maintain the “corporate debtor” as a "going concern" during the interim period. The moratorium aids this by preventing disruption to essential services, supplies, and operations that could be terminated by creditors or lessors due to defaults.
- v. **Promoting Fair and Transparent Resolution:** By centralizing all claims and processes under the adjudicating authority, the moratorium fosters transparency and fairness. It allows for a comprehensive assessment of liabilities of the debtor and assets, leading to a resolution plan that is informed and equitable.

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<sup>24</sup> The Moratorium’s Paradigm Shift: Prioritizing Collective Creditor Action in Insolvency Law”

- vi. **Prevention of Undue Pressure and Coercion:** It shields the corporate debtor from undue pressure and coercive tactics that individual creditors might employ, which could otherwise undermine the chances of a successful resolution or lead to an unfair distribution of assets.

### **3.2 Commencement and duration of the moratorium Under the IBC (Section 14):**

It begins on the insolvency commencement date, which is the date of admission of the application for Corporate Insolvency Resolution Process (CIRP). Generally, continues until the completion of “CIRP”, which means: The approval date of the resolution plan of the NCLT, / The order of liquidation date being passed, if no resolution plan is approved.

**Interim Moratorium (for Individuals/Personal Guarantors under IBC):** For individuals and personal guarantors, the IBC also offers a "interim moratorium" (e.g., Section 96) that begins when an insolvency application is filed and continues until it is admitted or denied. The scope and duration of this are different from those of the corporate moratorium, reflecting the unique goals of individual insolvency.

The moratorium's broad application covers a variety of activities, all of which are typically intended to stop any activity that would reduce the “assets of corporate debtor” or “obstruct process of resolution”. “Section 14(1) of IBC” states that the moratorium forbids: “The Institution or Continuation of Pending Suits or Proceedings”, “The term encompasses the enforcement of any judgment, order, or decree issued by a court, tribunal, arbitration panel, or ‘other authority’.” This expansive language is particularly significant for dissertation analysis, especially in contexts involving potential conflicts with regulatory entities such as SEBI. Asset’s Transferring, Encumbering, Alienating, or Disposing prevents unilaterally dealing with its assets in a manner that could prejudice creditors. “The Action to Foreclose, Recover, or Enforce of any Security Interest” includes actions taken by secured creditors under specific laws (e.g., SARFAESI Act, 2002). The intent is to bring all

enforcement actions under the collective mechanism of the “IBC”<sup>25</sup>. ‘The corporate debtor’ possess the property, this is vital for continuing the business operations without immediate eviction or repossession. “Section 14(2) of the IBC” expressly forbids the discontinuation or withdrawal of essential goods or services such as electricity, water, telecommunications, or information technology to a “corporate debtor” during ‘the moratorium’, as long as the debtor continues to meet its current payment obligations. A key amendment specified that insolvency alone cannot be used as a reason by government bodies or sectoral regulators to suspend or terminate licenses, permits, registrations, quotas, concessions, clearances, or comparable authorizations, so long as there are no outstanding payments on dues related to their usage. This measure serves to further support the objective of preserving “the corporate debtor as a going concern”.

While broad, the moratorium is not absolute. Certain actions may be explicitly or implicitly excluded:

- i. Proceedings by the Corporate Debtor: While “Section 14 of the IBC” generally places ‘a moratorium on proceedings against the corporate debtor, it does not prevent the corporate debtor, acting through its Resolution Professional, from initiating or continuing legal actions that are advantageous to the debtor’s estate’. This includes activities such as pursuing claims to recover outstanding dues from third parties or appealing proceedings or orders that may negatively affect the value of the debtor’s assets.
- ii. Criminal Proceedings: Generally, the moratorium does not extend to proceedings of criminal against the corporate debtor or its, unless the these are solely for recovery of a debt. This distinction is often a matter of judicial interpretation, focusing on the punitive vs. recovery nature of the proceeding.
- iii. Actions against Guarantors: Importantly, unless specific individual insolvency proceedings are started against the guarantor, the moratorium

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<sup>25</sup> Understanding the IBC- <http://ibclaw.in>

on a corporate debtor does not automatically extend to its personal guarantors. This has been a major judicial ruling.

- iv. **Set-off Rights (with limitations):** The ability of a creditor to set off mutual debts may be impacted but is not entirely extinguished by the moratorium; however, it must be exercised within the parameters of insolvency law principles.
- v. **Certain Regulatory Actions (depending on nature):** While recovery actions by regulatory bodies like SEBI are stayed, inquiries or determinations of regulatory compliance or penalties without immediate recovery actions might still proceed, though this remains an area of nuanced interpretation<sup>26</sup>.

#### Impact of moratorium- Corporate Debtors

- i. The most direct benefit is the immediate cessation of all debt collection and enforcement activities, providing a crucial "breathing space" for the corporate debtor to reorganize its affairs.
- ii. **Preservation of Value:** By preventing the piecemeal sale or attachment of assets, the moratorium ensures that the corporate debtor's entire estate is preserved, maximizing its value for a potential resolution or orderly liquidation.
- iii. **Facilitates Turnaround Efforts:** The pause in legal and financial hostilities allows the Resolution Professional and management to focus entirely on developing and implementing a viable resolution plan, including operational restructuring.
- iv. **Continuity of Business Operations:** Protection against termination of essential supplies and repossession of critical assets maintain its "going concern" status during the process of CIRP and it helps the corporate debtor.

#### Impact of moratorium - Creditors

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<sup>26</sup> Staying regulatory action under guise of insolvency proceedings emboldens errant developers- <https://www.decanherald.com>

- i. **Temporary Suspension of Individual Rights:** For the time being, creditors—including secured creditors—are unable to exercise their individual rights to security interest or recovery. Many people believe that this significantly limits their options for quick fixes.
- ii. **Shift to Collective Mechanism:** Creditors are compelled to engage in a process of collective decision-making through the CoC. This ensures equitable treatment but means that individual creditors lose direct control over their specific recovery efforts.
- iii. **Potential for Delays:** While designed to be time-bound, the moratorium period can sometimes be extended due to complex negotiations or legal challenges, leading to delays in recovery for creditors.
- iv. **Risk of Asset Dilution (Pre-moratorium):** The effectiveness of the moratorium depends on timely initiation. If a corporate debtor is allowed to deteriorate significantly before CIRP, the assets available for creditors might already be severely diluted.
- v. **Uncertainty Regarding Specific Claims:** The interaction of the moratorium with other particular laws (such as SEBI regulations) may initially raise questions regarding the recoverability or priority of creditors with complex or regulatory claims (such as penalties or investor refunds)<sup>27</sup>.

#### Impact on Overall Efficiency of Resolution Processes

**Promotes Orderly Resolution:** The moratorium is fundamental to ensuring an orderly and systematic resolution process, preventing a chaotic "grab race" among creditors that would inevitably destroy value. By providing a protected period for negotiation and restructuring, the moratorium enhances the likelihood, which is generally more beneficial than liquidation. By centralizing claims, the moratorium significantly reduces the number of parallel litigations and enforcement actions, thereby de-clogging the judicial system and saving time and resources for all parties. It attracts Resolution Applicants because they are guaranteed to purchase a business free from prior encumbrances and

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<sup>27</sup> Review of regulatory framework- <https://indiacorplaw.in>

litigation, prospective resolution applicants find the distressed assets more appealing due to the certainty offered by the moratorium and the ensuing "clean slate" (Section 32A IBC). This increases competition and enhances the results of resolution. The broad wording of moratorium provisions (e.g., "other authority") often requires extensive judicial interpretation to resolve conflicts with other specific laws and ensure consistent application, which can initially impact efficiency until precedents are established. Ensuring strict compliance with the moratorium by all parties, especially in large and complex cases involving multiple creditors and diverse claims, can be an administrative challenge for the Resolution Professional.

A key component of contemporary insolvency law, the moratorium is revolutionising corporate rescue and debt settlement. Its primary responsibility is to establish a safe space in which a financially troubled organisation can be evaluated, restructured, or liquidated to optimise value for all parties involved, especially creditors. Although it temporarily restricts the rights of individual creditors, this restriction is a necessary compromise for the overall benefit of economic efficiency and collective resolution. In order to analyse its efficacy and influence on the insolvency ecosystem, a dissertation must comprehend the subtleties of its scope, exceptions, and the ongoing evolution of its interpretation by the judiciary.

### **3.3 Historical background and rationale for its introduction in the IBC**

IBC,2016 is one of the most significant legislative changes economic histories of India. A severely broken and dysfunctional insolvency regime that had a devastating impact on the economy, especially on corporate debtors, creditors, and the general effectiveness of credit markets, prompted its introduction. To fully appreciate the profound reasoning behind the revolutionary provisions of the IBC, one must have a thorough understanding of the historical background. Before the IBC, India's insolvency and debt recovery framework was characterized by a labyrinth of laws, multiple adjudicating forums, and

inherent biases that often-favoured debtors and led to immense delays and low recovery rates<sup>28</sup>.

#### Key Problems of the Pre-IBC Regime:

The existence of disparate laws and tribunals created jurisdictional overlaps, conflicts, and forum shopping. There was no single, unified framework for corporate insolvency. Specifically, SICA permitted the current management, which was frequently the cause of the company's illness, to maintain control throughout the resolution process. Moral hazard and disincentives for a true revival resulted from this. Lack of Time-Bound Processes is another problem. There were endless delays because there were no hard deadlines for resolution. Cases would drag on for years or even decades, by which time assets would have lost a great deal of value. India's recovery rate was among the lowest globally, adversely impacting credit flow and increasing borrowing costs. The prolonged delays and the "debtor-in-possession" model led to severe asset stripping, loss of going concern value, and destruction of enterprise value. Creditors, particularly financial creditors, had limited effective tools to initiate and drive a timely resolution process. The absence of an efficient exit mechanism for failed businesses discouraged entrepreneurship and risk-taking.

Rationale for the Introduction of the IBC, 2016: Non-Performing Asset is one of the major crises in the banking sector in the early 2016, largely exacerbated by inefficiencies of the existing insolvency framework. In 2014, Dr. T. K. Viswanathan, was constituted "the Bankruptcy Law Reform Committee" to draft "a new insolvency and bankruptcy law". Its report, submitted in 2015, laid the intellectual groundwork for the IBC, emphasizing the following core principles and rationale: Creditor-in-Control Model The basic change from a "debtor-in-possession" to a "creditor-in-control" model. The reasoning behind this was those creditors, who have the largest financial stake, are in the best position to determine whether a distressed company should be liquidated or reorganised. The "Committee of Creditors (CoC)" has the authority to decide

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<sup>28</sup> "Background of the IBC" -<https://www.nlsblr.com>

on business matters. “Time-Bound Process”, A period of 180 days at first, with a 90-day extension option, and a final cap of 330 days (including extensions and litigation). The argument went that insolvency is a situation where "time is money" and that delays cause value to erode<sup>29</sup>. "maximization of the value of assets of the corporate debtor" is the primary objective of CIRP. These shifts focus from simply recovering debt to preserving and enhancing the overall enterprise value. The IBC consolidated various laws into a single, cohesive structure, covering corporate persons, partnership firms, and individuals. This addressed the fragmentation issue. The establishment of Information Utilities (IUs) was crucial to provide verified financial information, reducing disputes and delays in proving claims. IPs (Insolvency professionals) was introduced to manage the insolvency process, conduct the CIRP, and facilitate the resolution. This professionalization was key to ensuring impartiality and efficiency. The adjudicating authorities were designated for consolidating jurisdiction & expertise. The IBC provides a clear, predictable, and relatively swift mechanism for the exit of unviable businesses, reducing the "ever-greening" of bad loans and freeing up capital for more productive uses.

Specific rationale for key provisions within the IBC ; Moratorium (IBC Section 14): Without a moratorium, individual creditors—particularly those who are secured by SARFAESI—would quickly seize and sell assets in order to recoup their debts. This disjointed strategy frequently resulted in the distressed sale of assets, destroying the company's "going concern" value and leaving little for unsecured creditors. This race is stopped by the moratorium, which pools all available resources for a resolution that maximises value. It gives crucial period as calm, free from litigation and enforcement actions. This "breathing space" is vital for the RP to assess the debtor's financial position, prepare an information memorandum, invite resolution plans, and manage day-to-day operations without constant interference. The moratorium forces creditors to participate in the CIRP by putting a halt to all individual court cases and enforcement actions. This embodies the move to a collective

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<sup>29</sup>Time limit for completion of Insolvency resolution process under IBC-  
<https://www.ibbi.gov.in>

insolvency framework by forcing all stakeholders into a single, unified forum (the CoC) to negotiate and choose a resolution plan. The specific prohibition in essential goods or services suspension during the moratorium directly addresses business operational. This ensures that the enterprise value is not eroded during the resolution process, making it more attractive for potential resolution applicants.

"Clean Slate" Principle (Section 32A of IBC):

Although not included in the original IBC, Section 32A was added in 2020 through an amendment that embodied the "clean slate" theory and was founded on numerous judicial interpretations as well as pragmatic needs. Before Section 32A, successful resolution applicants often faced the risk of inheriting liabilities for offenses, particularly regulatory penalties (from SEBI, Income Tax, etc.) or criminal proceedings. This uncertainty acted as a significant deterrent for bidders. Attracting Resolution Applicants and Maximizing Value gives a "clean slate" to the new management, making the corporate debtor a significantly more attractive proposition for investors and maximizing the potential for higher bids. Finality of Resolution provides a degree of finality to the "resolution process". If "the approval of resolution plan", the company can move forward without the lingering threat of past legal or regulatory actions, promoting its effective revival. While providing immunity, Section 32A contains safeguards, ensuring that individuals responsible for the offenses (e.g., directors, officers) can still be prosecuted, thereby balancing the need for corporate revival with accountability for misconduct.

The urgent need to modernise a stagnant insolvency system is where the IBC got its start. Its implementation represented a concerted and thorough attempt to move India towards an insolvency regime that is time-bound, creditor-driven, and value-maximizing. A more robust credit market and easier business operations in India were the results of the careful design of key provisions like the moratorium and the "clean slate" principle, which

addressed the pervasive issues of fragmentation, delays, and value destruction that afflicted the pre-IBC era.

### **3.4 Identify the action prohibited during the moratorium period**

The declaration of a moratorium upon the commencement of the “Corporate Insolvency Resolution Process (CIRP)” under Section 14 is one of the fundamental elements of “the Insolvency and Bankruptcy Code, 2016 (IBC)”<sup>30</sup>. This moratorium is intended to create a "calm period" in which the corporate debtor cannot be subjected to coercive measures. Despite being essential to the resolution process, this frequently clashes with statutory requirements under other regulatory frameworks, particularly those enforced by “the Securities and Exchange Board of India (SEBI)”. “Under Section 14(1) of IBC” lists particular prohibitions that take effect immediately after “the National Company Law Tribunal (NCLT)” accepts a “CIRP application”. Despite their protective intent, these limitations have led to operational and interpretational conflicts with SEBI's authority and goals under securities laws, particularly when it comes to listed companies.

Statutory Prohibitions under Section 14(1) of the IBC: Section 14(1) of the IBC states: “Subject to the provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following...” The actions prohibited under the moratorium can be grouped into four key categories: “The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.”<sup>31</sup> “Explanation: No new civil, criminal, arbitral, or administrative proceedings can be initiated against the “corporate debtor”. Ongoing suits and enforcement of any decree or award are stayed. This includes SEBI adjudication or penalty proceedings, tribunal orders, or even investor grievances being escalated.”

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<sup>30</sup> <https://bnblegal.com>

<sup>31</sup> Section 14(1)(a) of SEBI

SEBI, as a market regulator, is obligated to continue proceedings related to violations of securities law. However, moratorium halts SEBI's ability to initiate or continue enforcement actions (e.g., penalty, prosecution, or disgorgement orders) against defaulting listed entities. In *Anil Agarwal v. SEBI* (2021)<sup>32</sup>, SEBI's recovery actions were halted by the moratorium under IBC.

Transfer or Disposal of Assets [Section 14(1)(b)]: "Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein."<sup>33</sup> Explanation: Corporate debtors are prohibited from selling or dealing with their tangible and intangible assets.

Aimed at preserving "the value of the debtor's assets" for creditors and future resolution applicants. SEBI mandates disclosures for asset sales, related-party transactions, and capital restructuring, which may conflict with the asset transfer restrictions under the IBC. Resolution applicants often seek exemptions from SEBI's regulations during acquisition or restructuring, causing further conflict. "Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002."<sup>34</sup> Explanation: "Prohibits creditors, especially banks and financial institutions, from taking enforcement action such as repossession, foreclosure, or auction of secured assets." SEBI's Recovery and Refund Mechanism (e.g., "under the Securities Contracts (Regulation) Act, 1956") sometimes involves attachment of securities and assets for investor protection, which may be blocked by this clause. There is jurisdictional ambiguity about whether SEBI can proceed with such recoveries during moratorium.

Recovery of Property by Owners or Lessors: "The recovery of any property by an owner or lessor where such property is occupied by or in the possession of

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<sup>32</sup> Appeal No: 240 of 2019, SAT, Mumbai

<sup>33</sup> Section 14(1)(b) of SEBI Act

<sup>34</sup> Section 14(1)© of SEBI Act

the corporate debtor.”<sup>35</sup> Explanation: “Prevents owners or lessors of property, equipment, or machinery from reclaiming assets used by the debtor during CIRP. Protects the going concern status of the company.”

SEBI’s listing requirements demand continued disclosures on material events, including loss of possession of leased or licensed assets. However, IBC’s moratorium prohibits any such action or disclosure without RP/NCLT oversight. This can delay compliance and mislead investors if not clearly disclosed.

Although the objectives of debtor protection and creditor maximisation are served by Section 14(1), it frequently compromises SEBI’s regulatory mandate of investor protection, transparency, and the enforcement of securities laws. Which law prevails? SEBI’s penal actions vs IBC’s moratorium protections. Investor vs Creditor Rights: SEBI protects shareholders; IBC protects creditors. Public Interest vs Commercial Interest: SEBI works in public interest; IBC prioritizes commercial efficiency. Courts have generally held that IBC overrides SEBI proceedings, based on “Section 238 of the IBC (“non-obstante clause”)”. However, in some cases, courts have balanced interests, especially where fraud or misrepresentation is involved. Section 14(1) forbids certain activities during the moratorium period in order to promote a smooth and efficient resolution process. These restrictions, however, frequently conflict with SEBI’s regulatory authority when they are applied to listed companies. These laws urgently need to be harmonised through legislative amendment, regulatory cooperation, or judicial clarity. India can only accomplish the dual objectives of effective insolvency resolution and strong investor protection by means of such harmonisation.

### **3.5 Ambit and scope of moratorium**

Ambit and scope of moratorium refers to what falls within its legal reach—what the moratorium includes and applies to. “Under Section 14 of the IBC”, the ambit includes “Institution or continuation of suits or legal proceedings

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<sup>35</sup> Section 14(1)(d) of SEBI Act

against the corporate debtor”, “Execution of any judgment, decree, or order by any court of law or tribunal”, “Transfer, encumbrance, alienation, or disposal of any asset of the corporate debtor” and “Foreclosure, recovery, or enforcement of any security interest (e.g., by creditors)”.

Scope refers to the effect and coverage—how wide and deep the moratorium’s influence is. It: Protects the corporate debtor from harassment and legal actions while the resolution process is underway Stays all actions by creditors (secured or unsecured) against the debtor's assets. Includes actions in all forums, whether in civil court, consumer court, arbitration, etc. Does not apply to personal guarantors unless specifically included by order, Criminal proceedings, Proceedings before High Courts or Supreme Court under constitutional jurisdiction (e.g., writs under Article 226). Judicial pronouncements clarifying the scope of the moratorium: Clarifying the extent of the “moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC)” in India has been made possible in large part by judicial rulings. By preventing any legal action or recovery proceedings from being started or maintained against the “corporate debtor”, “the moratorium” seeks to protect the debtor's assets throughout “the Corporate Insolvency Resolution Process (CIRP)”.

*Innoventive Industries Ltd. v. ICICI Bank & Anr.*<sup>36</sup>: *Innoventive Industries Ltd.*, a corporate debtor, owed financial debts to ICICI Bank, a financial creditor. ICICI Bank filed an application under Section 7 of the IBC before “the National Company Law Tribunal (NCLT)” to initiate “the Corporate Insolvency Resolution Process (CIRP)”. *Innoventive* objected, arguing that it was protected under ‘a state law’ “the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 (MRU Act)” which temporarily suspended enforcement of liabilities against the company. The “NCLT” admitted the case and imposed “a moratorium under Section 14 of the IBC”. *Innoventive* appealed to the NCLAT and then to the Supreme Court. The key Legal Issues

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<sup>36</sup> (2017) 1 SCC 407

are, Whether state legislation (MRU Act) could override the IBC?, Whether the conditions for admitting a petition under Section 7 were satisfied? *and* What is the scope and effect of the moratorium under Section 14?

Judgment and Reasoning: “The Supreme Court held that IBC is a complete code and that there is repugnancy between the MRU Act and the IBC”. “Under Article 254 of the Constitution, a Central law (IBC) will prevail over a conflicting state law (MRU Act).” “The Court emphasized the non obstante clause in Section 238 of the IBC, giving it overriding effect over inconsistent laws.”

Trigger for Section 7 – Existence of Debt and Default: “The Court clarified that once a default is established, the Adjudicating Authority must admit the application under Section 7.” It is not required to enter into disputes about the debt or the viability of the business — it’s a summary satisfaction.

Moratorium under Section 14: Once the CIRP is admitted, Section 14 automatically kicks in, imposing a “moratorium” on: “Institution or continuation of legal proceedings,” “Enforcement of security interest,” “Recovery of property,” “Termination of essential goods or services.” This judgment confirmed that the moratorium is broad and automatic and aims to preserve the debtor’s assets during resolution. A pillar of Indian insolvency law is the *Innoventive Industries* ruling. It established a pro-debtor but process-driven approach to corporate resolution and upheld the IBC's position as the comprehensive and supreme code for insolvency matters. It made clear that moratoriums are all-encompassing and intended to stabilise the debtor while creditors seek a resolution.

*Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan Pvt. Ltd.*<sup>37</sup>:

Under the IBC, Hotel Gaudavan Pvt. Ltd., a corporate debtor, was in the process of going bankrupt. The State Government (Airport Authority of India) started eviction proceedings against the corporate debtor under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PP Act) while the

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<sup>37</sup> (2018) 16 SCC 94

Corporate Insolvency Resolution Process (CIRP) was still pending.<sup>38</sup> The Supreme Court was asked to decide whether eviction proceedings under a different statute could go forward while Section 14 of the IBC was in effect.<sup>39</sup>

The legal issue is, “Does the moratorium under Section 14 of the IBC apply to eviction proceedings initiated under the Public Premises Act or similar laws?”

The Supreme Court stayed the eviction proceedings, holding that: “The eviction notice and proceedings initiated under the Public Premises Act are in direct contravention of the moratorium imposed under Section 14 of the IBC.” It emphasized that “Section 14” has a wide scope and bars all proceedings, including those for eviction, regardless of the statute under which they are initiated, if they are against the “assets or possession of the corporate debtor”.

Key Observations:

**Broad Interpretation of Moratorium:** The moratorium covers all proceedings, civil or quasi-judicial, which affect the assets or management of the corporate debtor.

**No Exception for Public Premises Act<sup>40</sup>:** Even statutory proceedings for eviction under special laws like the PP Act are barred once moratorium is imposed. **Purpose of Section 14 Reinforced:** “The objective is to maintain the status quo of the corporate debtor’s assets during the CIRP, preventing piecemeal recovery or disruption.”

One significant decision that broadened the interpretation of the moratorium under the IBC was the Alchemist Asset Reconstruction case. It made it clear that during the CIRP, no legal action, including evictions by the government, is allowed that could jeopardise the corporate debtor's ability to continue operating. By maintaining the debtor's operational integrity, this case reaffirmed the IBC's goal of facilitating resolution rather than liquidation.

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<sup>40</sup> Public premises Act, 1971- <https://www.indiacode.nic.in>

*Canara Bank v. Deccan Chronicle Holdings Ltd.*<sup>41</sup>: Following “the commencement of insolvency proceedings under the IBC”, Canara Bank, a financial creditor, attempted to enforce its security interest against Deccan Chronicle Holdings Ltd. under the SARFAESI Act, 2002. “Section 14 of the IBC already had a moratorium in place”. The question was whether the IBC-imposed moratorium would prevent the SARFAESI proceedings from moving forward.<sup>42</sup>

The legal issue is Does the “moratorium under Section 14 of the IBC” bar financial creditors from taking or continuing action under the SARFAESI Act, 2002? It is held that, “The NCLAT held that once the moratorium under Section 14 is in effect, no action can be taken to foreclose, recover or enforce any security interest, including under SARFAESI”. The Tribunal explicitly ruled: "During the moratorium period, no secured creditor can recover the amount or take possession of the secured assets of the corporate debtor, including by way of SARFAESI Act proceedings."

Key Observations:

Wide Scope of Section 14: Section 14 imposes a blanket stay on all recovery actions, regardless of the statute under which they are initiated. SARFAESI Proceedings Covered: Even though the SARFAESI Act is a special statute for secured creditors, IBC overrides it when CIRP is in progress. The object of the moratorium is to ensure “the corporate debtor” remains a going concern and to prevent a run on its assets during CIRP. SARFAESI proceedings are halted during the IBC moratorium period, according to the ruling in “*Canara Bank v. Deccan Chronicle Holdings Ltd*”. This decision played a crucial role in preserving the IBC's dominance and shielding corporate debtors from disjointed enforcement actions, guaranteeing a cohesive and efficient resolution procedure.

On going investigation and pre moratorium actions: Prior to the moratorium, SEBI might have sent out show-cause notices or started investigations.

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<sup>41</sup> Company Appeal (AT) (Insolvency) No. 147 of 2017

However, unless the Central Government expressly exempts it, any further action against the “corporate debtor” is halted once the moratorium is in effect. Courts and tribunals, including the Supreme Court and the NCLAT, have repeatedly ruled that the moratorium extends to SEBI proceedings against the corporate debtor and that the IBC's moratorium provisions supersede SEBI's authority under the SEBI Act. According to the Insolvency Law Committee, granting SEBI an exemption could jeopardise the IBC procedure and the goal of maximising asset value for all creditors.

**CHAPTER 4:**  
**SCOPE OF THE TERM “OTHER  
AUTHORITY” AS USED IN “SECTION 14 OF THE IBC”**

**4.1 Interpretation of “Other authority”:**

“The Insolvency and Bankruptcy Code, 2016 (IBC)” does not define the term "other authority" specifically. Nonetheless, its interpretation is influenced by the IBC's background as well as more general legal precepts, particularly those established by Article 12 of the Indian Constitution.

"Other authorities" in Article 12 refers to bodies that perform governmental or public functions, whether statutory or non-statutory, and includes corporations, societies, and other entities if they act as instrumentalities or agencies of the government.<sup>43</sup>The Supreme Court has laid down tests such as government control (financial, functional, and administrative), public function, and statutory creation to determine whether an entity is an "other authority" under Article 12.

The term has been interpreted broadly to include not only statutory bodies but also non-statutory entities with pervasive government control. Mere regulatory control is not sufficient; the control must be deep and pervasive. The IBC, in various provisions (e.g., “Section 3(18)” defining "financial sector regulator"), refers to "authority or body constituted under any law for the time being in force to regulate services or activities". The IBC and its rules sometimes refer to actions by "other authorities" in the context of regulatory or governmental functions, but without a specific statutory definition, courts and tribunals rely on established constitutional principles for interpretation. SEBI, RBI, IRDAI,

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<sup>43</sup> Taxmann's., Insolvency and Bankruptcy code, 2016(7<sup>th</sup> edition)

etc., are considered "other authorities" under the IBC's regulatory framework due to their statutory status and regulatory functions. However, unless explicitly exempted by the Central Government (as per Section 14(3)(a) of IBC), their actions against a corporate debtor are generally stayed during the moratorium.

In general, courts have construed "other authority" to refer to any forum—not just conventional courts or tribunals—that has the ability to decide cases or enforce claims. For instance, it has been decided that the moratorium applies to proceedings before the Securities Appellate Tribunal (SAT)<sup>44</sup>, Debt Recovery Tribunal (DRT), or even regulatory commissions.

Limitations: Unless they entail adjudication or claim enforcement, the term excludes actions that are solely administrative or executive in nature. Unless they involve adjudication or enforcement, actions taken by purely administrative bodies (such as routine regulatory compliance) might not always be covered.

#### **4.2 The principle of statutory interpretation, particularly “Ejusdem generis and purposive interpretation<sup>45</sup>”**

Literal Interpretation (Golden Rule): According to the literal rule, unless doing so would make the statute absurd or be against its context or purpose, words must be given their plain, ordinary, and grammatical meaning. Courts have often applied the literal rule to IBC provisions. For example, “the Supreme Court has held that when words are clear and unambiguous, courts must give effect to them as written, without adding or subtracting from their meaning. In the context of "other authority," if the phrase is clear and broad, it should be interpreted expansively unless the context suggests a narrower meaning”. The purposive approach looks at the intention behind the law and interprets the statute to achieve the purpose or object for which it was enacted, especially when a literal interpretation would defeat the legislative intent.

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<sup>44</sup> Welcome to Securities Appellate Tribunal - <https://researchgate.net>

<sup>45</sup> Doctrine of “ ejusdem generis” - <https://lawbhoomi.com>

The IBC is a time-sensitive and objective-driven statute, aiming for maximization of asset value and timely resolution of insolvency. Courts have sometimes favoured purposive interpretation to avoid procedural delays and to ensure that the objectives of the IBC are not frustrated. For instance, in the debate over prior CCI approval under Section 31(4), some judges have argued for a purposive reading to ensure commercial efficiency and avoid unnecessary delays. However, the Supreme Court has also cautioned that purposive interpretation should not override clear statutory language.

**Ejusdem Generis Definition:** The principle of “*ejusdem generis*” (“of the same kind”) applies when general words follow specific words. It suggests that the general words are limited to things of the same kind as those specifically enumerated. The phrase in Section 14(1)(a): “court of law, tribunal, arbitration panel or other authority” could potentially attract *ejusdem generis*. The specific words (“court of law, tribunal, arbitration panel”) are all adjudicatory or dispute resolution bodies. “Other authority” could be interpreted as limited to similar bodies, i.e., those that adjudicate or enforce claims. The phrase “other authority” is broad and may have been intended to be expansive, not limited by the preceding list. Courts have often interpreted “other authority” broadly to include anybody that can adjudicate or enforce claims, not just those strictly similar to courts or tribunals. The applicability of *ejusdem generis*<sup>46</sup> is often debated in this context. If the legislative intent is to provide a comprehensive stay, courts may prefer a broader interpretation and not limit “other authority” to only those bodies strictly akin to courts or tribunals. In practice, Indian courts have tended to interpret “other authority” expansively, focusing more on the legislative intent and the purpose of the moratorium.

*Ejusdem generis* may be contested in relation to “other authority,” but there is disagreement over how to apply it. Unless the context expressly indicates otherwise, courts have typically favoured a broader interpretation to ensure the effectiveness of the moratorium.

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<sup>46</sup> “of the same kind”- Latin term

In conclusion, even though ejusdem generis might theoretically restrict the reach of "other authority," Indian courts have a tendency to favour a more expansive, purposeful approach in order to guarantee that the moratorium has the desired outcome.

### **4.3 Judicial interpretation of “ other authority”.**

Below is a precise analysis of the key case law relevant to the interpretation of “suit or proceeding” and “other authority” in IBC, Section 14(1),

*Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.*

This is a pre-IBC judgment. The case is significant for understanding how the term “suit or proceeding” has been interpreted in the context of moratoriums under insolvency laws. “The Honourable Supreme court of India held that the term “proceeding” under “Sick Industrial Companies(Special Provisions) Act, 1985” is broad and includes any legal process, including recovery proceedings, execution, and enforcement actions”. The intent was to give the BIFR a “calm period” revives a company, free from legal actions.

Impact on IBC: The broad interpretation of “proceeding” in SICA has influenced courts to adopt a similarly expansive view under the IBC, especially in interpreting Section 14(1)(a). The case supports the argument that “other authority” in the IBC should be read widely to include all forums capable of adjudicating or enforcing claims.

*P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*<sup>47</sup>

Supreme Court, 2021: The main question was whether the moratorium under IBC Section 14 applied to “proceedings under Sections 138/141 of the Negotiable Instruments Act (NI Act).” The Supreme Court held that “every legal proceeding against the corporate debtor including those under NI Act.” It was cleared that, “proceeding” in Section 14(1)(a) is to be interpreted broadly to include quasi-criminal proceedings (like cheque dishonour cases), not just

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<sup>47</sup> 2021(6)SCC 258

civil suits. The objective is to provide a "calm period" to corporate debtor by avoiding any financial or legal distractions that might obstruct the resolution process.

**Exception for Individuals:** In Negotiable Instrument Act, the moratorium does not apply to proceedings against individuals (directors, signatories, etc.), only to the corporate debtor itself.

This case cemented the expansive interpretation of “proceeding” and “other authority” in the IBC, ensuring that the moratorium applies to a wide range of legal actions, including those before non-traditional forums.

*Anand Rao Korada, RP of M/s. GMR Hyderabad International Airport Ltd. v. SEBI*<sup>48</sup>:

There is no widely reported Supreme Court or NCLAT judgment with this exact title as of the latest available records. However, NCLAT has addressed similar issues involving SEBI and the moratorium in other cases. NCLAT and NCLT have consistently held actions in moratorium in Section 14 by regulatory bodies like SEBI, unless explicitly exempted. Even though SEBI is a statutory regulator, it protects from the proceedings against the corporate debtor, such as levying fines or starting enforcement procedures. Its actions may be exempted, but no such notification exists for SEBI as of now.

**Impact:** The moratorium is interpreted to cover all “proceedings” before any “authority,” including SEBI, unless an exception applies. This approach ensures that the corporate debtor is protected from regulatory actions that could disrupt the insolvency process.

#### Other Relevant Judgments on “Other Authority” and Regulatory Bodies

**NCLT/NCLAT and High Courts: Broad Interpretation:** Tribunals and courts have generally interpreted “other authority” in Section 14(1)(a) to include any forum that can adjudicate or enforce claims, not limited to courts or tribunals.

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<sup>48</sup> AIR 2020 SC 222

Regulatory Bodies:

SEBI: As discussed, actions by SEBI are stayed during the moratorium.

RBI/IRDAI: Similar treatment applies to other financial sector regulators.

Example: In *Uttam Galva Steels Ltd.*, NCLAT clarified that the moratorium applies to all legal proceedings, including those before regulatory authorities.

Non-Traditional Forums: Debt Recovery Tribunal (DRT): Proceedings before DRT are covered by the moratorium. Arbitration Panels: Arbitration proceedings against the corporate debtor are also stayed.

#### **4.5 Conclusion on “ other authority” and “SEBI”.**

A reasoned conclusion on whether SEBI should be considered an "other authority" in IBC section 14(1), Moratorium must be grounded both the judicial interpretation of the statute and the broader objectives underlying the IBC and SEBI Act.

In order to maximise the value of the assets and promote the process of seamless resolution, judicial trends have repeatedly underlined that the moratorium is meant to give a "calm period" to the company during, it will be protected from all legal and financial attacks. The Supreme COURT of India held in *Innovative Industries Ltd. v. ICICI Bank*<sup>49</sup>, no legal action against the corporate debtor may continue. Courts and tribunals have applied this idea to regulatory bodies like SEBI. As a statutory regulator, SEBI is prohibited from initiating or pursuing proceedings or enforcing orders against the corporate debtor in moratorium declaration.

According to a broad interpretation of Section 14(1)(a), the term "other authority" refers to anybody that has the authority to decide, uphold, or recover claims; it is not restricted to courts, tribunals, or arbitration panels. As a regulatory body it has the ability to enforce compliance, levy fines, and seize assets, SEBI undoubtedly qualifies as "other authority" for the purposes of the

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<sup>49</sup> 2017(1) SCC 148

moratorium. The reasoning behind this is that permitting regulatory actions to continue during insolvency would defeat the purpose of the moratorium.

Moreover, the overriding effect of the IBC, as enshrined in Section 238, ensures that ‘in the event of a conflict between the laws of IBC&SEBI, provisions of the IBC prevail’. This has been consistently upheld in cases where SEBI’s attachment or recovery actions have been set aside upon the initiation of the moratorium, with courts directing SEBI to de-attach properties and respect the insolvency process.

The regulatory function of SEBI is not completely eliminated by this expansive interpretation, though. Although SEBI is unable to independently enforce penalties or recoveries during the moratorium. This equilibrium is essential because it acknowledges SEBI's larger responsibility to oversee the securities markets while maintaining the integrity of the insolvency procedure.

In light of these judicial trends and the objectives of both legislations, it is clear that SEBI must be considered a “other authority” for moratorium aim. It’s shield designed to protect corporate debtor from all forms of legal and regulatory actions that could disrupt the orderly resolution of insolvency, and this protection extends to actions by SEBI. The courts’ consistent approach has been to prioritize the collective insolvency process over individual regulatory enforcement, ensuring that the assets preserved to the stake holder’s benefit. Therefore, unless the Central Government issues a specific notification exempting SEBI from the moratorium—which has not happened—SEBI’s actions are stayed, and it is treated as a “other authority” under Section 14(1)(a) of the Act.

## **CHAPTER 5**

### **CONFLICT AND CONSEQUENCE OF NON- OBSTANTE CLAUSES UNDER SEBI ACT AND IBC**

#### **5.1 Introduction to the “ Non-obstante clauses**

In the draughting of statutes, It is a tool of legislative which is used to make clear and guarantee that some provisions take precedence over others that might seem to contradict or conflict with them. A classic way to phrase this clause is "notwithstanding anything contained in any other law for the time being in force." To give the provision in which it is embedded explicit precedence over any potential overlaps or inconsistencies between two or more legal instruments is it's main purpose.

Legally speaking, the non-obstante clause is a definite indication of legislative intent, guaranteeing that the particular law or provision to which it is attached will take precedence over any other law's statements. This is especially important in the Indian legal system because different statutes may govern the same topic, which could result in rights or obligations that conflict. In cases of conflict, the clause serves as a "tie-breaker," deciding which law should be applied.

The non-obstante clause's ability to offer consistency and clarity in statutory interpretation is what gives it legal significance. Courts have repeatedly ruled that these clauses have a substantive effect and supersede any conflicting provisions in other laws, making them more than just ornamental. This is essential to preventing conflicting clauses in other statutes from undermining the IBC's goals, which include maximising value for all stakeholders and promptly resolving insolvency.

Additionally, in addition to resolving conflicts between central statutes, It helps to resolve conflicts between state laws or between different provisions within a single statute. It is crucial to remember that unless specifically mentioned, the clause does not supersede other constitutional provisions. The Honourable SC explained that a overriding effect of non-obstante clause is depends on the clear language and intent of the statute in which it appears. If the enactment's words are unambiguous and clear, the clause cannot be used to limit their operation beyond what is specifically provided.

In conclusion, the non-obstante clause is an essential tool for statutory interpretation because it clarifies the law, resolves conflicts, and guarantees that the legislative intent underlying a given provision is fully implemented. Legal certainty and the successful execution of statutory goals are promoted by its inclusion in laws like the IBC, which emphasise the significance of giving the goals of that legislation precedence over any competing legal requirements.

Non-obstante clause's purpose, which reads, "notwithstanding anything contained in any other law for the time being in force," is to give the particular provision it appears in precedence over other provisions. Its primary goal is to guarantee that the specific law or regulation that contains the non-obstante clause will take precedence and be fully implemented, notwithstanding any contradictory or conflicting provisions in previous or current legislation.

When new laws are introduced that might conflict with existing statutes or when it becomes necessary to give priority to some legal goals over others, this legislative tool is particularly important. By employing a non-obstante clause, legislators indicate that the provision should be implemented as intended, even if doing so requires nullifying or temporarily halting the operation of other laws that might otherwise make it more difficult to implement. Courts and authorities are given explicit instructions by the clause to apply the superseding provision without being hindered by contradictions in other legal documents.

The non-obstante clause essentially serves to settle disputes and guarantee legislative clarity. By giving the particular provision precedence over all others in cases of inconsistency, it serves as a tool to enforce the legislature's will and promote certainty, consistency, and the successful realisation of the legislative intent.

It's purpose to give overriding effect to the provision in which it is placed: Fundamentally, the goal is to guarantee that a particular clause in a law will take precedence over any conflicting laws or regulations, irrespective of what those other laws or regulations may say. A non-obstante clause, a potent legislative tool that instructs courts, administrators, and citizens that the provision containing the clause is to be enforced above all others in cases of inconsistency, is most frequently used to accomplish this. The legal landscape is crowded with statutes, rules, and judicial decisions that may overlap or conflict. When a new law is introduced, it is possible that some of its provisions may contradict earlier laws or regulations. Without a mechanism to resolve such conflicts, the intended effect of the new law could be undermined or rendered ineffective. The overriding effect is designed to clarify legislative intent. By stating that a provision effects "notwithstanding anything contained in any other law," the legislature makes it clear that the new provision is to be applied in full, even if it directly contradicts existing laws.

The non-obstante clause is most familiar way to provide overriding effect. This method is characterised by the phrase "notwithstanding anything contained in any other law." The Latin-derived phrase literally translates to "notwithstanding" or "in spite of." Legally speaking, it means that the clause in question will take effect notwithstanding any conflicting clause in other laws. Other laws are not meant to be repealed or rendered invalid by this clause. It merely guarantees that the clause with the overriding effect will be applied in the event of inconsistency. Except in cases where they clash with the superseding clause, other laws continue to be enforceable.

Judicial Interpretation and Limitations: Courts play an important role in interpreting scope & effect of overriding provisions. The judiciary must

determine whether a conflict exists and whether the overriding provision should indeed prevail. The SC has consistently said that,

overriding clauses are to be interpreted strictly and applied only when there is a clear and irreconcilable conflict between provisions. For example, The Supreme Court observed in “*Orient Paper and Industries Ltd. v. State of Orissa*<sup>50</sup>”, an overriding clause “overrides ‘any provision to the contrary in any other law’... These words are an expression of the widest amplitude engulfing all rules having the force of law, whichever be the source from which they emanate—statutory, judicial or customary—the only exception, in the context, being the Constitution of India.” However, courts have also cautioned that overriding clauses are not always to be regarded as repealing clauses. They do not expressly or completely supersede all other provisions of the law; rather, they ensure that the provision containing the clause is given priority in cases of conflict.

Practical Examples and Case Law: Several Indian statutes use overriding clauses to ensure that their provisions are not undermined by other laws. For instance:

- i. “Right to Information Act, 2005” (Section 22): This section states that the provisions of the Act shall have effect notwithstanding anything inconsistent contained in any other law.
- ii. “Insolvency and Bankruptcy Code, 2016” (Section 238): This section provides that the provisions of the Code shall have effect notwithstanding anything inconsistent contained in any other law
- iii. “Recovery of Debts Due to Banks and Financial Institutions Act, 1993” (Section 34): This section gives the Act overriding effect over other laws, ensuring that the debt recovery process is not obstructed by conflicting provisions.

The use of overriding clauses is further demonstrated by case law. The Supreme Court made a distinction between the terms "subject to" and

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<sup>50</sup> 1961 AIR 1438

"notwithstanding" in *T.R. Thandur v. Union of India (1996)*<sup>51</sup>. According to the court, a non-obstante clause grants a provision full force and effect regardless of conflicting provisions, whereas a "subject to" clause places one provision beneath another.

**The Extent and Limits of Overriding Effect:** The overriding effect operates only when there is a clear and irreconcilable conflict between provisions. If the provision with the overriding effect is silent on a particular matter, other laws will continue to apply. This principle was discussed in the context of the Securitisation Act, 2002. Courts have also clarified that overriding clauses do not make other provisions redundant. They simply ensure that, in cases of conflict, the overriding provision is applied. Other provisions remain valid and operative except to the extent they conflict with the overriding provision. Giving a provision overriding effect serves the function of guaranteeing that the provision will take precedence over any competing laws or regulations. A non-obstante clause, which expresses legislative intent to give precedence to the new provision, is used to accomplish this. The overriding effect is not absolute; it only applies when there is an obvious and unavoidable conflict and does not nullify or repeal other laws.

In conclusion, the overriding effect is a vital tool in statutory drafting, ensuring that new laws can achieve their intended objectives without being hindered by older or conflicting provisions. It is a reflection of the legislature's authority to make laws and to resolve conflicts in favour of the public interest and the objectives of the new legislation.

## **5.2 “Non- obstante clauses in the “IBC”:**

IBC Section 238”, is an important provision that establishes legal supremacy in the IBC over all other laws in cases of inconsistency. The provision reads: “The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.” This analysis will

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<sup>51</sup> AIR 1996 SC 1643

explore the rationale behind “Section 238”, its legislative intent, judicial interpretation, practical implications, and its broader impact on India’s insolvency and bankruptcy regime.

**Legislative Intent and Rationale:** Codify and amend the laws pertaining to the timely resolution and reorganisation of insolvency of individuals, partnership firms, and corporate entities is the major purpose of IBC. India's insolvency system was disjointed before the IBC, with several laws and adjudicating bodies, which resulted in inefficiency, delays, and misunderstanding. The ultimate goal of the legislation was to maximise asset value and safeguard the interests of all parties involved by establishing a uniform, effective, and predictable process for resolving insolvency.

Section 238 was specifically introduced to resolve conflicts between the IBC and other statutes. The drafters recognized that several existing laws granted special rights to secured creditors, tax authorities, and other stakeholders. Without a clear mechanism to resolve conflicts, the effectiveness of the IBC could be undermined, leading to forum shopping, parallel proceedings, and erosion of asset value.

**The legal Significance Non-Obstante Clause;** The phrase “notwithstanding anything inconsistent” signals that, the IBC will prevail in the event of a conflict. This is a common drafting technique used to ensure that new, specialized legislation is not rendered ineffective by older or conflicting laws. Section 238's non-obstante clause is purposefully broad, covering all laws and legal documents. This guarantees that other laws, rules, regulations, or contractual agreements won't weaken or get around the IBC's provisions. The purpose of the clause is to guarantee that the IBC takes precedence in conflict situations, not to repeal other laws.

**Judicial Interpretation and Landmark Cases:** Indian courts have consistently upheld the overriding effect of Section 238. Several landmark judgments have clarified the scope and application of this provision:

*“Innoventive Industries Ltd. v. ICICI Bank”*:<sup>52</sup> The Supreme Court highlighted that “the Insolvency and Bankruptcy Code (IBC)” constitutes a comprehensive framework, with Section 238 designed to prevail over any conflicting laws. The Court further observed that the IBC was introduced to remedy the shortcomings and delays found in earlier insolvency mechanisms.

*“Duncans Industries Ltd. v. A.J. Agrochem”*<sup>53</sup>: The Supreme Court ruled that “the Insolvency and Bankruptcy Code (IBC)” takes precedence over the Tea Act of 1953, even if the latter mandates prior approval from the Central Government before initiating winding up proceedings. The Court reasoned that in IBC, the process of insolvency resolution under the IBC is distinct from winding up and that the overriding clause ensures that the IBC’s time-bound process is not hindered by other statutes.<sup>54</sup>

*“Swiss Ribbons Pvt Ltd v. Union of India”*<sup>55</sup>: The Supreme Court once again underscored that the chief aim of the IBC is to facilitate prompt insolvency resolution and optimize the value of assets. It emphasized that Section 238 plays a vital role in fulfilling this purpose by ensuring that no other laws can cause delays or hinder the resolution proceedings.

Courts have also clarified that Section 238 does not make other laws redundant. It simply ensures that, in cases of inconsistency, the IBC prevails. Other laws remain operative to the extent they do not conflict with the IBC.

#### Practical Implications and Challenges

Section 238 has significant practical implications for creditors, debtors, and other stakeholders:

- i. **Moratorium and Asset Protection:** “Once the insolvency process begins, Section 14 of the Insolvency and Bankruptcy Code imposes a moratorium that immediately suspends any new or ongoing legal

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<sup>52</sup> 2017(1) SCC148

<sup>53</sup> .2019 SCC(9) 725

<sup>55</sup> 2019(4)SCC17

actions, asset transfers, enforcement of security interests, and recovery of property from the corporate debtor”. This legal stay is designed to protect the debtor’s assets and provide a stable environment for collective resolution efforts. With the application of section 238, the Code explicitly overrides any conflicting statutes or agreements, ensuring that this period of protection remains intact and cannot be circumvented by other legal instruments.

- ii. **Parallel Proceedings:** Prior to the IBC, creditors could initiate proceedings under multiple laws, leading to parallel litigation and asset erosion. “Section 238” seeks to prevent this by subsuming all other proceedings under the IBC, regardless of when they were initiated.
- iii. **Special Rights of Creditors and Authorities:** Certain laws grant special privileges to secured creditors, tax authorities, and other stakeholders, but “Section 238 of the Insolvency and Bankruptcy Code (IBC)” ensures these rights do not hinder “the insolvency resolution process”<sup>56</sup>. For instance, the Supreme Court has clarified that even though income tax liabilities are sometimes classified as “Crown debts,” they do not override the claims of secured creditors under the IBC, reaffirming the Code’s precedence in insolvency matters
- iv. **Timely Resolution:** The Insolvency and Bankruptcy Code requires “the Corporate Insolvency Resolution Process (CIRP)” to be completed within a fixed period of 330 days, which includes any extensions granted and the time spent in legal proceedings. Section 238 of IBC plays a vital role in ensuring that this strict deadline is not disrupted by any conflicting laws or procedural hurdles,

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<sup>56</sup> Rights of secured creditors under the IBC,2016 - <http://ibelaw.in>

thereby safeguarding the timely completion of the resolution process<sup>57</sup>.

Despite having a clear purpose, Section 238 has been difficult to implement. Delays and confusion have resulted from some courts permitting parallel proceedings under different laws. For instance, in some circumstances, the Debt Recovery Tribunal (DRT) has kept hearing cases even after the IBC's insolvency procedures were started. Critics claim that this goes against the spirit of Section 238—which is meant to encompass all other proceedings.

#### Comparative Analysis

Section 238 is similar to overriding clauses found in other specialized statutes, such as the SARFAESI Act and the RDBA. However, the scope of Section 238 is broader, as it covers all laws and instruments, not just those related to debt recovery. This reflects the comprehensive nature of the IBC as a complete code for insolvency and bankruptcy.

The overriding effect of Section 238 is also consistent with international best practices. Many jurisdictions with advanced insolvency regimes have similar provisions to ensure that insolvency laws take precedence over other statutes in cases of conflict.

#### Criticism and Reform

While Section 238 has been widely praised for its clarity and effectiveness, it has also faced criticism. Some commentators argue that the provision is too broad and may lead to unintended consequences, such as the erosion of legitimate rights of certain stakeholders. For example, tax authorities and secured creditors may feel that their rights are unfairly subordinated under the IBC.

There have also been calls for greater clarity on the interplay between the IBC and other laws, particularly in sectors with specialized regulations. “The Insolvency Law Committee” has proposed that “the adjudicating authority

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<sup>57</sup> Corporate Insolvency Resolution Process; Key stages, challenges & impact- <http://thelegalschool.in>

under the Insolvency and Bankruptcy Code” should possess clear jurisdiction to resolve disputes arising from overlapping or conflicting laws to ensure smooth and effective insolvency proceedings.

#### Broader Impact on India’s Insolvency Regime

The insolvency landscape in India has changed significantly as a result of Section 238. The clause has streamlined the insolvency resolution process, cut down on delays, and improved predictability for all parties involved by guaranteeing the IBC's supremacy. Additionally, rather than using multiple forums, creditors are now more inclined to use the IBC as the primary mechanism for debt recovery due to “the overriding effect of Section 238”.

“Section 238 of the IBC is a cornerstone of India’s insolvency and bankruptcy framework”. Its overriding effect ensures that the IBC’s provisions prevail over any inconsistent law or instrument, thereby facilitating a unified, efficient, and time-bound resolution process. The provision reflects the legislative intent to create a comprehensive and effective insolvency regime, free from the constraints of outdated or conflicting laws.

While Section 238 has faced some criticism and implementation challenges, its overall impact has been overwhelmingly positive. By providing legal certainty and preventing forum shopping, Section 238 has strengthened the credibility and effectiveness of India’s insolvency and bankruptcy system.

Conflict of “non-obstante clauses”: A complicated and developing area of Indian jurisprudence is the legal quandary that arises when two statutes that each have a non-obstante clause appear to supersede one another. The "battle of the non-obstante" is a situation that poses a special challenge to courts, tribunals, and stakeholders because it pits the insolvency regime's goal of a quick, orderly, and value-maximizing resolution of distressed entities against the regulatory objectives of market oversight and investor protection.

#### Context and Legislative Framework

SEBI ACT: The SEBI Act, 1992, empowers SEBI to oversee securities markets, protect investors, and enforce securities regulations. Notably, Section

28A(3) includes a non-obstante clause, which grants SEBI's penalty recovery efforts priority over any other claims against the individual or entity from whom the penalty is being recovered. This broad provision is aimed at ensuring SEBI's regulatory enforcement remains effective and is not impeded by other legal actions.

IBC provisions in other statutes do not obstruct "the insolvency resolution process". : "The IBC,2016", serves as a comprehensive statute designed to amend and unify "laws relating to the insolvency resolution" and "restructuring of individuals, partnership firms, and corporate entities. Section 238 includes a non-obstante clause, which establishes that the provisions of the IBC will prevail over any inconsistent rules or provisions found in other existing laws or instruments effective under those laws. This ensures that any conflicting".

Conflict arises when both statutes claim supremacy over the other. For example, during the Corporate Insolvency Resolution Process (CIRP) under the IBC, a moratorium (Section 14) is imposed, prohibiting any legal action against the corporate debtor or its assets. However, SEBI, under Section 28A, may seek to recover penalties from the corporate debtor by attaching and selling its assets. Both statutes contain non-obstante clauses, leading to a direct clash regarding which authority—SEBI or the insolvency tribunal—can proceed with enforcement actions.

Several legal principles are invoked to resolve such conflicts:

i. Later-in-Time Rule:

When two special statutes containing "non-obstante clauses" conflict, it is generally held that the statute enacted later will prevail. This principle is based on the understanding that the legislature, being aware of existing laws, intends the newer law to override any earlier conflicting provisions. In this context, since the SEBI Act was enacted in 1992 and "the Insolvency and Bankruptcy Code (IBC)" came into force in 2016, the "IBC" is presumed to have precedence over the SEBI Act where inconsistencies arise.

ii. Subject-Matter Specificity:

Courts often consider the subject matter and purpose of each statute. The SEBI Act is primarily concerned with investor protection and market regulation, while the IBC focuses on insolvency and creditor rights. If the provisions do not directly contradict each other, both can coexist. However, in cases where both statutes seek to regulate the same subject (such as the assets of a corporate debtor), a conflict arises.

iii. Manifest Inconsistency Test:

Only when there is a clear discrepancy between the IBC and another law does the non-obstante clause (Section 238) in the IBC come into play. According to court rulings, the IBC's non-obstante clause has the "widest amplitude," which means that it is meant to supersede all other laws in cases involving insolvency and the moratorium period. However, some tribunals have adopted a more limited perspective, contending that other laws should only be superseded by the non-obstante clause in cases where there is a direct conflict regarding the same issue.

#### Supreme Court and NCLAT Pronouncements

IBC is a comprehensive code in and of itself, and that any conflicting laws are to be superseded by its provisions, including Section 238. In *"Innoventive Industries Ltd. v. ICICI Ban"*<sup>58</sup>, the SC held that the IBC was passed in order to rectify the shortcomings and hold-ups of the earlier insolvency framework. According to the Court, the IBC's non-obstante clause has the "widest amplitude," meaning that its provisions take precedence over those of all other laws.

The Supreme Court ruled in *"Pr. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd"*<sup>58</sup>, that the non-obstante clause of the IBC supersedes the Income Tax Act of 1961. Lower courts have applied this logic to other laws, such as the SEBI Act.

#### NCLAT and NCLT Decisions

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<sup>58</sup> Special Leave Petitions (Civil) No.6483 of 2018

In “*Ms. Anju Agarwal v. Bombay Stock Exchange*”, held that recovery actions against corporate debtor during the moratorium under SEBI. SEBI can only file a claim as an operational creditor.

In *Roofit Industries Ltd. v. BSE Limited* and *Shobha Ltd. v. Pancard Clubs*, the NCLT ruled that the IBC’s *non-obstante* clause does not have a blanket overriding effect and should only be invoked when there is a direct conflict with the core issues addressed by the IBC.

SEBI & IBC conflict has significant practical implications:

- i. **Moratorium and Asset Protection:** Section 14 of IBC protects the corporate debtor from the legal actions against him or its asset during the process of insolvency resolution. Section 238 ensures that this moratorium is not undermined by other laws or instruments.
- ii. **Parallel Proceedings:** Prior to the IBC, creditors and regulators could initiate proceedings under multiple laws, leading to parallel litigation and asset erosion. Section 238 seeks to prevent this by subsuming all other proceedings under the IBC, regardless of when they were initiated.
- iii. **Special Rights of Creditors and Authorities:** Certain laws grant special rights to secured creditors, tax authorities, and other stakeholders.
- iv. **Timely Resolution:** Section 238 is essential to ensure that this timeline is not derailed by conflicting laws or procedural requirements.

#### Criticism and Counterarguments

While the prevailing judicial trend favors the primacy of the IBC, there are counterarguments and criticisms:

- i. **Field of Operation:** SEBI regulates investor-company relations, while the IBC governs creditor-debtor relations. Therefore, there is no real conflict, and both statutes can coexist.
- ii. **Blanket Overriding Effect:** There is concern that a blanket application of the IBC’s *non-obstante* clause could undermine legitimate regulatory actions by SEBI and other authorities. Courts have

cautioned against the misuse of Section 238 to negate the operation of other laws.

- iii. Pending SC Determination: Many of the cases, such as “*SEBI v. Raj Oil Mills Limited*”, “*SEBI v. Rohit Sehgal & Ors*”, and “*SEBI v. Monnet Ispat and Energy Limited*”, the matter is still pending a final ruling.

Conflicts between the SEBI Act and “the Insolvency and Bankruptcy Code (IBC)” are not uncommon. Similar legal tensions have emerged with other statutes, including the “SARFAESI Act”, “the Income Tax Act”, and the Companies Act. In these instances, courts typically rule in favour of the IBC because it is a newer and more comprehensive framework on matters of insolvency, and its provisions are considered to override earlier laws on directly overlapping issues

However, judicial pronouncements clarify that the IBC’s non-obstante clause, which is meant to give the Code overriding effect, is not unconditional. The courts tend to apply this only in situations where there is a true and unavoidable conflict with the primary objectives of the IBC. If both statutes address different subject matters, or if their core purposes do not collide, they are allowed to function alongside each other

#### Broader Impact on the Legal System

The difficulties of overlapping regulatory and insolvency frameworks in a complex economy are highlighted by the legal dispute between the “SEBI Act” and “the IBC”. In settling disagreements between special statutes, the conflict emphasises the necessity of legislative clarity and judicial consistency. The legislature's intention to guarantee a prompt and orderly resolution of distressed entities is reflected in the current approach, which favours the IBC's primacy during the insolvency process. The courts' warning against a general overriding effect, however, makes sure that other statutes' regulatory goals are not completely compromised.

### 5.3 Principles of resolving conflicts

The established rules of statutory interpretation form the cornerstone for resolving conflicts between statutes such as the SEBI Act and “the Insolvency and Bankruptcy Code (IBC)”, both of which include non-obstante clauses. An in-depth analysis of these interpretive principles, their practical application, and the nuanced considerations unique to the overlap between the SEBI Act and IBC is provided below.

- i. Lex Posterior Derogat Priori ( The Later Law Prevails Over the Former): This Latin maxim translates to “the later law overrides the earlier one.” It signifies that if two legislative provisions are inconsistent with one another, the rule enacted at a later date generally takes precedence over the one made earlier, unless the legislature has clearly indicated a different intention.
- ii. Application to IBC vs. SEBI Act: While the SEBI Act was passed in 1992 (with the introduction of Section 28A, the relevant provision in 2014), the IBC was passed in 2016. Therefore, SEBI Act and the IBC directly conflict, the IBC, being a later enactment, is typically assumed to take precedence.
- iii. Judicial Precedent: In “*Maharashtra Tubes Ltd. v. State Industrial & Investment Corp. of Maharashtra Ltd.*”, the SC has held that where two special statutes with “non-obstante clauses” conflict, the later statute should prevail, even if both are considered special statutes. This principle is often cited in the context of the IBC and SEBI Act, with courts and commentators arguing that the IBC’s non-obstante clause should take precedence.
- iv. “Lex Specialis Derogat Legi Generali (Special Law Overrides General Law)”:

- v. It means “the special law overrides the general law.” This principle states that when two laws deal with the same subject matter, the more specific or specialized law should prevail over the general one.
- vi. Application to IBC vs. SEBI Act: The application of this principle is more nuanced and debatable in the context of the Acts of SEBI & IBC
- vii. IBC- Special Law for Insolvency: “The Insolvency and Bankruptcy Code (IBC)” serves as an exhaustive legislative framework specifically intended to regulate insolvency and bankruptcy matters concerning corporations, partnership firms, and individuals. It establishes a comprehensive process for resolving insolvency, including a moratorium that temporarily halts legal proceedings against the debtor during the resolution period. Accordingly, the IBC operates as a distinct and specialized statute for managing insolvency issues
- viii. SEBI Act as a Special Law for Securities Regulation: A specialised law for investor protection, securities market regulation, and securities law enforcement is the SEBI Act. SEBI is expressly authorised by Section 28A(3) to recoup penalties through the attachment and sale of property, and its own non-obstante clause grants this recovery precedence over other claims.

Are Both Special Laws? Both statutes are special in their own domains. The SEBI Act is special for securities regulation, while the IBC is special for insolvency and bankruptcy. This raises the question: which statute is more “special” in the context of a conflict between regulatory enforcement and insolvency moratorium? Conflicting Subject Matter: Some contend SEBI & IBC has no conflict because they govern different topics, such as investor protection versus creditor rights and insolvency, and that the two can coexist. According to this perspective, since every statute is unique in its own right, the *lex specialis* principle cannot resolve the conflict. Others, including certain tribunals and commentators, argue that when both statutes claim supremacy over the same subject (e.g., the assets of a corporate debtor during insolvency), the IBC, as the more recent and comprehensive code for insolvency, should be

considered the “special law” for insolvency matters, overriding the SEBI Act’s general enforcement powers during the moratorium.

The NCLAT in *Ms. Anju Agarwal v. Bombay Stock Exchange* held that the IBC’s moratorium (Section 14) prevails over SEBI’s recovery powers (Section 28A), citing the IBC’s *non-obstante* clause and its status as a later and more comprehensive code. Conversely, In, *Roofit Industries Ltd. v. BSE Limited* and *Shobha Ltd. v. Pancard Clubs* the NCLT has taken a narrower view, holding that the IBC’s *non-obstante* clause should only override other laws if there is a direct conflict with the IBC’s core insolvency objectives.

The doctrine of harmonious construction requires courts to interpret statutes in a way that reconciles conflicting provisions and gives effect to both, if possible. Both the SEBI Act and the IBC serve significant public interests—investor protection and the orderly resolution of insolvency—courts make every effort to harmonise them. Harmonious construction, however, might not be feasible in cases of genuine conflict (for example, when SEBI tries to seize assets during the IBC moratorium), and the courts will have to determine which statute takes precedence. The Inconsistency test requires that the *non-obstante* clause in the IBC (Section 238) is triggered only if there is a manifest inconsistency between the IBC and another law. SEBI & IBC provisions can be read together without direct conflict, both may operate concurrently. However, if there is a direct conflict (e.g., SEBI’s attempt to recover penalties by attaching assets during the moratorium), the IBC’s *non-obstante* clause will prevail.

Addressing conflicts between the SEBI Act and “the Insolvency and Bankruptcy Code (IBC)” largely rests on the principles of *lex posterior derogate priori* (the later law overrides the earlier) and *lex specialis derogate legi genareali* and (the more specific law prevails over the general one). When both laws contain *non-obstante* clauses and a direct conflict arises—particularly during the moratorium under the IBC—it is generally accepted that the IBC, as the more recent and specialized statute for insolvency, will have primacy over the SEBI Act. Since both statutes are unique in their own

fields, the *lex specialis* principle is less straightforward. Although courts have generally supported the IBC's superiority in insolvency cases, the matter is still complex and awaits the Supreme Court's ultimate ruling.

The IBC's later enactment and comprehensive nature make it likely to prevail over the SEBI Act in insolvency-related disputes. However, the ongoing debate over which statute is the "special law" in a particular situation underscores the difficulty of interpreting statutes in India's changing legal system.

The SEBI & IBC conflict, each armed with a *non-obstante* clause—has wide-ranging consequences for regulatory enforcement, insolvency resolution, investor protection, and the broader legal and financial ecosystem. Below is a detailed analysis of these consequences, drawing on judicial developments and expert commentary.

**Disruption of Regulatory Enforcement;** SEBI's primary objective is to protect investors and maintain market integrity, often by imposing fines or directing compensation from companies engaged in fraudulent conduct. However, when the moratorium "under Section 14 of the Insolvency and Bankruptcy Code (IBC)" is in effect, "the National Company Law Tribunal (NCLT)" intervenes to suspend or nullify SEBI's enforcement measures—including actions like attaching and selling a corporate debtor's assets. This approach was demonstrated in the case of "*Bhanu Ram & Ors. V HBN Diaries & Allied Limited*", where SEBI was directed to release the properties it had attached to allow the resolution professional to manage the corporate debtor, effectively halting SEBI's recovery efforts during the insolvency process. This creates uncertainty for SEBI and other regulators about the enforceability of their orders during the insolvency process. Regulators may be reluctant to initiate enforcement actions if there is a risk that such actions will be overridden by the IBC, potentially weakening market discipline.

**Impact on Insolvency Resolution;** Moratorium as a Double-Edged Sword, SEBI or other regulators are barred from recovering dues or penalties, it may delay or complicate the distribution of assets among creditors, especially

where regulatory claims (such as for investor restitution) are involved. The resolution professional must navigate conflicting claims from regulatory authorities and creditors. While the framework provided by the IBC prioritizing claims, regulatory orders' presence (such as SEBI's attachment) complicates the process and may lead to litigation, as seen in the ongoing Supreme Court cases.

**Investor Protection and Creditor Rights;** Protecting investors is a common goal of SEBI's actions, particularly when market fraud or collective investment schemes are involved. In the event that the IBC's moratorium overshadows SEBI's recovery powers, resentful investors may find their claims lowered or delayed in favour of those of other creditors. The IBC establishes a hierarchy for creditor claims, but regulatory claims (such as SEBI's penalties or restitution orders) are not always explicitly addressed. This ambiguity can lead to disputes over the priority of regulatory claims versus those of financial or operational creditors.

**Legal and Judicial Uncertainty;** Due to the conflict, SEBI and other regulators are contesting NCLT/NCLAT orders that supersede their enforcement actions, which has resulted in a spike in litigation. The Supreme Court is currently considering a number of well-known cases, such as *SEBI v. Raj Oil Mills Limited*, *SEBI v. Rohit Sehgal & Ors.*, and *SEBI v. Monnet Ispat and Energy Limited*. The lack of a definitive ruling creates uncertainty for all stakeholders.

**Inconsistent Tribunal Rulings;** Different benches of the NCLT and NCLAT have sometimes taken divergent views on the extent to which the IBC's *non-obstante* clause overrides SEBI's powers. While most rulings favor the IBC during the moratorium, some tribunals have sought to balance regulatory and insolvency objectives, leading to inconsistency in outcomes.

**Erosion of Regulatory Authority;** If regulators like SEBI are consistently overridden by the IBC, their authority to enforce market rules and protect investors may be undermined. This could erode confidence in the regulatory framework and deter investors from participating in the market.

Impact on Business Confidence; The uncertainty surrounding the interplay between the IBC and SEBI may affect business confidence. Companies may be less willing to comply with regulatory requirements if they believe that insolvency proceedings could shield them from enforcement actions.

Need for Legislative or Judicial Clarity; Clarifying the hierarchy between regulatory enforcement and insolvency resolution through legislative amendments or a final Supreme Court decision is necessary to balance the goals of both frameworks and fortify India's financial ecosystem, as the ongoing conflict makes clear.

#### **5.4 Introduction to the effect of the report of the Insolvency Law Committee**

To keep the Insolvency and Bankruptcy Code, 2016 (IBC) efficient, adaptable, and aligned with the requirements of stakeholders in a constantly changing economic landscape, the Government of India set up the Insolvency Law Committee (ILC). This expert committee, operating mainly under the Ministry of Corporate Affairs (MCA), was tasked with supervising and steering the development of the country's insolvency and bankruptcy framework.

Establishment & Constitution: The Insolvency Law Committee was first constituted in November 2017, under the chairmanship of Shri Injeti Srinivas, then Secretary of the MCA. This initial formation was in response to the need for a structured review of the IBC, which had been implemented in December 2016 and was already demonstrating both its transformative potential and the emergence of operational and interpretational challenges.

In March 2019, the ILC was reconstituted as a Standing Committee, reflecting the government's commitment to ongoing, systematic review and improvement of the insolvency framework. The committee brings together a diverse group of members, including senior representatives from the Ministry of Corporate Affairs (MCA), "the Insolvency and Bankruptcy Board of India (IBBI)", the "Reserve Bank of India (RBI)", and "the Department of Financial Services", along with renowned legal and financial specialists, former

regulators, and prominent professionals from both the industry and academic fields.

The primary mandate of the Insolvency Law Committee is to:

- i. IBC implementation and Functioning review: The ILC is tasked with monitoring how the IBC is being put into practice, identifying bottlenecks, and assessing whether the law is achieving its intended objectives.
- ii. Recommend amendments and improvements: The committee holds the authority to recommend amendments to the IBC and its related regulations, aiming to keep the law strong and effective amid changing market dynamics and the interests of stakeholders.
- iii. Address emerging issues: The ILC is expected to proactively identify and address new challenges, such as those arising from personal insolvency, cross-border insolvency, and the treatment of avoidable transactions.
- iv. Harmonize stakeholder interests: The committee is to balance the competing “interests of creditors”, debtors, employees, “and other stakeholders”, ensuring that the insolvency process is fair, efficient, and value-maximizing.
- v. Facilitate ease of resolving insolvency: The ILC is to recommend measures that make the insolvency resolution process smoother, faster, and more predictable, in line with global best practices.

The Insolvency Law Committee operates through a structured process of consultation, deliberation, and recommendation:

- i. Stakeholder engagement: The ILC actively solicits input from a wide range of stakeholders, including industry bodies, professional associations, financial institutions, and the public. It has established online platforms for feedback and holds meetings with key stakeholders to gather diverse perspectives.
- ii. Review of international best practices: The committee examines insolvency frameworks in other jurisdictions and considers how

international standards and practices can be adapted to the Indian context.

- iii. Analysis of case law and market practices: The ILC reviews judicial decisions, regulatory orders, and market developments to understand how the IBC is being interpreted and applied in practice.
- iv. Preparation of reports and recommendations: Based on its analysis, the ILC prepares detailed reports containing recommendations for legislative and regulatory changes. These reports are submitted to the government for consideration and implementation.

Key recommendations and contributions:

Since its inception, the Insolvency Law Committee has made significant contributions to the evolution of the IBC. Some of its most notable recommendations and the resulting legislative changes include:

- i. Thresholds for CIRP: The ILC suggested setting minimum requirements for certain creditor classes, like deposit holders and homebuyers, to begin CIRP. This was done to make sure that only legitimate and significant claims started the process and to stop pointless or early insolvency applications.
- ii. Protection of Critical Licenses and Supplies: The committee recommended that government-issued licenses, permits, and concessions should not be terminated or suspended solely due to insolvency during the moratorium period, provided that the corporate debtor pays all current dues. This measure aimed to protect the business as a going concern and support successful resolution. “The Insolvency and Bankruptcy Code (Amendment) Act, 2020”, incorporated this suggestion, granting the resolution professional the authority to ensure uninterrupted critical supplies and shielding the corporate debtor from arbitrary termination of essential contracts during insolvency proceedings
- iii. Protection of Resolution Applicants: This suggestion was put into practice in order to promote involvement in the settlement procedure

and keep prospective investors from being turned off by the reputation of previous wrongdoing. A new clause to this effect was added by the 2020 Amendment Act.

- iv. Personal Insolvency and Fresh Start Process: This is intended to provide a clean slate to honest but unfortunate debtors and to reduce the stigma associated with insolvency.
- v. Treatment of Avoidable Transactions and Improper Trading: The ILC has examined the treatment of transactions that may be set aside as preferential, undervalued, or fraudulent, and has recommended measures to strengthen the provisions relating to avoidable transactions and improper trading.
- vi. Cross border insolvency: Acknowledging the growing interconnectedness of global business, the Insolvency Law Committee (ILC) has emphasized the importance of establishing a framework to manage cross-border insolvency cases. It has recommended adopting internationally recognized standards, specifically the “UNCITRAL Model Law on Cross-Border Insolvency”, to promote cooperation among different jurisdictions and provide clarity and assurance to stakeholders involved in international insolvency proceedings.
- vii. Ongoing Role and Impact: The Insolvency Law Committee's significance as a permanent body for the ongoing evaluation and enhancement of the IBC is highlighted by its reconstitution as a Standing Committee. In addition to conducting periodic reviews, the committee also monitors implementation, engages stakeholders continuously, and identifies new issues that might call for legislative or regulatory action. A number of IBC amendments have resulted from the ILC's recommendations, all of which are intended to address real-world issues, fill in knowledge gaps, and improve the effectiveness and equity of the insolvency procedure. Many people consider its reports and recommendations to be authoritative, and regulators and policymakers take them seriously.

Broader Significance; In order to maintain the IBC's effectiveness and vitality as a tool for handling insolvency in India, the ILC is essential. Through its efforts, the financial system is kept stable, stakeholder interests are safeguarded, and an atmosphere that is conducive to business is fostered. The multidisciplinary makeup of the committee guarantees that its recommendations are comprehensive and consider the viewpoints of industry, legal professionals, regulators, and the general public. The legitimacy and efficacy of the insolvency regime are improved by this inclusive approach.

Despite its achievements, the Insolvency Law Committee faces ongoing challenges, including:

- i. Balancing competing interests: It ensuring that the insolvency process is fair and equitable.
- ii. Keeping pace with market developments: The rapid evolution of financial markets and business practices requires the committee to remain agile and responsive to new challenges, such as those posed by digital assets, complex financial instruments, and cross-border transactions.
- iii. Ensuring effective implementation: The success of the IBC depends not only on the quality of the law but also on its effective implementation.

Looking ahead, the Insolvency Law Committee is expected to continue its work on personal insolvency, cross-border insolvency, and the treatment of new asset classes. A key component of bankruptcy and insolvency laws in India is the ILC.

Impact of the ILC recommendations on law and practice; Indian courts and tribunals, including “the National Company Law Tribunal (NCLT)”, “the National Company Law Appellate Tribunal (NCLAT)”, and the Supreme Court, have at times referred to “the Insolvency Law Committee (ILC)” reports and recommendations in their rulings. Nonetheless, these reports are generally regarded as persuasive guidance rather than binding authority. Their primary impact lies in shaping judicial interpretation, clarifying legislative

intent, and assisting in resolving ambiguities within “the Insolvency and Bankruptcy Code (IBC)”

ILC reports are not statutes or regulations but are advisory and analytical documents. Courts and tribunals may refer to these reports to understand the background, rationale, or legislative intent behind specific provisions of the IBC. This helps in contextualizing the law and interpreting its provisions in line with the objectives identified by the ILC. Judges may cite ILC reports when interpreting ambiguous or novel provisions of the IBC. For example, if the language of the Code is unclear or if a provision is being interpreted for the first time, courts may look to the ILC’s analysis for guidance on how the legislature intended the law to operate. References to ILC reports often appear in the reasoning sections of judgments, especially when courts are justifying a particular interpretation or when they are recommending legislative or regulatory changes. The reports may be used to support arguments about the need for clarity, efficiency, or fairness in the insolvency process.

Legislative Intent and Policy Rationale; “The Insolvency Law Committee’s (ILC) recommendations” are sometimes referred to by “the National Company Law Tribunal (NCLT)” and “the National Company Law Appellate Tribunal (NCLAT)” when interpreting provisions of “the Insolvency and Bankruptcy Code (IBC)” to understand legislative intent. For instance, judicial considerations on the timelines and protective measures in the “Corporate Insolvency Resolution Process (CIRP)” have been shaped by the ILC’s focus on the importance of promptly admitting insolvency applications and establishing an interim moratorium to prevent the depletion of assets during the insolvency process. The ILC’s recommendation to increase the threshold for initiating insolvency proceedings (e.g., raising the default amount from ₹1 lakh to ₹10 lakh for corporate debtors) was aimed at curbing frivolous applications. While courts do not always explicitly cite the ILC report, the policy rationale behind this change has been reflected in judicial attitudes toward ensuring that the insolvency process is not misused.

Cases involving MSMEs have cited the ILC's recommendation to exempt MSME promoters from some of the requirements for submitting resolution plans (unless they are wilful defaulters). When evaluating whether MSME promoters are eligible to take part in the resolution process, tribunals have occasionally referenced the ILC's reasoning, which holds that MSME businesses are usually driven by promoters and that excluding promoters could impede resolution.

**Avoidance Transactions and Improper Trading:** The ILC's thorough examination of improper trading and avoidance transactions has influenced judges' comprehension of these ideas. The ILC report's principles and recommendations have influenced tribunals' approach to resolving disputes involving preferential, undervalued, or fraudulent transactions, even though specific case law may not always directly reference the report.

#### Limitations and Scope of Influence

- i. **Not Binding Precedent:** ILC reports do not have the force of law and are not binding on courts or tribunals. Their influence is limited to providing context, background, and expert opinion.
- ii. **Selective Reference:** Courts and tribunals refer to ILC reports selectively, usually when the legislative intent or policy rationale is unclear.
- iii. **Legislative Implementation:** Many of the ILC's recommendations have been implemented through amendments to the IBC or its subordinate legislation. In such cases, courts interpret the amended provisions directly, without needing to refer back to the original ILC report

ILC reports are regarded by Indian courts and tribunals as important sources of expert analysis, policy justification, and legislative intent. These reports are commonly cited to resolve ambiguities, support suggestions for legislative or regulatory change, and defend judicial reasoning, even though they are not legally binding. The ILC's impact is particularly noticeable in cases involving

new or controversial topics, where the court's analysis heavily relies on the history and goals of the IBC.

- i. “Impact of approval of a resolution plan on SEBI Action;” A crucial stage in the insolvency process is the approval of the resolution plan by the Adjudicating Authority, namely the “National Company Law Tribunal (NCLT)”, “under Section 31 of the Insolvency and Bankruptcy Code (IBC)”. This decision plays a significant role in addressing conflicts between statutes like the “SEBI Act and the IBC”, as once the NCLT sanctions the resolution plan, it becomes binding on all stakeholders and can override conflicting provisions in other laws during the insolvency resolution process. Once “the National Company Law Tribunal (NCLT)” approves “the resolution plan under Section 31, it becomes binding on the corporate debtor, its employees, members, creditors (both operational and financial), guarantors, and all other participants in the resolution process. Due to this binding effect, all involved parties are legally obligated to comply with the terms set out in the approved plan, and none may challenge or pursue claims beyond what the plan allows.”
- ii. Doctrine of “Clean slate and fresh start”; The "clean slate" or "fresh start" principle is activated by the approval, meaning that all previous liabilities and claims that are not covered by the resolution plan are terminated. This principle is essential for the successful resolution applicant, who can assume control of the corporate debtor's operations free from previous claims and encumbrances, such as regulatory fines or enforcement actions that might have been brought under other laws like the SEBI Act. This implies that any regulatory or enforcement measures taken by SEBI that are not expressly maintained or allowed for in the resolution plan cannot be implemented following the plan's approval in the event of conflicting provisions.
- iii. Overriding effect and harmonization of conflicting laws; Because of Section 31's binding effect and Section 238's (the IBC's non-obstante clause) reinforcement, the resolution plan takes precedence over any

conflicting provisions in other laws, such as the SEBI Act. This is especially important when there is a conflict between the IBC's moratorium and resolution procedure and SEBI's regulatory enforcement powers (like recovering penalties or attaching assets).

- iv. Prevention of Hydra-headed litigation; After the resolution plan is approved, the clean slate principle forbids the reopening of previous claims or the filing of new ones. This is necessary to avoid "hydra-headed litigation," in which numerous claims from various forums—including regulatory bodies like SEBI—could compromise the efficacy and finality of the procedure of insolvency resolution.
- v. Regulatory compliance and post-approval obligations; The approval of the resolution plan gives most claims finality, but it does not release “the corporate debtor or the resolution applicant” from obtaining any additional legal approvals that are needed after the plan is approved, such as regulatory clearances or approvals under competition law. These are merely procedural and have no bearing on the plan's ability to bind current liabilities or claims.

#### Relevance to the SEBI Act- IBC Conflict;

- i. Finality and certainty: All claims, including those that may emerge under the SEBI Act, will be definitively settled in accordance with the resolution plan once it has been approved. This stops SEBI or other regulators from taking enforcement actions that might interfere with the corporate debtor's resolution process or new beginning.
- ii. Overriding Effect: The approved plan's binding nature and the IBC's non-obstante clause mean that, at least with regard to the claims and liabilities covered in the plan, the IBC's resolution framework supersedes any conflicting SEBI Act provisions.
- iii. Limitations and Gaps: Nevertheless, there is still uncertainty about whether specific regulatory claims (like investor compensation or disgorgement) can be left out of the resolution process or how much SEBI can take enforcement action against specific people (like promoters or former management). Generally speaking, the courts have

ruled that while the corporate debtor is subject to the clean slate, its affiliated individuals are not.

### 5.5 The “Clean Slate” Principle

The clean slate principle is based on the need for clear and final resolution in insolvency cases. “The Insolvency and Bankruptcy Code (IBC)” aims to balance the interests of all parties by providing a structured “Corporate Insolvency Resolution Process (CIRP)” for the timely reorganization or liquidation of the “corporate debtor”. “Under this principle, once the resolution plan is approved by the Adjudicating Authority (NCLT), the corporate debtor is freed from all previous liabilities and claims not included in the plan, allowing the new management to start fresh.” Although the IBC does not specifically codify the principle, it has been developed and reaffirmed by judicial interpretation, most notably by the Supreme Court in “*Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*”<sup>59</sup>.

Orissa Manganese & Minerals Limited's insolvency was at issue in this case. Following the submission of several resolution plans, Ghanashyam Mishra & Sons Pvt. Ltd. was chosen as the successful resolution applicant. The “NCLT” and the “(CoC)” both the resolution plan approved. Nevertheless, a number of creditors, including statutory authorities such as the Income Tax Department, attempted to enforce claims that were not part of the approved plan after it was approved. The central legal issue revolved around whether, following the NCLT’s approval of a resolution plan “under Section 31 of the Insolvency and Bankruptcy Code (IBC)”, any creditor—including statutory authorities—could initiate or enforce claims that were not included in the approved plan. The Supreme Court was also called upon to define the scope of the “clean slate” principle and determine its applicability to statutory and regulatory claims.

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<sup>59</sup> 2021 (9) SCC 657

The Supreme Court held that: “Once the NCLT approves the resolution plan, it becomes binding on the corporate debtor, its employees, members, creditors, guarantors, and all other parties involved in the resolution process, including government and statutory authorities.”

The Court emphasized that the IBC is designed to provide a fresh start to the corporate debtor. The CIRP ensures that all creditors have an opportunity to submit their claims, and the resolution applicant can assess the liabilities before formulating the plan. Allowing claims to be raised after the plan’s approval would undermine the finality and certainty of the process, deterring potential resolution applicants and defeating the objectives of the IBC. The judgment specifically addressed statutory authorities, including tax departments, and held that they are also bound by the resolution plan. Claims for statutory dues that were not included in the plan cannot be enforced after its approval.

In later rulings, the Ghanashyam Mishra ruling has been frequently referenced and upheld. For instance, the Supreme Court reaffirmed in a recent order (March 2025) that the law established in Ghanashyam Mishra is unambiguous and clear.

In “*Rainbow Papers Limited v. State Tax Officer*,” the Supreme Court had observed that if a statutory claim is raised before the CoC but not considered, “the approval of the resolution plan” could be vitiated. However, in *Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.* and subsequent cases, the Court clarified that if a statutory authority fails to submit its claim during the CIRP, it cannot later enforce that claim against the corporate debtor. This distinction ensures that the clean slate principle is not undermined by procedural lapses or non-participation by statutory authorities.

All creditors, including statutory and regulatory bodies, are subject to the Ghanashyam Mishra ruling. The same rules apply to SEBI as a statutory regulator. During the CIRP, SEBI must present any claims it may have against the corporate debtor, such as those for penalties, disgorgement, or restitution.

The claim is terminated upon the approval of the resolution plan if it is not covered by it. The clean slate principle and the overriding effect of the IBC (Section 238) apply to SEBI's authority to enforce orders or collect penalties. SEBI must follow the CIRP framework if it wants to enforce orders or collect penalties against the corporate debtor. The clean slate principle applies to the corporate debtor, not to individuals (e.g., promoters, directors, or other persons). SEBI can continue to pursue enforcement actions against individuals for their personal liability, even after the resolution plan is approved.

There have been instances where SEBI has sought to attach or recover assets from the corporate debtor after the resolution plan's approval. Tribunals have generally held that such actions are barred by the clean slate principle and the binding nature of the resolution plan.

The NCLT and NCLAT have consistently applied the clean slate principle to bar SEBI's enforcement actions against the post resolution plan of the corporate debtor. However, there have been occasional disputes regarding the scope of SEBI's powers, especially in cases involving investor compensation or disgorgement. Pending Supreme Court Determination: The interplay between SEBI's regulatory powers and the IBC's clean slate principle is still evolving. While the *Ghanashyam Mishra* judgment provides a strong foundation, the Supreme Court has yet to specifically address all nuances of SEBI's enforcement actions in the context of the IBC. Some cases are pending before the Supreme Court, and its final determination will provide further clarity.

#### Broader Implications and Policy Considerations;

- i. **Finality and Certainty:** The clean slate principle ensures that the resolution process is not undermined by lingering claims or litigation. This is essential for attracting investment and encouraging resolution applicants to participate in the CIRP.
- ii. **Balancing Regulatory and Insolvency Objectives:** The IBC's goals are given priority by the clean slate principle, but regulatory enforcement is not completely disregarded. In addition to taking action against

individuals, SEBI and other regulators may also take action against assets. The corporate debtor is shielded from post-resolution claims, though. Harmonization of Laws:

The principle reflects the legislature's intent to harmonize conflicting laws by giving precedence to the IBC's resolution framework. This is reinforced by the IBC's *non-obstante* clause (Section 238), which ensures that the IBC prevails over other laws in cases of inconsistency.

*Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*: Key Takeaways.

- i. Resolution plan are extinguished and not included all claims.
- ii. Statutory & regulatory authorities are bound by the resolution plan.
- iii. The clean slate principle applies to the corporate debtor, not to individuals.
- iv. The principle is essential for the finality and certainty of the insolvency process.

Subsequent Judicial Pronouncements; The Supreme Court and lower tribunals have consistently reaffirmed the clean slate principle, applying it to bar post-resolution claims by statutory and regulatory authorities.

The Court has clarified that the clean slate principle is not undermined if a statutory authority fails to submit its claim during the CIRP. SEBI's Position in the Clean Slate Framework, SEBI must submit its claims during the CIRP and SEBI can still pursue actions against individuals. A pillar of the IBC framework is the clean slate principle, which was stated in "*Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd.*" It guarantees that all prior liabilities not covered by the authorised resolution plan are released from the corporate debtor upon completion the process of insolvency. Finality, certainty, and efficacy of the insolvency resolution process depend on this principle, which is applicable to all creditors, including statutory and regulatory bodies like SEBI.

The relationship between SEBI's regulatory powers and the IBC's clean slate principle is still developing, and the Supreme Court's final ruling on pending cases will provide further clarity, but the Ghanashyam Mishra judgement continues to be the authoritative precedent on the clean slate principle and its applicability to regulatory actions under the IBC. Although the clean slate principle offers strong protection for corporate debtors, it does not release individuals from liability, and SEBI can still pursue enforcement actions against them.

The conflicting goals of these two legal frameworks are the basis of the ongoing discussions and difficulties in balancing the finality under IBC resolution plan with SEBI's ongoing regulatory oversight: Protect investors and maintain the integrity of the securities market is mandate under SEBI, while the IBC seeks a quick, value-maximizing resolution of insolvency with finality for the corporate debtor. The existence of non-obstante clauses in both statutes adds to this tension, creating jurisdictional issues and ambiguity for parties involved.

Finality of the Resolution Plan vs. Regulatory Enforcement- Clean Slate Principle and SEBI's Claims; All claims not covered by the authorised resolution plan are wiped out, giving the corporate debtor a fresh start, according to the Supreme Court's historic ruling in "*Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd*". As a statutory regulator, SEBI, however, frequently tries to carry out enforcement actions—like penalty recovery, disgorgement, or restitution—even after the resolution plan is accepted, claiming that the insolvency process does not fully encompass its duty to safeguard investors and market integrity. Pending Supreme Court Determination- The issue is not fully settled, with several cases pending before the Supreme Court (e.g., *SEBI v. Rohit Sehgal & Ors.*), which will ultimately determine the balance between the IBC's finality and SEBI's regulatory oversight. SEBI's actions are often aimed at safeguarding investors, especially in cases involving collective investment schemes or market fraud. However, the IBC's moratorium and clean slate principle may limit SEBI's ability to enforce restitution or penalties against the corporate

debtor, potentially leaving investors without recoup. Although the corporate debtor is subject to the clean slate principle, SEBI retains the authority to take enforcement action against individuals, such as directors and promoters. Although court rulings acknowledge this distinction, there is ongoing debate regarding the precise nature and extent of personal responsibility. For all parties involved, the existence of parallel proceedings under the SEBI Act and IBC may result in delays, procedural redundancies, and uncertainty. For instance, when the corporate debtor is subject to the IBC moratorium, SEBI may start recovery proceedings, which could result in conflicting orders and legal action. Courts have acknowledged the need for harmonization between the SEBI Act and IBC to avoid regulatory inconsistencies and ensure efficient insolvency outcomes. However, achieving this harmonization is complex, given the distinct objectives and statutory frameworks of both regulators.

**Legislative Amendments Explicit Carve-Outs for Regulatory Claims:** To make sure that SEBI's investor protection mandate is not totally subordinated to the insolvency process, the legislature could create clear carve-outs in the IBC for specific regulatory claims, like investor restitution or disgorgement orders. This would make it clear which claims are extinguished and which survive the resolution plan. Establishing formal mechanisms for coordination between SEBI & IBBI could help reconcile conflicting mandates. For example, a joint committee or consultation process could be mandated before SEBI initiates enforcement actions against a corporate debtor under the IBC moratorium. The law could be amended to clarify the extent of SEBI's powers to pursue individuals associated with the corporate debtor, ensuring that investor protection is not undermined while preserving the finality of the resolution plan for the corporate entity.

**Judicial Refinement Supreme Court Guidance,** It is anticipated that the Supreme Court's impending ruling in "*SEBI v. Rohit Sehgal & Ors*". and related cases will offer much-needed clarification on how the IBC and SEBI Act interact. During and after the insolvency process, the Court could specify the precise conditions under which SEBI's regulatory actions may be halted or continued.

Courts could refine the clean slate principle to allow for limited exceptions where SEBI's enforcement is essential for investor protection or market integrity, while still preserving the core objectives of the IBC. Judicial guidelines could be developed to manage parallel proceedings, ensuring that SEBI's actions do not disrupt the insolvency process and that the resolution professional is not burdened with conflicting claims. Alignment of Delisting and Other Regulations: The Bombay High Court and other recent rulings have supported the legality of SEBI rules that permit delisting under IBC resolution plans, acknowledging the importance of IBC provisions in insolvency cases while permitting regulatory supervision when required. This strategy might be expanded to cover additional areas of overlap, like restitution and penalty enforcement. Policy Dialogue and Stakeholder Consultation: Ongoing policy dialogue and stakeholder consultation between SEBI, IBBI, and other relevant regulators could help identify areas of conflict and develop practical solutions that balance insolvency resolution with investor protection.

## CHAPTER:6

### CONCLUSIONS AND RECOMMENDATIONS

Two essential pillars of India's financial and legal system are the SEBI & IBC. The regulatory body in charge of the commodities and securities markets, SEBI was founded in 1992 with the goal of preserving market integrity and safeguarding investor interests. However, with the main goals of optimising asset value and guaranteeing prompt resolution, the “IBC, 2016” offers a structured legal outline for the “insolvency and bankruptcy resolution of corporate entities”.

Even though the two organisations have different goals, there are a number of inconsistencies and conflicts resulting from their overlapping jurisdictions, especially when it comes to the importance of laws and the implementation of regulatory actions during insolvency proceedings. The interaction between SEBI's regulatory authority and the IBC's general provisions source.

Several landmark cases have highlighted these conflicts:

*“Anju Agarwal v. Bombay Stock Exchange & Ors.”*: NCLT ruled that regulatory bodies such as SEBI are included in the definition of "other authority" under Section 14, which prevents SEBI from enforcing adherence to its rules during the moratorium.

*“Bhanu Ram & Ors. v. HBN Dairies & Allied Ltd<sup>58</sup>”*: Emphasising that Section 238 of IBC, the non-obstante clause supersedes SEBI's actions, even if they were started before the moratorium, the NCLT ordered “SEBI” to de-attach the property of corporate debtor.<sup>60</sup>

*“Monnet Ispat & Energy Ltd. v. Union of India<sup>59</sup>”*: By declaring that SEBI no longer has the authority to start proceedings or issue penalty orders related to the pre-CIRP period after a resolution plan is approved, the SC reaffirmed the superiority of IBC over other laws. “These cases underscore the legal complexities and the need for a harmonious relationship between SEBI and the IBC to ensure effective governance and protection of stakeholder interests.” By implementing some recommendations, India can create a more cohesive and efficient legal framework that harmonizes the objectives of SEBI and the IBC, ultimately fostering a more robust financial and insolvency ecosystem. One essential element of the CIRP is the moratorium granted by IBC Section 14. Its main goal is to give the corporate debtor a "breathing space" so they can try to revive and reorganise without being immediately burdened by ongoing legal actions. By preventing the corporate debtor's assets from being exhausted through various proceedings, the moratorium seeks to enable a more organised and efficient resolution process.

Section 14 of “the Insolvency and Bankruptcy Code (IBC), 2016”, plays a vital role in “the Corporate Insolvency Resolution Process (CIRP)” by imposing a moratorium that prevents any legal actions, asset transfers, or enforcement of security interests against the corporate debtor. This pause is essential to safeguard the debtor’s assets from erosion and to maintain the business as a going concern, thereby enabling an effective and timely resolution or restructuring. The moratorium creates a protective space for the corporate debtor to focus on revival without the threat of ongoing or new recovery proceedings, which helps preserve value for all stakeholders involved. Legally speaking, the phrase "other authority" in Section 14(1)(a) is

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58. (2019)ibclaw.in858NCLT

59. Civil Appeal No: 3285 of 2019

particularly significant because it expands the scope of the moratorium by stopping proceedings before quasi-judicial bodies and regulatory authorities in addition to traditional courts and tribunals.

The legislature's goal to avoid a variety of proceedings during the CIRP that might disrupt the resolution process or reduce the corporate debtor's assets value is reflected in this inclusive terminology. The phrase "other authority" guarantees that actions taken under various legal frameworks—including the “SEBI Act”, “Companies Act”, “Recovery of Debts and Bankruptcy Act”, and others—are included in the moratorium's protective purview.

The definition of the term has changed over time due to judicial interpretations. The NCLAT specifically ruled in *Anju Agarwal v. Bombay Stock Exchange* that regulatory agencies such as SEBI are covered by the term "other authority," which prohibits them from starting or pursuing legal action during the moratorium. The moratorium has also been expanded to cover proceedings before arbitration tribunals, consumer forums, and electricity commissions. But there are still some grey areas. It is still up for debate, for example, whether enforcement actions taken against third-party guarantors prior to such authorities are included. Initiating regulatory or penal actions during the CIRP, such as those under tax statutes or environmental laws, also presents difficulties. This highlights the need for uniformity and clarity in how "other authority" is interpreted.

Although the broad interpretation supports the moratorium's protective intent, it must be weighed against the regulatory bodies' operational independence and the public interest goals they uphold. Critical issues that cannot be suspended indefinitely, such as investor protection, public safety, and economic integrity, are frequently addressed by regulatory enforcement. In order to prevent the moratorium from serving as a complete defence against justifiable enforcement or compliance requirements, the definition of "other authority" under Section 14 must be precisely defined. Maintaining insolvency efficiency and regulatory integrity still depends on aligning the IBC's goals with those of other regulatory frameworks.

The IBC's Section 14's inclusion of "other authority" is a praiseworthy legislative attempt to guarantee the corporate debtor's complete protection during insolvency. But without clear limits, it could turn into a legal minefield that impedes regulatory requirements and delays resolution. Legislative clarity and administrative cooperation are both necessary to strike the correct balance between regulatory enforcement and insolvency protection. A careful and well-planned strategy will help maintain the IBC's main objective, which is the prompt and effective settlement of corporate insolvency, without jeopardising the concurrent goals of public safety, market regulation, and statutory compliance.

Two fundamental pillars of India's corporate and financial governance framework are the SEBI Act of 1992 and the IBC, 2016. While SEBI protects investor interests and upholds orderly capital markets, IBC expedites the "time-bound resolution of insolvency". However, the opposing non-obstante clauses included in both statutes create a recurring source of operational and legal conflict.

"Section 238 of the IBC" reads:

"The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force..."

Section 35 of SEBI Act, "notwithstanding anything inconsistent therewith contained in any other law," is another similar overriding clause that SEBI has.

Legal ambiguity results from these two overriding clauses operating simultaneously, particularly when SEBI's regulatory actions conflict with the IBC's moratorium or resolution procedure. This is particularly noticeable in situations involving: Listed entities undergoing CIRP, SEBI's enforcement actions against securities law violations and Obligations under LODR (Listing Obligations and Disclosure Requirements) Regulations.

According to court rulings that have typically sided with the IBC, once CIRP begins, IBC Section,238 takes precedence over all other conflicting laws.

Notable decisions such as *Monnet Ispat & Energy Ltd. v. Union of India* and *Anju Agarwal v. Bombay Stock Exchange* have upheld the supremacy of the IBC's non-obstante clause, especially when the two laws cannot be interpreted harmoniously.

However, this judicial approach, though well-founded in law, raises legitimate concerns: SEBI's inability to take enforcement action during CIRP can compromise investor protection and market integrity. Public shareholders may suffer when company disclosures are suspended or regulatory obligations are waived under the shield of moratorium. Creditor interests may conflict with penal or restitutionary orders passed by SEBI, especially in cases involving fraud or market manipulation. As a result, the coexistence of contradictory non-obstante clauses without legislative reconciliation has led to regulatory deadlocks, varying interpretations, and conflict between SEBI's enforcement authority and the IBC's protective framework.

The recommendations from the ILC have had a profound impact on the IBC's implementation. Key areas of focus have included:

- i. **Enhancing the Resolution Process:** The ILC has emphasized the need to expedite the CIRP Recommendations such as mandating the use of Information Utilities (IUs) for establishing defaults and setting strict timelines for the approval or rejection of resolution plans aim to reduce delays and increase the efficiency of process.
- ii. **Protecting Stakeholder Interests:** Acknowledging the variety of stakeholders involved, the Insolvency Law Committee (ILC) has suggested steps to safeguard the interests of homebuyers, operational creditors, and employees. For example, by classifying homebuyers as financial creditors, they are given a role in the resolution process, and recommendations regarding the handling of workmen's dues emphasize the need to protect employee rights.
- iii. **Addressing Regulatory Conflicts:** The ILC has acknowledged the challenges arising from overlapping jurisdictions between the IBC and

other regulatory bodies like SEBI. By proposing clarifications and amendments, the committee seeks to harmonize the functioning of these bodies.

- iv. **Promoting Voluntary Liquidation:** The committee has recognized the need for a more flexible approach to voluntary liquidation. By recommending mechanisms for the termination of the Voluntary Liquidation Process (VLP) before dissolution, the ILC provides corporate entities with the agility to adapt to changing market conditions.
- v. **Strengthening Institutional Frameworks:** “The Insolvency Law Committee (ILC)” has proposed the creation of the Insolvency and Bankruptcy Fund (IBC Fund) to strengthen the insolvency framework. Additionally, it has recommended granting “the Insolvency and Bankruptcy Board of India (IBBI)” the authority to issue guidelines for the Committee of Creditors (CoC), aiming to standardize procedures and improve governance within the insolvency resolution process

These recommendations have significantly improved the IBC's framework, but issues remain. Delays in the tribunal process, the need for additional clarity in certain provisions, and the evolving insolvency landscape necessitate ongoing review and adaptation.

## **RECOMMENDATIONS**

### **i. Legislative Amendments for Clarity:**

**Define Jurisdictional Boundaries:** The IBC should be amended to clearly state the jurisdictional limits between SEBI and the IBC, especially with regard to the enforcement of rules during the moratorium.

**Clarify Interaction with Other Laws:** Introduce provisions that clarify the interaction between the IBC and other laws, ensuring that the provisions of IBC take precedence in conflict.

Establish a Coordinated Framework: Inter-Agency Collaboration: Foster collaboration between SEBI, IBBI & the NCLT to streamline processes and resolve conflicts efficiently.

Regular Consultations: Implement regular consultations and joint committees to address emerging issues and ensure consistent application of laws.

**ii. Judicial Oversight and Guidance:**

Specialized Bench for Conflicts: Establish a specialized bench within the NCLT to adjudicate matters involving conflicts between SEBI and the IBC, ensuring expertise and consistency in rulings.

Guidelines for Courts and Tribunals: Issue comprehensive guidelines to courts and tribunals on handling cases that involve overlapping jurisdictions, providing a clear framework for decision-making.

**iii. Investor Protection Mechanisms:**

Ensure that investor interests are protected during insolvency proceedings by mandating timely disclosures and facilitating mechanisms for investor claims.

**iv. Awareness Programmes:**

Launch awareness programs to educate investors about their rights and the procedures involved in insolvency resolutions.

**v. Periodic Review and Feedback Mechanism:**

Monitor Implementation: Establish a mechanism to monitor the implementation of recommendations and assess their effectiveness in resolving conflicts.

Feedback from Stakeholders: Regularly collect feedback from stakeholders, including investors, insolvency professionals, and regulatory bodies, to identify areas of improvement and refine the legal framework accordingly.

**vi. Training and Capacity Building:**

Educate Stakeholders: Conduct training programs for stakeholders, including insolvency professionals, legal practitioners, and regulatory officials, to enhance their understanding of the interplay between SEBI and the IBC.

Develop Expertise: Promote the development of expertise in handling cases that involve both securities regulations and insolvency proceedings, ensuring informed decision-making.

**vii. Clarification of Ambiguities:**

Proceedings Initiated by the “Corporate Debtor”: “The Insolvency and Bankruptcy Code (IBC)” should explicitly clarify whether the moratorium applies to actions initiated by the corporate debtor. Clear legislative language would help prevent future disagreements, despite the guidance provided by judicial interpretations.

Personal Guarantors: The application of the moratorium to the corporate debtor's personal guarantors should be addressed by the IBC. A consistent approach would offer certainty as recent court rulings on this matter have been inconsistent.

**viii. Enhanced Stakeholder Communication:**

Public Announcements: The interim resolution professional should ensure that all stakeholders are promptly informed about the initiation of the moratorium and its implications.

Regular Updates: Regular updates should be provided to stakeholders regarding the status of the resolution process, including any developments that may affect the moratorium.

**ix. Monitoring Compliance:** The Adjudicating Authority should actively monitor compliance with the moratorium provisions and take prompt action against any violations.

**x. Dispute Resolution:** A mechanism should be established to resolve disputes arising from the application of the moratorium, ensuring that such disputes do not delay the process of resolution.

- xi. Best Practices:** Develop and disseminate best practices for the implementation of the moratorium, drawing from successful case studies and international experiences.
- xii. Effectiveness Assessment:** A periodic review of the moratorium provisions should be conducted to assess their effectiveness in achieving the objectives of the “IBC”.
- xiii. Stakeholder Feedback:** To ensure that the moratorium provisions remain aligned with the evolving needs of the “insolvency resolution process”.
- xiv. Harmonization with Regulatory Frameworks:** The IBC should include a provision for consultation with key regulatory bodies, such as SEBI, RBI, and IRDAI, when deciding the continuation or suspension of regulatory proceedings. Joint committees could be established comprising representatives from the IBBI and key regulatory bodies to resolve jurisdictional overlaps and design a coordinated response mechanism.
- xv. Exceptions for Public Interest Litigation or Enforcement:** Public interest litigations (PILs) and enforcement actions involving serious public safety or environmental concerns should be exempted from the moratorium, provided that such proceedings do not involve asset seizure or hinder the CIRP. This ensures that corporate accountability is preserved even during insolvency, without jeopardizing creditor recovery.
- xvi. Clarity on Actions Against Third Parties:** The law should make a clear distinction between proceedings against the corporate debtor and those against promoters, directors, or third-party guarantors, as these are often initiated before “other authorities” and can continue under the current legal framework. Codifying this distinction will prevent inconsistent judicial interpretations and procedural delays.
- xvii. Training and Sensitization of Regulatory Bodies:** Regulatory bodies such as SEBI, RBI, TRAI, and others must be sensitized through training programs about the objectives and mechanisms of the IBC, especially the moratorium clause, so as to avoid conflicts and duplicative proceedings.

Capacity-building initiatives should be introduced to ensure that all stakeholders have a consistent understanding of the term "other authority."

- xviii. **Institutional Mechanism for Conflict Resolution:** An institutional mechanism or standing inter-agency panel should be established to address real-time conflicts between regulatory bodies and insolvency professionals over the interpretation of moratorium provisions.
- xix. **Database Creation of a National Insolvency:** A national database listing all proceedings stayed due to the moratorium, including actions before "other authorities," can help ensure transparency and consistency in implementation across jurisdictions.
- xx. **Legislative Clarification of Supremacy:** The legislature should explicitly clarify the operation and scope in IBC & SEBI non-obstante clauses. A hierarchical provision or an explanatory clause may be introduced in the IBC or in the SEBI Act to guide courts in resolving overlaps, stating clearly when one law takes precedence over the other based on the subject matter.
- xxi. **Contextual Supremacy Model:** Introduce a context-based model of statutory precedence: IBC should prevail in matters strictly related to insolvency, restructuring, or asset resolution. SEBI should retain authority over penal, disclosure, and investor protection measures where ongoing regulation is essential, even during CIRP.
- xxii. **Strengthening the IBC Fund:** Ensure adequate capitalization of the IBC Fund and establish clear guidelines for its utilization, supporting the insolvency ecosystem and facilitating smoother resolutions.
- xxiii. **Codify the Scope of Regulatory Action Post-Resolution Plan:** The IBC should include a provision clarifying that the resolution plan approvals does not extinguish liabilities for statutory or penal violations, especially where such violations are against public interest or market discipline. A distinction should be made between monetary claims and regulatory or punitive actions, with only the former being extinguished upon plan approval.

- xxiv. Enable SEBI to Continue Certain Enforcement Actions:** SEBI should be allowed to continue actions such as Debarring individuals from accessing capital markets. Pursuing criminal complaints or proceedings that do not directly impact the resolution estate. Investigating misconduct by past promoters or officers. These actions should not interfere with the operations of the resolved company, thus maintaining a balance between enforcement and revival.
- xxv. Protect the Resolution Applicant While Ensuring Past Accountability:** However, SEBI should retain powers to act against previous management, promoters, or directors, even after the plan is approved, to ensure that those responsible for regulatory breaches are not immunized.
- xxvi. Mandate Disclosure of SEBI Proceedings in Resolution Plans:** All ongoing or past regulatory investigations or actions by SEBI should be disclosed in the Information Memorandum and considered during the plan formulation.
- xxvii. Develop a Harmonized Regulatory Framework:** The IBBI and SEBI should jointly issue guidelines or a memorandum of understanding (MoU) outlining the treatment of SEBI actions post-resolution plan approval. Such harmonization would avoid jurisdictional conflicts and offer predictability for market participants.
- xxviii. Judicial Clarity Through a Special Bench or Reference Mechanism:** A special bench of the NCLT/NCLAT or a reference mechanism to the High Court may be instituted to determine the impact of resolution plans on ongoing regulatory actions. This would promote uniformity in interpretation and reduce conflicting rulings.
- xxix. Legislative Provision for Carve-Outs in Resolution Plans:** Resolution applicants and CoCs should be allowed to include or exclude regulatory liabilities in the resolution plan after mutual consultation with SEBI and subject to approval by the Adjudicating Authority. This creates a case-by-case mechanism to assess what liabilities should be discharged and which ones should survive.

- xxx. **Leveraging Technology:** Promote the use of technology in the insolvency process, such as digital platforms for filing and tracking cases, to enhance efficiency and accessibility
- xxxi. **Training of RPs and Legal Advisors:** Insolvency professionals must be trained in understanding securities laws and SEBI regulations so they can properly assess and report on potential liabilities during CIRP. Legal advisors to CoC and RPs should also be well-versed in regulatory risk assessments.

The relationship between insolvency resolution and regulatory enforcement is where an approved resolution plan affects SEBI's operations. Although reviving distressed entities and giving resolution applicants a fresh start are the objectives of the IBC, investor protection and regulatory accountability must not be compromised. The current situation calls for a fair, coordinated, and open strategy that maintains regulatory discipline while promoting a lawful resurgence. India can develop a sophisticated insolvency framework that promotes both market integrity and economic recovery through judicial guidance, regulatory coordination, and legislative clarification.

maintaining fair, transparent, and accountable capital markets—a crucial component of any contemporary economy—requires this balance in addition to the IBC's success.