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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

\+ **C.S. (COMM.) 812/2025**

Between:-

**ROSELAND BUILDTECH PVT. LTD.**
THROUGH ITS DIRECTOR, MR. NISHANT CHHAJER,
REGISTERED OFFICE AT:
510, SOM DATT CHAMBER-II,
9, BHIKAJI CAMA PLACE,
NEW DELHl-110066

.....PLAINTIFF

*(Through: Mr. Tanmaya Mehta and Mr. Palash Singhai, Advs.)*

versus

1. **VIHAAN 43 REALITY PVT LTD**
(EARLIER KNOWN AS "KUNJBIHARI DEVELOPERS PVT. LTD.")
REGISTERED OFFICE AT:
CTS NO. C/1361, BL/1,
PALI HILL, BANDRA WEST, MUMBAI-400050

2. **CLE PRIVATE LIMITED**
(EARLIER KNOWN AS SONATA INVESTMENTS LTD.)
REGISTERED OFFICE AT:
RAHEJA POINT WING B, 7TH FLOOR,
NEHRU R NEAR SHAMRAO VITHAL BANK,
VAKOLA, SANTA CRUZ (EAST), MUMBAI- 400055

3. **SUMMIT CEMINFRA PVT. LTD.**
REGISTERED OFFICE AT:

RAHEJA POINT WING B, 7TH FLOOR,
NEHRU RD. NR SHAMRAO VITHAL BANK,
VAKOLA, SANTACRUZ (EAST), MUMBAI- 400055

4. **VALUECORP SECURITIES AND FINANCE LTD.**
24/26, CAMA BUILDING, 1ST FLOOR,
DALAL STREET FORT, MUMBAI - 400001

5. **ANANT RAJ LIMITED**
REGISTERED OFFICE AT:
PLOT NO. CP-1, SECTOR-8 IMT MANESAR,
GURGAON, HARYANA-122051

6. **HALLOW SECURITIES PVT. LTD.**
REGISTERED OFFICE AT:
FLAT NO. 510, SOM DATT CHAMBER-II,
9 BHIKAJI CAMA PLACE, NEW DELHI-110066

7. **REGISTRAR OF COMPANIES**
THROUGH MINISTRY OF CORPORATE AFFAIRS
4TH FLOOR, IFCI TOWER, 61,
NEHRU PLACE, NEW DELHI - 110019

.....DEFENDANTS

*(Through: Mr. Darpan Wadhwa, Sr. Adv. with Mr. Amek Vaid, Ms. Chanan Parwani, Mr. Shivam Shukla, Mr. Kaustubh Singh, Ms. Shubhi Agarwal, Mr. Rajat Sinha, Advs. for D-1.*
*Ms. Ekta Kalra Sikri, Mr. Ajay Pal Singh Kullar and Mr. Prakhar Khanna, Advs. for D-5.*
*Ms. Pooja M. Saigal, Sr. Adv. with Mr. Shubham Jain, Advs. for D-6.)*

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% Reserved on: 20.11.2025
Pronounced on: 05.01.2026

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# J U D G E M E N T

**I.A. 22971/2025 (***filed by the defendants under Order VII Rule 11 of the CPC)*
**I.A. 19370/2025** *(filed by the plaintiff under Order XXXIX Rule 1 & 2 of the CPC)*

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The plaintiff/corporate debtor has filed this suit being aggrieved by the act of defendant no. 1/financial creditor filing a petition against the plaintiff, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter "**IBC**"/"**Code**"), before the National Company Law Tribunal, New Delhi ('**NCLT'**) for the initiation of the corporate insolvency resolution process. The gravamen of dispute, essentially, lies in the plaintiff claiming the complete discharge of its obligations, and there not being a legally enforceable debt, on the basis of which proceedings under the IBC could be initiated by defendant no.1.

2. The plaintiff has sought, *inter alia*, a declaration that its obligations under the loan agreement dated 31.10.2006, entered into between the plaintiff and defendant no. 2, stand discharged; and that a 'Business Transfer Agreement' dated 06.03.2020, entered into between defendant no. 1, defendant no. 2 and defendant no. 3, whereby the debt held by defendant no. 2 under the said loan agreement was assigned in favour of defendant no. 1, is *void-ab-initio*, and not binding upon the plaintiff.

3. This Court *vide* order dated 11.08.2025 allowed I.A. 19371/2025, filed for seeking exemption from mandatory pre-institution mediation under Section 12A of the Commercial Courts Act, 2015, and issued summons to the defendants. Through the same order, notice was issued on I.A. 19370/2025 filed by the applicant/plaintiff under Order XXXIX Rule 1 and 2 of the Civil Procedure Code, 1908 ('**CPC'**).

4. On 10.09.2025, defendant no. 1 was allowed to file its reply to I.A. 19370/2025 and to bring its application under Order VII Rule 11 of the CPC

on record, the same was subsequently registered as I.A. 22791/2025. Thereafter, vide order dated 17.09.2025, the parties were allowed to file their written submissions and compilation of judgements for adjudicating I.A. 19370/2025 and I.A. 22691/2025. Defendant no. 1 was further permitted to place on record documents in response to the submissions advanced by the plaintiff by 26.09.2025. A response to the same was permitted to be filed by the plaintiff by 26.09.2025. Liberty was also granted to the plaintiff to file a rejoinder to the defendant's reply to I.A. 19370/2025.

5. The parties were, thereafter, heard at length on 09.10.2025, 06.11.2025 and 20.11.2025. Their written submissions and compilation of judgements were also considered and examined in great detail.

6. Upon careful consideration, the Court has arrived at the conclusion that the present suit is barred under the provisions of the IBC. The issues that are sought to be raised in the instant suit are to be adjudicated by the NCLT under Sections 65, 75, 60(5)(c) read with the relevant NCLT Rules, 2016. Since the NCLT has jurisdiction over matters involved in the instant *lis* and to answer questions involved in the present suit, the bar provided for under Section 63 and 231 of the IBC applies. The I.A. 22791/2025 filed by defendant no. 1 under Order VII Rule 11 of the CPC is, therefore, allowed. Resultantly, I.A. 19370/2025 filed by the plaintiff under Order XXXIX Rule 1 and 2 of the CPC becomes infructuous and is disposed of accordingly. Before detailing the reasoning, the necessary facts, as gleaned from the plaint, shall be considered.

## I. FACTUAL MATRIX

7. The plaintiff and defendant nos. 1-5 are companies engaged in real estate and other allied commercial activities. From the year 2006 until 2024, defendant no. 5 consistently held 50% of the equity shareholding in the plaintiff, while the remaining 50% shareholding was held by various entities. During the financial years 2021-22, defendant no. 2 held the remaining shareholding of the plaintiff, which was then transferred by defendant no. 2 in favour of defendant no. 4 in April, 2024.

8. The plaintiff claims that vide loan agreement dated 31.10.2006 it had availed a term loan facility of Rs. 80 Crores from defendant no. 2 (then Sonata Investments Ltd.) (hereinafter "**said Loan Agreement**"), which was originally repayable within a period of twenty-four months from the date of disbursement but through a supplementary loan agreement dated 31.10.2010, the period for repayment was extended by an additional twenty-four months.

9. On 10.11.2006, defendant no. 5, which was a 50% equity shareholder in the plaintiff-company, purportedly executed an undertaking in favour of defendant no. 2, to the effect that it shall ensure continued holding of no less than 50% of the total equity share capital of the borrower/plaintiff; and that it would not dilute, transfer, assign, or otherwise encumber, the existing or future shareholding in the borrower/plaintiff in favour of any third party, so long as any outstanding amounts are due from the borrower/plaintiff to the lender/defendant no. 2.

10. At the commencement of the year 2024, defendant nos. 2 and 5 allegedly approached defendant no. 6 with a proposal to transfer their entire

shareholding in the plaintiff, each being of 50%, together with complete managerial and financial control over the plaintiff and its subsidiaries, in favour of defendant no. 6, for a sale consideration of Rs. 88 Crores for each share of defendant nos. 2 and 5.

11. As per the purported understanding reached between the parties, the transfer of defendant no. 5's 50% shareholding was structured as a composite transaction involving the following three steps—*first*, defendant no. 5 transferring 50% of its shareholding in the plaintiff to defendant no. 6 for a total consideration of Rs. 88 Crores; thereafter, *second*, the discharge of outstanding loan liabilities of the plaintiff in accordance with the instructions of defendant no. 2; and finally, *third*, upon the settlement of the loan liabilities, 50% shareholding held by defendant no. 2 in the plaintiff would be transferred to defendant no. 6 against a payment consideration of Rs. 88 crores.

12. In furtherance of the above-noted mechanism, on 26.02.2024 a Share Purchase Agreement ("**SPA**") was executed between defendant no. 5 as the seller, defendant no. 6 as the purchaser and defendant no. 2 as the confirming party. As per its terms, defendant no. 5 transferred its shareholding in the plaintiff in favour of defendant no. 6 for a sale consideration of Rs. 88 Crores.

13. Subsequently, in accordance with the instructions of defendant no. 2, the plaintiff made several payments to defendant no. 1 during the financial years 2023-24 and 2024-25, towards the complete discharge of the loan liability towards defendant no. 2, under the said Loan Agreement. The said

payments were made with the understanding that the payments to defendant no. 1 would reduce the obligation of the plaintiff towards defendant no. 2 under the said Loan Agreement.

14. In April, 2024 while disregarding the purported understanding between the parties, defendant no. 2 transferred its shareholding in the petitioner, in favour of defendant no. 4. Thereafter, an agreement was arrived at, that the shareholding of the plaintiff, which stood with defendant no. 4, shall be sold to defendant no. 6 for a consideration of Rs. 88 Crores. In furtherance of the same, defendant no. 6 made payments to defendant no. 4; however, defendant no. 4 resiled from executing the share purchase agreement.

15. Thereafter, upon the purported discharge of all liabilities, including the repayment of the Rs. 80 Crore loan, defendant no. 1 instituted a petition under Section 7 of the IBC registered as C.P. (IB) No. 389 (PB)/2024 and titled '*Vihaan 43 Realty Pvt. Ltd. v. Roseland Buildtech Pvt. Ltd.*' (hereinafter "**Section 7 Petition**"), before the NCLT alleging a default in repayment of the said loan, which stood assigned in its favour by defendant no. 2, under a Business Transfer Agreement dated 05.03.2020 (hereinafter "**BTA**").

16. The plaintiff claiming the BTA, which forms the basis of the Section 7 petition, to be fraudulent, forged, *void-ab-initio* and not binding upon the plaintiff has filed the instant suit. The procedural history of the suit, thereafter, has been narrated at paras. 3-5 of this judgement. The

submissions of the learned counsel *qua* the application under Order VII Rule 11 of the CPC may now be considered.

## II. SUBMISSIONS MADE ON BEHALF OF DEFENDANT NO. 1

17. Mr. Darpan Wadhwa, learned senior counsel appearing on behalf of defendant no.1, has submitted that the present action is a *mala fide* attempt to derail and obstruct the statutory insolvency process under the IBC. The suit is a classic case of clever drafting, abuse of process, and is barred by law, liable to be rejected at the threshold. Additionally, it was also submitted that the present suit does not disclose a cause of action, and is barred by delay and acquiescence. Learned senior counsel has also alleged that the plaintiff has supressed material facts, which is a ground for outright dismissal of the instant suit.

18. He submits that the present suit impinges upon the jurisdiction vested exclusively in the NCLT under the IBC. The plaintiff's prayers (a) to (c) directly assail the existence of debt, validity of assignment, and authenticity of documents forming the basis of the Section 7 Petition, all of which are matters squarely within the domain of the NCLT under the IBC, which is a self-contained code providing a comprehensive framework for the resolution of insolvency disputes. In support of his submission, learned senior counsel has taken the Court through Sections 63, 64(2), 65, 75, 231 and 238 of the IBC.

19. Learned senior counsel also argued that the present suit seeks to achieve indirectly what cannot be achieved directly under the IBC namely, to stall a statuary proceeding and obtain declaratory finding on issues

already *sub judice* before the NCLT. Such an attempt constitutes clear abuse of the process of law and amounts to forum shopping.

20. Reliance has been placed on the decisions in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka & Ors.***[1], ***Swiss Ribbons Pvt. Ltd. and Anr. v. Union of India***[2] ("***Swiss Ribbons***"), ***Gujarat Urja Vikas Nigam Ltd. v. Amita Gupta***[3] ("***GUVNL***"), ***Shree Ambica Rice Mill v. Kaneri Agro Industries Limited***[4], ***Rishima SA Investments LLC v. Sarga Hotel Private Limited***[5], ***Hytone Merchants v. Sabtadi Investments Consultants***[6], ***Sanjay Pandurang Kalate v. Vistra ITCL (India)***[7], ***Beacon Trusteeship Ltd v. Earthcon Infracon Pvt. Ltd***[8], ***Mohammed Enterprises v. Farooq Ali Khan***[9], ***Innoventive Industries Ltd. v. ICICI Bank***[10], ***Thampanoor Ravi v. Charupara Ravi***[11], ***CIT v. Venkateswara Hatcheries (P) Ltd.***[12], ***Subramaniam Swamy v. Union of India***[13], ***P. Jamnadas Kothari v. Vikram Jamnadas Kothari***[14], ***Mrs. Shailja Krishna v. Satori Global Limited***[15], ***Kunwer Sachdev v. IDBI Bank & Ors***[16], ***Tejinder Pal Setia v. KONE Elevators India (P) Ltd***[17], ***Cotton Corporation of India Ltd v.***

[1] (2020) 13 SCC 308.
[2] (2019) 4 SCC 17.
[3] (2021) 7 SCC 209.
[4] 2021 SCC OnLine NCLAT 599.
[5] Company Appeal (AT) (Insolvency) No. 800 of 2020.
[6] 2021 SCC OnLine NCLAT 598.
[7] 2023 SCC OnLine NCLAT 1415.
[8] (2020) SCC OnLine SC 1233.
[9] (2025) 257 Comp Cas 344.
[10] (2018) 1 SCC 407.
[11] (1999) 8 SCC 74.
[12] (1999) 3 SCC 632.
[13] (2016) 7 SCC 221.
[14] (2013) 177 Comp Cas 199.
[15] (2025) 259 Comp Cas 1.
[16] (2024) 5 HCC (Del) 170.
[17] (2024) 242 Comp Cas 700.

***United Industrial Bank Ltd***[18]***, T. Arivandandam v. T.V. Satyapal and Anr.***[19]***, Ramisetty v. Nasyam Jamal Saheb***[20]***, In Satish Khosla v. Eli Lilly Ranbaxy Ltd.***[21]; ***Kusha Duruka v. State of Odisha***[22]***, Union of India and Ors v. CIPLA Limited and Anr.***[23]***, Frost International Limited v. Milan Developers and Builders Private Limited and Anr.***[24].

## III. SUBMISSIONS MADE ON BEHALF OF THE PLAINTIFF

21. Mr. Tanmaya Mehta, learned counsel appearing on behalf of the plaintiff, eloquently argued that the NCLT does not, at the stage of Section 7, have the jurisdiction to adjudicate upon the validity of an assignment deed. He further submitted that a plain reading of the purported BTA would reveal that the document is a sham, forged, fabricated and antedated. Learned counsel took the Court through the allegedly glaring inconsistencies in the BTA.

22. While relying on Section 9 of the CPC, he submitted that there is a presumption in favour of the jurisdiction of civil courts and Sections 63, 64(2) and 231 of the IBC are to be construed strictly. Learned counsel further argued that the nature of reliefs sought for by the plaintiff fall outside the adjudicatory scope of the NCLT as — *first*, the tribunal cannot grant a declaratory relief; *second*, a borrower can only raise a defence and not initiate proceedings against a financial creditor; and *third*, the NCLT cannot

[18] (1983) 4 SCC 625.
[19] (1977) 4 SCC 467.
[20] 2023 SCC OnLine SC 521.
[21] 1997 SCC OnLine Del 935.
[22] (2024) 4 SCC 432.
[23] (2017) 5 SCC 262.
[24] (2022) 8 SCC 633.

decide on issues concerning fraud, forgery, and disputes pertaining to the existence of debt.

23. Mr. Mehta, further, during rejoinder submissions, made an interesting argument for this Court to consider, it being, that the right asserted by the plaintiff in the instant case is neither created by the IBC nor is contingent on its adjudicatory framework rather the said right pre-exists under the common law, and therefore the civil court will have jurisdiction. He further submitted that even if the Court finds that there is an overlap in the *lis* sought to be adjudicated in the present suit, and that which can be entertained by the NCLT, the same would not make the present suit not maintainable as the powers of the civil court are plenary in nature.

24. Learned counsel also submitted that while examining the plaint for the purposes of Order VII Rule 11, if a single prayer is found to be worthy of trial, the plaint as a whole cannot be rejected.

25. Reliance was placed on the decisions in ***Sian Participation Corp v. Halimeda International Ltd.***[25], ***Kirpa Ram v. Surendra Deo Gaur***[26], ***Anita Kushwaha v. Pushap Sudan***[27], ***Sri Boyenepally Srijayavardhan v. V. Nirupama Reddy & Ors***[28], ***Ranjeet alias Bhaiyu Mohite v. Nandita Singh & Ors.***[29], ***Liverpool London S.P. & I Assn Ltd v. M.V. Sea Succes I***[30], ***Joginder Pal Singh v. State (Govt. of NCT of Delhi)***[31], ***Central Bank of***

[25] [2024] 3 WLR 937.
[26] (2021) 13 SCC 57.
[27] (2016) 8 SCC 509.
[28] 2024 SCC OnLine TS 3516.
[29] 2021 SCC OnLine MP 3410.
[30] (2004) 9 SCC 512.
[31] 2025 SCC OnLine Del 5617.

***India v. Prabha Jain***[32]***, Punjab & Sind Bank v. Frontline Corporation Ltd.***[33]***, SEBI v. Rajkumar Nagpal***[34]***, TATA Consultancy Services Ltd v. S.K. Wheels (P) Ltd.***[35]***, Innoventive Industries Limited v. ICICI Bank and Another***[36]***, Vijay Kumar Singhania v. Bank of Baroda & Anr.***[37]***, M. Suresh Kumar Reddy v. Canara Bank & Ors.***[38] ("***M. Suresh Kumar Reddy***"), ***Radha Exports (India) Pvt. Ltd v. K.P. Jayaram & Anr.***[39]***, Sandeep Behl v. Nirmal Trading Company***[40]***, Engineering Projects (India) Limited v. MSA Global LLC***[41]***, Union of India v. Madras Bar Association***[42]***, S.D. Joshi & Ors v. High Court of Judicature at Bombay***[43]***, CFM Asset Reconstruction Private Limited v. M.G. Finvest Private Limited***[44]***, Lalan Kumar Singh v. Phoenix ARC P. Ltd***[45].

## IV. ANALYSIS

26. For adjudicating I.A. No. 22971/2025 filed by the defendant no. 1 under Order VII Rule 11 of the CPC, the issue which has arisen for consideration is whether the instant suit is barred by the provisions of the IBC. For answering the said question, the Court is, following the settled legal position, not even by the slightest, influenced by the factual assertions made by the defendant. The averments made in the plaint are considered on

[32] (2025) 4 SCC 38.
[33] (2023) 16 SCC 331.
[34] (2023) 8 SCC 274.
[35] (2022) 2 SCC 583.
[36] (2018) 1 SCC 407.
[37] (2025) 256 Comp Cas 822.
[38] (2023) 8 SCC 387.
[39] (2020) 10 SCC 538.
[40] 2024 SCC OnLine NCLAT 1272.
[41] 2025 SCC OnLine Del 5072.
[42] (2010) 11 SCC 67.
[43] (2011) 1 SCC 252.
[44] (2024) 244 Comp Cas 464.
[45] (2020) 221 Comp Cas 122.

a demurrer, and assumed to be true, for the purposes of undertaking this analysis. Discussion on facts, also is not of much significance, as the neat issue relates to the interpretation of law.

## V. OBJECT AND PURPOSE OF THE IBC

27. The Statement of Objects and Reasons of the IBC, penned by the then learned Finance Minister late Shri. Arun Jaitley read as under:

> *"There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.*
>
> *2. The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.*
>
> *3. The Code seeks to provide for designating the NCLT and DRT as the*

*Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects. The Code also seeks to provide for establishment of the Insolvency and Bankruptcy Board of India (Board) for regulation of insolvency professionals, insolvency professional agencies and information utilities. Till the Board is established, the Central Government shall exercise all powers of the Board or designate any financial sector regulator to exercise the powers and functions of the Board. Insolvency professionals will assist in completion of insolvency resolution, liquidation and bankruptcy proceedings envisaged in the Code. Information Utilities would collect, collate, authenticate and disseminate financial information to facilitate such proceedings. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund of India for the purposes specified in the Code.*

*4. The Code seeks to provide for amendments in the Indian Partnership Act, 1932, the Central Excise Act, 1944, Customs Act, 1962, Income-Tax Act, 1961, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Finance Act, 1994, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the Payment and Settlement Systems Act, 2007, the Limited Liability Partnership Act, 2008, and the Companies Act, 2013.*

*5. The Code seeks to achieve the above objectives."*

28. The report of the Bankruptcy Law Reforms Committee, 2015 (hereinafter "**BLRC Report**"), which led to the enactment of the IBC, discusses in great detail the shortcomings of the then existing legal regime pertaining to the insolvency process of corporate entities. It notes, as a major difficulty, at Vol. 1, 3.3.1, the fragmented nature of the dispute resolution mechanism. It details a system where different forums decide on the rights of the creditors and debtor, and the decisions are readily appealed against, stayed and overturned in higher courts. The material portion of the report reads as under:

"***3.3. Present arrangements in India***
*The present structure of the bankruptcy and insolvency process in India is elaborate and multi-layered (Sharma and Thomas, 2015). The legislative process is covered over multiple laws, and adjudication takes place in multiple fora. For example, Sengupta and Sharma, 2015 notes that while the Companies Act, 1956, contains the main legal provisions for corporate insolvency, the legislative framework is completed through three major laws, two ancillary laws and one special provision.*
*…*
***3.3.1 Difficulties of the present arrangement***
*The current state of the bankruptcy process for firms is a highly fragmented framework. Powers of the creditor and the debtor under insolvency are provided for under different Acts. Given the conflicts between creditors and debtors in the resolution of insolvency as described in Section 3.2.2, the chances for consistency and efficiency in resolution are low when rights are separately defined. It is problematic that these different laws are implemented in different judicial fora. Cases that are decided at the tribunal/BIFR often come for review to the High Courts. This gives rise to two types of problems in implementation of the resolution framework. The first is the lack of clarity of jurisdiction. In a situation where one forum decides on matters relating to the rights of the creditor, while another decides on those relating to the rights of the debtor, the decisions are readily appealed against and either stayed or overturned in a higher court. Ideally, if economic value is indeed to be preserved, there must be a single forum that hears both sides of the case and make a judgement based on both. A second problem exacerbates the problems of multiple judicial fora. The fora entrusted with adjudicating on matters relating to insolvency and bankruptcy may not have the business or financial expertise, information or bandwidth to decide on such matters. This leads to delays and extensions in arriving at an outcome, and increases the vulnerability to appeals of the outcome.*"

(Emphasis Supplied)

29. The insufficiencies in the previous regime were also taken note of by the Supreme Court in ***GUVNL***, the material portion of which reads as under:

"*56. The salient aspects which emerge from the state of the law prior to the enactment to IBC can be formulated thus:*
*56.1. There was a multiplicity of legislation dealing with insolvency and bankruptcy.*
*56.2. Multiplicity of statutes led to the creation of multiplicity of fora.*

> *56.3. Provisions relating to insolvency and bankruptcy of companies were embodied in the SICA, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDDB"), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Sarfaesi") and the Companies Act, 2013.*
> *56.4. The above statutes provided for the establishment of multiplicity of adjudicating bodies including the BIFR, Debt Recovery Tribunal ("DRT"), NCLT and the Appellate Tribunal.*
> *56.5. While the liquidation of companies was adjudicated upon by the High Courts exercising company jurisdiction, individual insolvency was governed by the Presidency Towns Insolvency Act, 1909 and the PIA.*
> *56.6. The multiplicity of statute and fora in the regime prior to IBC led to a framework for insolvency and bankruptcy which was inadequate and ineffective, and resulted in undue delay.*"

Further, in ***Swiss Ribbons***, the Supreme Court incorporated a separate section titled "*Prologue: the pre-existing state of the law*", to detail the legislative deficiencies as they existed prior to the enactment of the IBC.

30. The rationale for the judicial authorities to dwell upon "*that which was*" is to stress upon the fundamental shift brought about by the enactment of the IBC. The Code, as it came to be enacted, marked a decisive break from the earlier insolvency framework, replacing a fragmented regime with a time-bound process aimed at maximising the value of the corporate debtor. The Supreme Court in ***Swiss Ribbons*** at paras. 27-28 further detailed the features of the IBC in the following words:

> "***27.*** *As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganisation and insolvency resolution of corporate debtors. Unless such reorganisation is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximisation of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When,*

*therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme—workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximise their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.*

***28.*** *It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.*"

Similarly, the objectives of the IBC were explained in the following words in ***GUVNL***:

"***56.8.*** *Bearing the above aspects in mind, IBC, which is a consolidating and amending statute, came to be enacted.*

***56.9.*** *IBC, in a clear departure from the past, separates commercial aspects of insolvency and bankruptcy proceedings from judicial*

*aspects.*

*…*

***58.*** *The BLRC noted that speed is of the essence for the working of a bankruptcy code. From the point of the view of creditors, a good realisation can be obtained when a firm is sold as a going concern. The decisions of this Court in Madras Petrochem [Madras Petrochem Ltd. v. BIFR, (2016) 4 SCC 1 : (2016) 2 SCC (Civ) 478] , Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] and ArcelorMittal (India) (P) Ltd. [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] emphatically advert to the failure of the statutory resolution machinery in the regime prior to IBC. It was in this backdrop that IBC was enacted to provide for a timely resolution of CIRP. The primary focus of IBC is to ensure the revival and continuation of the corporate debtor. The interests of the corporate debtor have been bifurcated and separated from the interests of persons in management. The timelines which are prescribed in IBC are intended to ensure the resuscitation of the corporate debtor.*"

31. With the above context in mind, the provisions under the IBC, material to determine the bar on a civil court's jurisdiction, may now be considered.

## VI. OUSTER PROVISIONS UNDER THE IBC

32. Sections 63 and 231 of the IBC are almost similarly worded, classical ouster clauses, usually provided in specialised legislations.[46] The purpose of such provisions is to centralise, and render exclusive, the adjudication of issues covered by a specialised legislation. They are essentially in the nature of negatively worded empowerment clauses, necessitated to allow the smooth functioning of a tribunal/authority vested with special and exclusive powers under a statute. The said Sections read as under:

"***63. Civil court not to have jurisdiction.—****No civil court or authority*

[46] For instance see Sections 34, 18, and 430 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Recovery of Debts and Bankruptcy Act, 1993, and Companies Act, 2013 respectively.

> *shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code*
> *…*
> ***231. Bar of jurisdiction.—****No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority or Board is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority or Board under this Code.*"

33. Importantly, the scope of such ouster clauses is constrained by the breadth of the legislation they are found in, and the issues which the specialised authority/tribunal under the concerned Act, is empowered to adjudicate upon. The language of such provisions usually is – *that which the specialised authority/body is to do under a given Act cannot be done by any other court/authority*. To determine what an authority/specialised body is empowered to adjudicate upon needs to be considered by analysing the other provisions of the Act.

## VII. SECTIONS 65, 75, 60(5)(c) OF THE IBC AND THE RELEVANT NCLT RULES, 2016

34. Sections 65, 75, and Section 60(5)(c) of the IBC, need to be analysed to determine whether the bar of Sections 63 and 231 is attracted.

### A. SCOPE OF SECTION 65 OF THE IBC

35. Section 65 of the IBC reads as under:

> "***65. Fraudulent or malicious initiation of proceedings***.
> *(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such*

> *person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*
> *(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*"
>
> (Emphasis Supplied)

36. To appreciate the breadth of these powers, the following judicial pronouncements of the NCLT and NCLAT may be considered, exclusively, for the purposes of appreciating the practice of the tribunal under the said provision.

37. In ***Punjab National Bank v. James Hotels Ltd.***[47] upon the corporate debtor claiming that the financial creditor had committed fraud, the NCLT directed the Registrar of Companies, Punjab and Chandigarh ('**ROC**') to preserve C.C.T.V. footages related to the visitors entering the premises of the ROC. This order of the NCLT was assailed before the Appellate Tribunal in ***James Hotels Ltd. v. Punjab National Bank***[48] on the grounds that the NCLT lacked competence to pass such an order. The NCLAT, while dismissing the appeal, found that fraudulent or malicious initiation of proceedings as also fraudulent bank trading can be adjudicated upon by the NCLT. The material portion of the Appellate Tribunal's judgement reads as under:

> "*3. Ld. Counsel appearing on behalf of the appellant-'Corporate Debtor' submits that the "offences and penalties" under I & B Code can be looked into only by Special Judge in terms of Chapter VIII of Part II of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code'). However, we find that 'the fraudulent or malicious initiation of the proceedings' and 'fraudulent bank trading' etc. can be*

[47] CP (IB) No. 14/CHD/2017, Order dt. 23.08.2017 (NCLT, Chandigarh).
[48] Company Appeal (AT) (Insol.) No. 165 of 2017 (Principal Bench, New Delhi).

> *looked into by Tribunal under Sections 65 and 66 of the I&B Code. In any case, during the course of Insolvency Resolution Process, if allegation of fraud by one or other party is brought to the notice of the Adjudicating Authority it is always open to the Adjudicating Authority to notice the appropriate authorities and parties to find out whether a prima facie case is made out and the same has any effect in the resolution process or not.*
>
> *...*
>
> *5. In the aforesaid circumstances, as the Adjudicating Authority to find out the truth of the allegation has issued notice, we are not inclined to interfere with the order at this stage.*"
>
> (Emphasis Supplied)

38. In ***Zaggle Prepaid Ocean Services Pvt. Ltd. v. Freebie Solutions Pvt. Ltd.***[49] the applicant/corporate debtor filed an application under Rule 131 read with Rule 11 of the NCLT Rules, 2016 while relying upon Section 60(5) of the IBC, and disputed the demand of the creditor claiming it had submitted forged invoices, and further that it had used the seal of the corporate debtor to pass off fabricated invoices as genuine ones. It was further claimed that the acts of the creditor amounted to forgery, criminal intimidation and extortion. Adjudicating upon this issue, the NCLT directed the creditor to produce the original invoices, the veracity of which, was disputed. The material portion of the judgement reads as under:

> *"2.9 It is submitted that the respondent/operational creditor has thus, raised demand of the above amount of INR 6,11,10,000/- by virtue of forged invoices showing discounts at higher rates that what was agreed, viz. 1% to 2%.*
>
> *2.10 It is further averred that the respondent/operational creditor had allegedly used the seal of the applicant/corporate debtor to pass off the fabricated invoices as genuine ones. It is averred that such acts of the respondent/operational creditor amount to forgery, criminal intimidation and extortion against the applicant/corporate debtor intended to tarnish the image and reputation of the applicant/corporate debtor. It is further averred that the respondent/operational creditor owed amounts to the tune of INR 25 crores to the applicant/corporate*

[49] 2019 SCC OnLine NCLT 12268.

> *debtor as on date.*
>
> *...*
>
> *9. When a serious ground is raised by the applicant/corporate debtor about the veracity of the invoices and pointed out the undisputed fact that a criminal case was filed against the respondent/operational creditor, it has become necessary to direct the respondent/operational creditor to produce the original invoices for which claim is raised to enable the adjudicating authority to decide the dispute. The original invoices are in the custody of the respondent/operational creditor. There will not be difficulty for the operational creditor to produce the originals for inspection by the Tribunal as well as by the parties concerned for a just decision of the issue involved. It is, therefore, necessary to direct the respondent/operational creditor to produce the original invoices basing on which claim is made against the applicant/corporate debtor.*
>
> *10. In the result, the application is allowed directing the respondent/operational creditor to produce before the Tribunal all the original invoices, the copies of which were shown as Annexure-III. On production of the same the parties concerned will be at liberty to verify such original invoices with the permission of the Tribunal. The application is accordingly disposed of.*"
>
> (Emphasis Supplied)

39. In ***Hytone Merchants Pvt. Ltd. v. Satabai Investment Consultants Pvt. Ltd.*** (supra) an important facet of the NCLT's power under Section 65 of the IBC was recognised by the Appellate Tribunal. In the said case, the NCLT had, despite their being a finding of the existence of default, and the application under Section 7 of the IBC being complete in all respects, dismissed the petition under Section 7. The NCLT did so on grounds that the petition had been filed in collusion with the corporate debtor.

40. In the said case, the precise question framed by the NCLAT for deciding the appeal was:

> "*Whether the petition complying with all requirements of Section 7(5) of the Insolvency and Bankruptcy Code, 2016, but if it appears that the Application is filed collusively, not with the intention of Resolution of Insolvency, and so with malicious intent, or malafides, then whether the*

*Application can be rejected relying on Section 65 of the Code?*"

The Appellate Tribunal then relied upon para. 59 of the Supreme Court's judgement in ***Swiss Ribbons*** and found that powers do in fact exist with the NCLT under Sections 65 and 75 of the Code to protect the corporate debtor from *mala fide* initiation of CIRP. The material portion of the judgement reads as under:

> *"39. Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.*
> *...*
> *44. ...Section 65 of the Insolvency and Bankruptcy Code, 2016 provides for punishment or fraudulent or malicious initiation of proceedings. It does not mean that Section 65 will not be applicable to prevent such fraudulent or malicious initiation of proceedings. When a statute makes a provision for punishment for any wrong, it also contains deemed power to prevent it. Therefore it cannot be said that section 65 will be applicable only after initiation of the Corporate Insolvency Resolution Process fraudulently or with malicious intent. "*

41. Further, in ***Wadhwa Law Chamber's Guide to the Insolvency and Bankruptcy Code***, 3rd Edition, Volume 2, at Page 2502, the learned authors have discussed the following caselaw under heading '*Collusion between Corporate Debtor and Financial Creditor*':

> "***Collusion between corporate debtor and financial creditor***
> *In Electroparks (India) Private Limited v. Videocon Infinity Infrastructure Private Ltd./ Infinity Infotech Parks Limited v. Electroparks (India) Private Limited, I.A. (IBC) No. 907/KB/2021 in C.P. (IB) No. 140/KB/2021 dt. 18-07-2022 (NCLT–Kol) (Unreported), the Adjudicating Authority considered an application by a shareholder*

> *of the corporate debtor. The applicant had contended that an order of CIRP had been obtained from the Adjudicating Authority by way of practicing blatant fraud. The Adjudicating Authority was of the view that the corporate debtor did not appear to have had any genuine liability towards the alleged financial creditor and the entire documentation has evidently been prepared by the alleged financial creditor in collusion with group entities. The alleged documents disclosed in the Supplementary Affidavit of the alleged financial creditor, far from helping its case, further demonstrated the fraudulent nature of the documents. It was held that the financial creditor was guilty of practicing and committing fraud on the Adjudicating Authority and therefore, as per S. 65 of the Code, a penalty of Rs. 50 lakh was imposed on the alleged financial creditor and the IRP was vitiated and terminated due to the fraud committed. The Adjudicating Authority also refused to record settlement between the parties and referred the matter to the Secretary, Ministry of Corporate Affairs, Central Government for investigation and further action at their end.*"

42. The above-discussed cases of the NCLT and NCLAT makes clear the practice of the tribunal and the Appellate Tribunal to delve into issues concerning fraud, forgery, in some cases even collusion, and further to pass appropriate orders in relation thereto.

43. While the Supreme Court had in ***Swiss Ribbons*** at para. 59, made a reference of the tribunal's power to prevent the corporate debtor from being dragged into CIRP *mala fide*, an authoritative pronouncement of a three-judge bench of the Supreme Court in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka and Ors.*** (supra) lay to rest doubts pertaining to the NCLT's jurisdiction to adjudicate upon fraud.

44. The question formulated by the Supreme Court reads as under:

> "*47. The second question that arises for our consideration is as to whether NCLT is competent to enquire into allegations of fraud, especially in the matter of the very initiation of CIRP.*"

Answering the said question, it was held by the Court that the NCLT does indeed have powers to inquire into allegations of fraud, if the underlying purpose for kickstarting the insolvency process is not the resolution of insolvency or liquidation as the case may be. The material paras. read as under:

> "*51. Even fraudulent tradings carried on by the corporate debtor during the insolvency resolution, can be inquired into by the adjudicating authority under Section 66. Section 69 makes an officer of the corporate debtor and the corporate debtor liable for punishment, for carrying on transactions with a view to defraud creditors. Therefore, NCLT is vested with the power to inquire into (i) fraudulent initiation of proceedings as well as (ii) fraudulent transactions. It is significant to note that Section 65(1) deals with a situation where CIRP is initiated fraudulently "for any purpose other than for the resolution of insolvency or liquidation".*
> *52. Therefore, if, as contended by the Government of Karnataka, the CIRP had been initiated by one and the same person taking different avatars, not for the genuine purpose of resolution of insolvency or liquidation, but for the collateral purpose of cornering the mine and the mining lease, the same would fall squarely within the mischief addressed by Section 65(1 ). Therefore, it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of CIRP cannot be a ground to bypass the alternative remedy of appeal provided in Section 61.*"
>
> (Emphasis Supplied)

45. Before parting with the said decision of the Supreme Court, to adequately appreciate the strength of the said judgement, it is important to lay stress upon the actual allegations made by the concerned party therein, which were found by the Court, to be susceptible to the NCLT's jurisdiction. At para. 48, the allegations made by the party have been narrated, the same is reproduced as under:

> "***48.*** *This question has arisen, in view of the stand taken by the Government of Karnataka before the High Court that they chose to*

*challenge the order of the NCLT before the High Court, instead of before NCLAT, due to the fraudulent and collusive manner in which the CIRP was initiated by one of the related parties of the corporate debtor themselves. In the writ petition filed by the Government of Karnataka before the High Court, it was specifically pleaded (i) that the Managing Director of the corporate debtor entered into an agreement on 6-2-2011 with one M/s D.P. Exports, for carrying out mining operations on behalf of the corporate debtor and also for managing its affairs and selling 100% of the extracted iron ore; (ii) that the said M/s D.P. Exports was a partnership firm of which one Mr M. Poobalan and his wife were partners; (iii) that another agreement dated 11-12-2012 was entered into between the corporate debtor and a proprietary concern by name M/s P. & D. Enterprises, of which the very same person, namely, Mr M. Poobalan was the sole proprietor; (iv) that the said agreement was for hiring of machinery and equipment; (v) that a finance agreement was also entered into on 12-12-2012 between the corporate debtor and a company by name M/s Udhyaman Investments Pvt. Ltd., represented by its authorised signatory Mr M. Poobalan; (vi) that there were a few communications sent by the said Mr Poobalan to various authorities, claiming himself to be the authorised signatory of the corporate debtor; (vii) that an MoU was entered into on 16-4-2016 between the corporate debtor and M/s Udhyaman Investments Pvt. Ltd., represented by the said Mr Poobalan, whereby the corporate debtor agreed to pay Rs 11.5 crores; (viii) that the said agreement was purportedly executed at Florida, but witnessed at Chennai; (ix) that Mr Poobalan even communicated to the Director, Department of Mines & Geology as well as the Monitoring Committee, taking up the cause of the corporate debtor as its authorised signatory; (x) that the CIRP was initiated by M/s Udhyaman Investments Pvt. Ltd. represented by its authorised signatory, Mr Poobalan; (xi) that the resolution applicant, namely, M/s Embassy Property Development Pvt. Ltd. as well as the Financial Creditor who initiated CIRP, namely, M/s Udhyaman Investments Pvt. Ltd. are all related parties, and (xii) that Mr Poobalan had not only acted on behalf of the corporate debtor before the statutory authorities, but also happened to be the authorised signatory of the Financial Creditor who initiated the CIRP, eventually for the benefit of the resolution applicant which is a related party of the Financial Creditor.*"

(Emphasis Supplied)

46. The High Court of Telangana in ***Ramky Infrastructure Ltd. v. Hi-reach Construction Equipments (P) Ltd.***,[50] had an occasion to adjudicate upon a Civil Revision filed by the corporate debtor assailing an order of NCLT, Hyderabad dismissing its application under Section 65 of the IBC. Before the NCLT, the corporate debtor had claimed, that a ledger statement filed by the creditor was never issued by the corporate debtor and that the seal/signature on it are fabricated and forged. The NCLT found that it did not have powers to adjudicate upon the issue of forgery and fabrication of the concerned documents.

47. After discussing a catena of precedents, and relying upon the pronouncement of the Supreme Court in ***Embassy Property Developments Pvt. Ltd. v. State of Karnataka and Ors.*** (supra), the High Court set aside the order of the NCLT noting that under Section 65 of the IBC, the NCLT does have powers to adjudicate upon the *lis* therein. The material portion of the judgement reads as under:

> "*1. This Civil Revision Petition is filed by the revision petitioner Corporate Debtor under Article 227 of the Constitution of India, aggrieved by the Order dated 05.02.2020 in I.A. No. 867 of 2019 in CP. (IB). No. 586/9/HDB/2019 passed by the learned National Company Law Tribunal, Hyderabad Branch, Hyderabad (for short 'the Tribunal'), wherein the said Interlocutory Application was closed as not maintainable.*
>
> *2. ...The applicant/Corporate Debtor filed application under Section 65 of the Insolvency and Bankruptcy Code, 2016 alleging that the Ledger Statement dated 14.04.2017 filed by the Operational Creditor respondent in main Company Petition was never issued by the applicant-Corporate Debtor. The seal and signature are forged and fabricated. The said document does not belong to the applicant or its authorized signatories. Therefore, the applicant sought for a direction*

[50] (2024) SCC OnLine TS 4201.

> *to respondent for producing the original of alleged ledger statement dated 14.04.2017, impose penalty under Section 65(1) of the Insolvency and Bankruptcy Code for malicious initiation and dismiss the company petition for malicious initiation.*
>
> *...*
>
> *25. The learned counsel for the revision petitioner contended that the learned Tribunal passed the impugned order holding that it is beyond its jurisdiction to adjudicate the issue of forged document i.e., ledger statement dated 14.04.2017…*
>
> *...*
>
> *30. Thus, considering the principle laid down in the above said decisions, this Court is of the opinion that the Adjudicating Authority/learned Tribunal can enquire into the issue of fraud only under Section 65 of Insolvency and Bankruptcy Code, 2016 and the consequence of initiating a CIRP fraudulently will be limited to the monetary penalty provided for in Section 65 of Insolvency and Bankruptcy Code, 2016.*"

48. The language of Section 65(1) of the IBC explicitly empowers the NCLT to adjudicate on fraud; however, the power to inquire into collusion between the parties seems to originate from the following expression under the said provision:

> "*or with malicious intent for any other purpose other than for the resolution of insolvency, or liquidation, as the case may be*"

Importantly, apart from collusion, there may possibly be other situations covered by the said expression, the Court is, however, in the instant case not concerned with them.

49. The adjudication of fraud, or malicious intent, naturally requires evidence to be led and, in some cases, parties to be cross-examined. It cannot be the case that an inquiry under this Section can only be embarked upon when facts are undisputed. It is but obvious that to determine the fraudulent or malicious nature of the initiation of the CIRP would require the authority/tribunal to arrive at factual findings on disputed questions.

50. The discussion above leads to the inescapable conclusion that under Section 65 of the Code, the tribunal can delve into issues of fraud and collusion concerning the initiation of CIRP. The said powers are vested with the tribunal in order to prevent attempts being made to pollute the sanctity of insolvency or liquidation proceedings by invoking its jurisdiction with an ulterior objective and by indulging in fraudulent or malicious act to achieve the same.

51. Though the power to determine the veracity of the information supplied by a given party is intrinsic to Section 65, a specific facet of it has also been separately dealt with under Section 75.

**B. SCOPE OF SECTION 75 OF THE IBC**

52. While not specifically dealt with in the judgements canvassed at the Bar, Section 75 of the IBC, particularly its language may be considered. The said provision reads as under:

> "***75. Punishment for false information furnished in application.***
> *Where any person furnishes information in the application made under section 7, which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material, such person shall be punishable with fine which shall not be less than one lakh rupees, but may extend to one crore rupees.*"

53. A bare perusal of the afore-noted provision would make apparent the wide scope of inquiry the NCLT can undertake while acting under the said provision. Strictly in terms of its adjudicatory breadth i.e., the issues which the tribunal can delve into under Section 75 of the Code, the NCLT can be seen to be empowered to discover the veracity of statements made in a given material; and furthermore, in order to determine the materiality of the

omission, to inquire into the circumstances within which a given information is supplied.

54. It is important to underscore that the adjudicatory competence i.e., the power to delve into issues pertaining to the truthfulness of the claims made during the initiation of CIRP, is already provided for under Section 65. The purpose of Section 75, at first blush, seems to be to act as a deterrent, in relation to a financial creditor's application under Section 7, particularly because of the limited scope of scrutiny the NCLT can undertake under Section 7 of the Code.

55. From a combined reading of the discussion pertaining to Sections 65 and 75, it can safely be concluded that — *first*, the NCLT has powers to delve into allegations of fraud and malicious initiation of CIRP under Section 65 of the Code; *second*, the NCLT and NCLAT have, actively, been utilising these powers to adjudicate upon issues concerning forgery, fraud, and collusion; and *third*, in furtherance of the powers to adjudicate upon fraud and malicious intent, the NCLT can delve into questions concerning the veracity/truthfulness of statements, information and documents.

## C. RESIDUARY POWERS OF THE NCLT UNDER SECTION 60(5)(c) OF THE IBC

56. Before analysing the NCLT Rules, 2016 which provides the tribunal with the requisite tools to embark upon the aforesaid exercise, Section 60 of the IBC which contains the residuary powers of the tribunal may also be considered, the same reads as under:

"***60. Adjudicating authority for corporate persons.***

*...*

*(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—*
*(a) any application or proceeding by or against the corporate debtor or corporate person;*
*(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*
*(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.*
*(6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.*"

(Emphasis supplied)

57. A bare perusal of the provision would reveal that the NCLT is further strengthened, under Section 60(5)(c) of the IBC, to determine questions of law and facts arising out of, or in relation to, the insolvency resolution of the corporate debtor. The scope of the words used in the said provision are broad, intended to encompass, all issues incidental and ancillary to the insolvency resolution proceedings. It intends to arm the NCLT with the requisite powers to arrive at a comprehensive adjudication of issues stemming from, or surrounding, the insolvency resolution or liquidation of the corporate debtor. It also aligns with the core objective behind the codification of IBC, which is to consolidate the laws and prevent scattering of connected or overlapping matters.

58. The residuary nature of the said provision was recognised by the Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Anr.*** (supra), para. 69 of which reads as under:

> "***69.*** *It will be noticed that the non obstante clause of Section 60(5) speaks of any other law for the time being in force, which obviously cannot include the provisions of the Code itself. Secondly, Section 60(5)(c) is in the nature of a residuary jurisdiction vested in NCLT so that NCLT may decide all questions of law or fact arising out of or in relation to insolvency resolution or liquidation under the Code.*"

59. The rational for the breadth of Section 60(5)(c) of the IBC was discussed by the Supreme Court in ***GUVNL***, wherein the Court stressed upon the objective of the IBC, namely to create a unified code and fora for the insolvency resolution process, and held that disputes bearing a nexus with the insolvency of the corporate debtor are covered by Section 60(5)(c). The material portion of the judgement reads as under:

> "*69. The institutional framework under IBC contemplated the establishment of a single forum to deal with matters of insolvency, which were distributed earlier across multiple fora. In the absence of a court exercising exclusive jurisdiction over matters relating to insolvency, the corporate debtor would have to file and/or defend multiple proceedings in different fora. These proceedings may cause undue delay in the insolvency resolution process due to multiple proceedings in trial courts and courts of appeal. A delay in completion of the insolvency proceedings would diminish the value of the debtor's assets and hamper the prospects of a successful reorganisation or liquidation. For the success of an insolvency regime, it is necessary that insolvency proceedings are dealt with in a timely, effective and efficient manner. Pursuing this theme in Innoventive [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] this Court observed that : (SCC p. 422, para 13)*
>
> > *"13. One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process."*
>
> *The principle was reiterated in ArcelorMittal [ArcelorMittal (India) (P) Ltd. v. Satish Kumar Gupta, (2019) 2 SCC 1] where this Court held*

*that : (SCC p. 88, para 84)*

> *"84. ... The non obstante clause in Section 60(5) is designed for a different purpose : to ensure that NCLT alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings."*
>
> *Therefore, considering the text of Section 60(5)(c) and the interpretation of similar provisions in other insolvency related statutes, NCLT has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the corporate debtor. However, in doing so, we issue a note of caution to NCLT and Nclat to ensure that they do not usurp the legitimate jurisdiction of other courts, tribunals and fora when the dispute is one which does not arise solely from or relate to the insolvency of the corporate debtor. The nexus with the insolvency of the corporate debtor must exist.*"

(Emphasis Supplied)

60. The Supreme Court further stressed, at para. 74 of the said judgement, that disputes that arise *dehors* the insolvency of the corporate debtor must be adjudicated upon by the competent authorities, in exclusion to the NCLT. The said paragraph reads as under:

> "*74. Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of IBC.*"

(Emphasis Supplied)

61. The BLRC Report also notes the importance of providing sufficient powers to the adjudicating authority/tribunal to deal with all questions arising out of the insolvency or liquidation of a firm:

"*4.2.2. Territorial jurisdiction*

***

*Further, following from current law, once a liquidation or bankruptcy order has been made, leave of NCLT or DRT would be necessary to proceed with any pending suit or proceeding or to file any fresh suit or proceeding by or against the debtor firm or individual. This will ensure the sanctity of the liquidation or bankruptcy process. NCLT or DRT should also have jurisdiction to entertain and dispose of any pending or freshsuit or legal proceeding by or against the debtor company or individual; question of priorities or any other question, whether of law or facts, in relation to the liquidation or bankruptcy. By bringing all litigations that may have a monetary impact on the economic value of debtor firm or individual's assets within the jurisdiction of NCLT, the liquidation or bankruptcy process will be made streamlined and efficient…*

*4.21. Tribunals jurisdiction on firm insolvency and liquidation*

*Under the Companies Act, 2013, the National Company Law Tribunal (NCLT) has jurisdiction over the winding up and liquidation of companies. Nclat has been vested with the appellate jurisdiction over NCLT. Similarly, the Limited Liability Partnership Act, 2008 also confers jurisdiction to NCLT for dissolution and winding up of limited liability partnerships, while appellate jurisdiction is vested with Nclat. The Committee recommends continuing with this existing institutional arrangement. NCLT should have jurisdiction over adjudications arising out of firm insolvency and liquidation, while Nclat will have appellate jurisdiction on the same.*"

62. It is important that the NCLT adjudicates upon all issues connected with the insolvency resolution process as fragmentation of adjudication across civil courts and other forums will derail the timelines under the IBC and defeat the core legislative purpose of speedy resolution. But for this, parties would carve out issues, bypass the NCLT, and paralyse the unified mechanism contemplated under the IBC. A broad interpretation of the said provision is necessary to prevent parties, particularly the corporate debtor, from instituting against a given financial creditor, proceedings before different forums under a variety of laws, making the timely insolvency resolution a distant mirage.

63. Importantly, the Supreme Court in ***GUVNL*** provided an important caveat that a Court must consider while recognising a given power, or otherwise acting under, Section 60(5)(c) of the Code. It being, the requirement of a specific textual hook under the IBC, as a condition pre-requisite for the NCLT to exercise its jurisdiction. The material portion of the judgement reads as under:

> "***173.*** *Although various provisions of IBC indicate that the objective of the statute is to ensure that the corporate debtor remains a "going concern", there must be a specific textual hook for NCLT to exercise its jurisdiction. NCLT cannot derive its powers from the "spirit" or "object" of IBC. Section 60(5)(c) of IBC vests NCLT with wide powers since it can entertain and dispose of any question of fact or law arising out or in relation to the insolvency resolution process. We hasten to add, however, that NCLT's residuary jurisdiction, though wide, is nonetheless defined by the text of IBC. Specifically, NCLT cannot do what IBC consciously did not provide it the power to do.*"
>
> (Emphasis Supplied)

64. There are two approaches which may then be taken to sections conferring residuary jurisdictions — *first*, it can recognise powers that are independent from those provided for under a substantive section, but which have a meaningful and substantial connection with the text of a given provision; or *second*, it can recognise powers which are incidental and ancillary to a given provision i.e., a power which is to be read in, in order to meaningfully exercise a broader power explicitly provided for under a given section of a statute.

65. Para. 173 of ***GUVNL***, as reproduced above, identifies two important facets of a power which may be recognised under Section 60(5)(c) them being—the power must have a textual hook, in other words the power is defined by the text of the IBC; and that the NCLT cannot do what the IBC

did not consciously provide it the powers to do. Cumulatively, both these aspects point towards the Court leaning towards the second construction of residuary provisions.

66. Generally, on the interpretation of Section 60(5)(c), the following conclusions may safely be drawn from the discussion above—*first*, under Section 60(5)(c) of the IBC, the NCLT has the jurisdiction to adjudicate upon any dispute having a nexus with the insolvency of the corporate debtor; and *second*, the power so recognised under Section 60(5)(c) must be incidental and ancillary to an explicitly provided provision under the IBC.

67. Specifically, in the context of Sections 65 and 75 of the IBC, the residuary Section 60(5)(c) can act as bridge, giving the NCLT, the requisite powers to adjudicate upon—*first*, whether the initiation of CIRP has occurred fraudulently, with a malicious intent or for any other purpose apart from the resolution of insolvency; and *second*, whether the information so furnished by a financial creditor is false, which would naturally include questions pertaining to the validity of any document on the basis of debt is sought to be proven, including assignment deeds if any.

68. Importantly, while Sections 65 and 75 are punitive in nature, the effect of positive findings on issues adjudicated under these provisions, may extend beyond the mere imposition of penalties. If for instance initiation of CIRP has been found to be fraudulent, and on the basis of a forged assignment deed, while penalty would naturally be imposed; broader consequences may also ensue pertaining to the very continuation of the CIRP. It would, without doubt, be absurd if the NCLT, after reaching the

conclusion that the initiation of the corporate insolvency process has been, *inter alia*, fraudulent, or that the very basis on which debt was sought to be proven is in fact forged/fraudulent, insists on continuing with the CIRP.

**D. NCLT RULES, 2016**

69. The NCLT Rules, 2016 may now be considered.

70. The constitution of the NCLT was provided for under Section 408 of the Companies Act, 2013 which reads as under:

> "***408. Constitution of National Company Law Tribunal.***
> *The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act* ***or any other law for the time being in force***."
>
> (Emphasis supplied)

71. A bare perusal of the afore-noted provision would reveal that the NCLT is empowered to exercise and discharge such powers which are conferred not merely by the Companies Act, 2013 but also any other law, including the IBC. The Supreme Court further noted the same in ***GUVNL***, the material portion of which reads as under:

> *"45. Sub-section (1) of Section 60 provides NCLT with territorial jurisdiction over the place where the registered office of the corporate person is located. NCLT shall be the adjudicating authority "in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors". NCLT has been constituted under Section 408 of the Companies Act, 2013 "to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force" ["408. Constitution of National Company Law Tribunal.—The Central Government shall, by notification, constitute, with effect from such date*

*as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force."] .*
*46. NCLT owes its existence to statute. The powers and functions which it exercises are those which are conferred upon it by law, in this case, IBC."*

72. The NCLT Rules, 2016 which are relevant for the present discussion read as under:

"***39. Production of Evidence by Affidavit.***
*(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.*
*(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary in the interest of natural justice, it may order cross-examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by the Tribunal, on an application moved by any party.*
*(3) Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.*

***43. Power of the Bench to call for further information or evidence.***
*(1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-*
*(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or*
*(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.*
*(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.*

***47. Oath to the witness.***
*The Bench Officer or the Court Officer, as the case may be, shall administer the following oath to a witness:*
*"I do swear in the name of God / solemnly affirm that what I shall state shall be the truth and nothing but the truth."*

***51. Power to regulate the procedure.***
*The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.*

***52. Summoning of witnesses and recording Evidence.***
*(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.*
*(2) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.*

***131. Application for production of documents, form of summons.***
*(1) Except otherwise provided hereunder, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*
*(2) An application for summons to produce documents shall be on plain paper setting out the document the production of which is sought, the relevancy of the document and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof.*
*(3) A summons for production of documents in the custody of a public officer other than a court shall be in Form NCLT-15 and shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Tribunal.*

***132. Suo motu summoning of documents.***
*Notwithstanding anything contained in these rules, the Tribunal may, suo motu, issue summons for production of public document or other documents in the custody of a public officer.*

## *PART XVIII*
## *EXAMINATION OF WITNESSES AND ISSUE OF COMMISSIONS*

***135. Procedure for examination of witnesses, issue of Commissions.***
*The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.*

***136. Examination in camera.***
*The Tribunal may in its discretion examine any witness in camera.*

***137. Form of oath or affirmation to witness.***
*Oath shall be administered to a witness in the following form: "I do swear in the name of God/solemnly affirm that what I shall state shall be truth, the whole truth and nothing but the truth".*

***138. Form of oath or affirmation to interpreter.***
*Oath or solemn affirmation shall be administered to the interpreter in the following form before the Bench Officer or the Court Officer as the case may be, as taken for examining a witness:*

> "*I do swear in the name of God/solemnly affirm that I will faithfully and truly interpret and explain all questions put to and evidence given by witness and translate correctly and accurately all documents given to me for translation.*"

***139. Officer to administer oath.***
*The oath or affirmation shall be administered by the Court Master.*

***140. Form recording of deposition.***
*(1) The Deposition of a witness shall be recorded in Form NCLT-16.*
*(2) Each page of the deposition shall be initiated by the Members constituting the Bench.*
*(3) Corrections, if any, pointed out by the witness may, if the Bench is satisfied, be carried out and duly initialled. If not satisfied, a note to the effect be appended at the bottom of the deposition.*

***141. Numbering of witnesses.***
*The witnesses called by the applicant or petitioner shall be numbered consecutively as PWs and those by the respondents as RWs.*

***142. Grant of discharge certificate.***
*Witness discharged by the Tribunal may be granted a certificate in Form NCLT-17 by the Registrar.*

***143. Witness allowance payable.***

*(1) Where the Tribunal issues summons to a Government servant to give evidence or to produce documents, the person so summoned may draw from the Government travelling and daily allowances admissible to him as per rules.*
*(2) Where there is no provision for payment of Travelling Allowances and Daily Allowance by the employer to the person summoned to give evidence or to produce documents, he shall be entitled to be paid as allowance, (a sum in the opinion of the Registrar sufficient to defray the travelling and other expenses), having regard to the status and position of the witness.*
*(3) The party applying for the summons shall deposit with the Registrar the amount of allowance as estimated by the Registrar well before the summons is issued.*
*(4) If the witness is summoned as a court witness, the amount estimated by the Registrar shall be paid as per the directions of the Tribunal.*
*(5) The aforesaid provisions would govern the payment of batta to the interpreter as well.*

***144. Records to be furnished to the Commissioner.***
*(1) The Commissioner shall be furnished by the Tribunal with such of the records of the case as the Tribunal considers necessary for executing the Commission.*
*(2) Original documents shall be furnished only if a copy does not serve the purpose or cannot be obtained without unreasonable expense or delay and delivery and return of records shall be made under proper acknowledgement.*

***145. Taking of specimen handwriting, signature etc.***
*The Commissioner may, if necessary, take specimen of the handwriting, signature or fingerprint of any witness examined before him.*"

73. The rules as reproduced above evince a comprehensive scheme to enable the NCLT to undertake a full-fledged fact-finding exercise, including directing parties to lead evidence on affidavit, summoning and examining witnesses on oath, ordering their cross-examination where necessary, compelling discovery and production of documents, and regulating its own procedure in accordance with principles of natural justice and equity.

74. It is important, however, to clarify that it is the substantive provisions in the Code that allow tapping into the NCLT Rules, 2016. It is through the Sections in the IBC that the underlying procedural powers can be accessed. If there was no provision under the IBC equipping a certain adjudication to be done, the rules cannot be utilised to undertake the said exercise.

75. In the context of Sections 65, 75 and 60(5)(c), it is clear that the NCLT Rules, 2016 as have been extracted above, can be invoked in order to delve into disputed questions of facts, which warrant a thorough examination of evidence. The provisions under the IBC and the NCLT Rules, 2016 cumulatively, leave no manner of doubt that the NCLT is institutionally equipped, both in terms of jurisdiction and procedure, to adjudicate complex disputes involving allegations of fraud, forgery, fabrication of documents, collusion and other serious factual controversies that may arise in connection with the initiation of CIRP.

## VIII. ANALYSING THE PLAINTIFF'S SUBMISSIONS

### A. RELIANCE ON THE LAW DECLARED UNDER THE SARFAESI ACT, 2002 AND THE SEBI ACT, 1996

76. The judgements relied upon by the plaintiff may now be considered in a bit more detail. To argue that the jurisdiction of a civil court is not barred, reliance was placed on ***Central Bank of India v. Prabha Jain*** (supra), ***Punjab & Sind Bank v. Frontline Corpn. Ltd.*** (supra), ***SEBI v. Rajkumar Nagpal*** and ***Tata Consultancy Services Ltd. v. S.K. Wheels*** (supra).

77. In ***Central Bank of India v. Prabha Jain*** (supra) the Supreme Court declared that the issues raised in the plaint therein were not barred by Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter "**SARFAESI Act**"). Before proceeding further, the said provision may be reproduced for ease of analysis:

> "***34. Civil court not to have jurisdiction.—****No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is* ***empowered by or under this Act to determine*** *and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).*"
>
> (Emphasis Supplied)

78. As has been noted at paras. 32 and 33 of this judgement, the scope of provisions that oust jurisdiction of courts/other authorities is dependent upon the scope of the statute under which such a provision finds its place. Therefore, it is owing to the SARFAESI Act not empowering the Debt Recovery Tribunal ('**DRT'**) to adjudicate upon the issues sought to be agitated by the plaintiff therein that the ultimate finding in ***Central Bank of India v. Prabha Jain*** rests. It has been noted as such at paras. 12-17 of the said judgement which read as under:

> *"**12.** Section 34 of the SARFAESI Act provides that no civil court shall have jurisdiction to entertain any suit or proceeding "in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine…" Hence, the civil court's jurisdiction is only ousted in respect of those matters which the Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under the SARFAESI Act to determine. The SARFAESI Act confers certain powers upon the Debts Recovery Tribunal by virtue of the following sections : Sections 5(5), 13(10), 17 and 19. Except for Section 17, as*

*such none of the other sections referred to above are relevant for the purposes of this matter.*

***13.*** *Section 17 of the SARFAESI Act is as follows:*

***13.1.*** *Under Section 17(1) of the Act,*

*"**17. Application against measures to recover secured debts**.—(1) Any person (including borrower), **aggrieved by any of the measures referred to in sub-section (4) of Section 13** taken by the secured creditor or his authorised officer under this Chapter, may make an application … to the Debts Recovery Tribunal…."*

*(emphasis supplied)*

***13.2.*** *From Sections 17(2), (3) and (4) of the SARFAESI Act, it is clear that the Tribunal has the power to examine whether*

*"**17. (2)** … **any of the measures referred to in sub-section (4) of Section 13** taken by the secured creditor … **are in accordance with the provisions of this Act and the rules made thereunder.**"*

*(emphasis supplied)*

***13.3.*** *The Tribunal has the power to pass consequential orders as provided in Section 17(3).*

***14.*** *From Section 17, it is clear that it is only the Tribunal that has the jurisdiction to determine whether "**any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor**" are in accordance with the Act or Rules thereunder.*

***15.*** *The plaintiff in her suit has prayed for 3 reliefs:*

*(a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati.*

*(b) The second relief is in relation to a mortgage deed executed by Pramod Jain in favour of the Bank.*

*(c) The third relief is for being handed over the possession of the suit property.*

***16.*** *So far as the first and second reliefs are concerned, **they are not in relation to any measures taken by the secured creditor under Section 13(4) of the SARFAESI Act.** Rather, they are reliefs in relation to the actions taken prior to the secured creditor stepping into the picture and well prior to the secured creditor invoking the provisions of the SARFAESI Act.*

***17.*** *Therefore, the Tribunal would have no jurisdiction under Section 17 of the SARFAESI Act to grant the declarations sought in the first and the second reliefs.*"

(Emphasis in original)

79. Further, similar to para. 25 of ***Central Bank of India v. Prabha Jain*** (supra), para. 22 of ***Punjab and Sind Bank v. Frontline Corpn. Ltd.*** (supra) relies upon the pronouncement of the Supreme Court in ***Mardia Chemicals***

***Ltd. v. Union of India***,[51] para. 51 of which deals with allegations of fraud being a carve out to Section 34 of the SARFAESI Act, and the same being in consonance with the law on English mortgages.

80. Both these judgements, however, do not apply, at all, to the instant case as — *first*, NCLT's scope of adjudication under the IBC is significantly broader than that of the DRT under the SARFAESI Act; *second*, the IBC provides for specific provisions i.e., Sections 65 and 75 which deal with fraud, forgery, false information and malicious initiation; and *third*, the scope of interference under English mortgages is not in issue in the instant case.

81. The reliance on ***SEBI v. Rajkumar Nagpal*** (supra) is equally misplaced. The Supreme Court in the said case found that the court had jurisdiction to entertain the *lis* therein, which pertained to a challenge to an RBI Circular and that neither Section 15-Y of the SEBI Act, 1992 nor Section 420 of the Companies Act, 2013 applied. The material portion of the judgement reads as under:

> ***(i) There is no bar to the civil court's jurisdiction***
> *79. As noted above, the suit before the Single Judge of the Bombay High Court (on the original side) sought the setting aside of the RBI Circular as illegal and ultra vires. An injunction restraining RCFL, Bank of Baroda, and RBI from implementing the RBI Circular was also sought.*
>
> *80. Section 15-Y of the SEBI Act stipulates that no civil court shall have the jurisdiction to entertain any suit in respect of any matter which an adjudicating officer appointed under the SEBI Act is empowered to determine. Section 15-I of the SEBI Act provides that an adjudicating officer may be appointed to adjudge cases under Sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-EA, 15-EB, 15-F, 15-G, 15-H, 15-HA, 15-HB.*

[51] (2004) 4 SCC 311.

> *None of the sections mentioned in Section 15-I of the SEBI Act would confer jurisdiction on the adjudicating officer to grant the relief sought by the plaintiffs in the first instance. Hence, the bar in Section 15-Y would not operate as against the suit in the present case.*
>
> *81. Similarly, Section 430 of the Companies Act provides that no civil court shall have the jurisdiction to entertain any suit in respect of any matter which the National Company Law Tribunal or the National Company Law Appellate Tribunal is empowered to determine. Nothing in the Companies Act, 2013 or any other law for the time being in force vests either the National Company Law Tribunal or the National Company Law Appellate Tribunal with the jurisdiction to adjudicate upon a challenge to the RBI Circular. Hence, the bar in Section 430 is not attracted.*
>
> (Emphasis Supplied)

82. The reliance placed by the plaintiff on paras. 28 and 29 of ***Tata Consultancy Services Ltd. v. SK Wheels Pvt. Ltd.*** (supra), which holds that Section 60(5)(c) of the IBC can be attracted only for a dispute connected with the insolvency of the corporate debtor also does not support its stance. In the instant case, the plaintiff's grievance is the filing of the Section 7 Petition by defendant no. 1. There is not an iota of doubt that the instant dispute has arisen in connection with the insolvency of the corporate debtor.

## B. SCOPE OF SECTION 7 AND ITS EFFECT ON THE OUSTER PROVISIONS

83. The next argument of the learned counsel which falls for the consideration of the Court is that there is a limited scope of scrutiny which the NCLT can undertake under Section 7 of the IBC. Mr. Mehta contends that while adjudicating an admission petition, the NCLT cannot adjudicate upon forgery, fraud, or *mala fide* initiation.

84. There is no quarrel with the position of law submitted by the learned counsel. The law as laid down by the Supreme Court in ***Innoventive Industries Limited v. ICICI Bank and Anr.*** ("***Innoventive Industries***") through Hon'ble Mr. Justice R.F. Nariman (as his Lordship then was) still holds the field. A pre-existing dispute pertaining to the validity of a financial debt, cannot be gone into by the NCLT while adjudicating upon a Section 7 application. Upon being satisfied that a default has occurred, irrespective of whether the debt in relation to which the default is claimed is disputed, there is no option left but to admit the Section 7 application. Para. 30 of ***Innoventive Industries*** reads as under:

> *"**30.** On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.*

85. The NCLAT in ***Vijay Kumar Singhania v. Bank of Baroda and Anr.***, followed ***Innoventive Industries*** and the Appellate Tribunal's decision was affirmed by the Supreme Court in Civil Appeal No. 9299 of 2024. Thereafter, in ***M. Suresh Kumar Reddy*** the Supreme Court re-iterated ***Innoventive Industries*** as being good law, and held that the only ground for rejection of a Section 7 application is that the debt has not become due and payable. The material parts of ***M. Suresh Kumar Reddy*** read as under:

> "*11. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. "Default" is defined under sub-section*

*(12) of Section 3 IBC which reads thus:*

> *"3. Definitions.—In this Code, unless the context otherwise requires—*
> ***
> *(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;"*

*Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a corporate debtor. In such a case, an order of admission under Section 7 IBC must follow. If NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.*

*XXX XXX XXX*

*14. Thus, it was clarified by the order in review that the decision in Vidarbha Industries [Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352 : (2022) 4 SCC (Civ) 329] was in the setting of facts of the case before this Court. Hence, the decision in Vidarbha Industries [Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352 : (2022) 4 SCC (Civ) 329] cannot be read and understood as taking a view which is contrary to the view taken in Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] and E.S. Krishnamurthy [E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161 : (2022) 2 SCC (Civ) 129] . The view taken in Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356] still holds good.*"

(Emphasis Supplied)

86. The conclusion which this Court has reached is not that under Section 7 of the IBC, the NCLT has powers to adjudicate upon fraud, forgery or the validity of an assignment deed but that the said powers are found in Sections 65, 75, 60(5)(c) of the IBC read with the relevant NCLT Rules, 2016. It is important to stress that the application of the ouster clauses under Sections 63 and 231 of the Code is not contingent upon the stage at which the NCLT is to adjudicate a given matter. What is material is that adjudication ultimately happens and jurisdiction is found to be vested with the tribunal to answer questions which may be raised in a given *lis*. The mere fact that a

particular issue is to adjudicated upon at a subsequent stage, would not vest a right in favour of party, to seek its adjudication, and seek reliefs in relation to it, before a different forum, and thereby escape the specialised statutory scheme.

87. The legislature in its wisdom, while designing the IBC, thought it fit to provide, as the text of Section 7 reveals, a limited scope of scrutiny at the stage of admission, but despite the same, provide Sections 65 and 75 to deter fraudulent or *male fide* initiation of CIRP. An argument that it is unfair for a given corporate debtor to await admission and only, thereafter, agitate its detailed factual propositions pertaining to forgery and fraud is a submission which the plaintiff could have raised to challenge the *vires* of the legislation. This purported unfairness could not vest jurisdiction in a civil court when the same is barred under Sections 63 and 231 of the Code. The observations of the Supreme Court in ***Radha Exports (India) Pvt. Ltd v. K.P. Jayaram & Anr.***, relied upon by the plaintiff, were again made in the context of a Section 7 application.

88. It is, however, important to clarify that the Court is not making any judicial comment pertaining to the modified scope of scrutiny, if any, which the NCLT may have to undertake if applications under Section 7 and Section 65 of the IBC are found to be simultaneously pending before it. The said question is left open for a future Court to determine. This Court also at this stage refrains from rendering any guidance as to how pending applications under Sections 7 and 65 of the IBC are to be dealt with. The same is completely within the domain of the NCLT, who shall deal with the same in accordance with the applicable law.

89. A connected argument of the learned counsel for the plaintiff is that the right asserted by the plaintiff in the instant case is neither created by the IBC nor is contingent on its adjudicatory framework rather the said right pre-exists under the common law, and therefore the civil court will have jurisdiction. In support of this argument the settled principle of *Ubi Jus Ibi Remedium* is also relied upon.

90. The question to be asked is—what really is this right sought to be agitated? Stripped from verbosity, the purported right is to insist that an adjudicatory body enter into questions of fraud, forgery, validity of an assignment deed after a Section 7 petition has been filed, but before the same is ultimately decided. The said right *firstly* does not really arise independent of the plaintiff's status as a corporate debtor under the IBC; and *secondly*, the right as formulated, inheres an express disregard of the prevailing law. The enforcement of the so-called right would require an authority to act contrary to the IBC, which is the applicable law for matters relating to insolvency, and further provides a carefully designed judicial framework. There cannot in the considered opinion of this Court be a common law right which inherently lies at the teeth of a statutory scheme. A claim that demands disobedience of the law is not a legal right but mere obstinacy.

91. The judgement of the Privy Council in ***Sian Participation Corp. v. Halimeda International*** (supra) is completely irrelevant to the discussion under the IBC. A cursory glance at the issues framed in the appeal before the Privy Council would reveal its inapplicability, they read as under:

"***3. The Issues***

*26. The agreed issues for determination on the appeal are:*

*(1) As a matter of BVI law, what is the correct test for the court to apply to the exercise of its discretion to make an order for the liquidation of a company where the debt on which the application is based is subject to an arbitration agreement and is said to be disputed and/or subject to a cross-claim (notwithstanding that dispute is not on genuine and substantial grounds)?*

*(2) Was the relevant test met or should the matter be remitted to determine whether this was the case?*

*(3) Did Wallbank J conclude that the court should refuse to consider the impact of the arbitration agreement because it had been raised too late and, if he did so find, was he wrong to do so?*

*(4) Does the appeal fall within section 3(1)(a) of the 1967 Order? In particular, does "the appeal [involve] directly or indirectly a claim to or question respecting property or a right of the value of £300 sterling or upwards"?*"

92. Is there, under the IBC, any discretion to make an order for the admission of CIRP where the debt on which the application is based is said to be disputed? The answer, as per the judgements in ***Innoventive Industries*** and ***M. Suresh Kumar Reddy***, both of which have been cited in the compilation of judgements provided by the plaintiff, is in the negative. Resultantly, the said decision of the Privy Council is not material to the present discussion.

## C. INAPPLICABILITY OF *MSA GLOBAL*

93. Lastly, much reliance has also been placed by the plaintiff on the decision of this Court in ***Engineering Projects (India) Limited v. MSA Global LLC***, subsequently affirmed by the Division Bench of this Court in

***MSA Global LLC Oman v. Engineering Projects India Ltd.***[52] by the plaintiff, to argue that the civil courts are not powerless when vexatious, oppressive, and *mala fide* proceedings are in operation. The Court has carefully considered the said decision and finds that there is fundamental distinction between the present case and the facts of ***MSA Global***. In the case of ***MSA Global***, it was found that the civil court did in fact have jurisdiction to grant anti-arbitration injunctions, however, in the instant case the suit cannot even be entertained owing to the statutory bar contained under the IBC.

94. Further in ***MSA Global***, a suit was entertained and an anti-arbitration injunction was granted where the proceedings of arbitration were found to be oppressive and vexatious. The decision was not against the continuation of arbitration proceedings as such but the manner in which the same were conducted. To clarify, one of the members of the arbitral tribunal therein, was guilty of non-disclosure, and therefore the constitution of the tribunal itself was rendered ineffective. The Court in ***MSA Global***, did not *per se* interdict the arbitration proceedings, the guilt of the member of the Tribunal in that case was noted and admitted. In the instant case, the Court cannot jump to the conclusion that the grievance of the plaintiff herein will not be adjudicated, or the NCLT is incapable of dealing with the said grievance. The Division Bench while affirming ***MSA Global***, has also, recognised, at para. 133, that the case of ***MSA Global*** was the rarest of rare ones.

95. Thus, from the discussion above, it can be concluded that under Sections 65, 75, 60(5)(c) read with the relevant NCLT Rules, 2016 the

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adjudicating authority i.e., the NCLT has powers to adjudicate upon issues concerning fraud, forgery, collusion as also the validity of the documents on the basis of which debt is sought to be proven by a given financial creditor. It is further clear that to undertake the aforesaid adjudication, the NCLT can, *inter alia*, delve into seriously disputed questions of fact, and examine, record, and evaluate evidence in the form and manner it considers necessary.

96. On the anvil of the above-discussed law, the case of the plaintiff/applicant may now be considered.

## IX. ANALYSING THE PLAINT

97. As has been observed above, a cumulative reading of Sections 63 and 238 of the IBC read with Sections 60(5)(c), 65, 75 of the Code would reveal that a dispute, issue or question which is to be determined/entertained by the NCLT would fall outside the purview of the civil courts. To that extent, such a dispute would attract the rigours Order VII Rule 11(d) of the CPC and resultantly the plaint would be barred.

98. To appreciate the suit of the plaintiff, the prayer clause in the plaint may be examined. The same is reproduced as under:

> "*In view of the facts and circumstances set out hereinabove, it is most respectfully prayed that this Hon'ble Court may be pleased to:*
>
> *a. Pass a decree of declaration that the loan advanced to the Plaintiff under a Loan Agreement dated 31.10.2006, is fully discharged, and that no amounts are due and payable under the said Agreement and or any other documents by the Plaintiff to any of the Defendant Nos. 1 and 2; and*
> *b. Pass a decree of declaration that the Business Transfer Agreement dated 06.03.2020 (Doc-15), stated to be entered into between Kunjbihari Developers Private Limited (now known as Vihaan 43*

*Realty Private Limited) (D-1), CLE Private Limited (D-2) and Summit Ceminfra Private Limited (D-3), is null and void-ab-initio and not enforceable and not binding upon the Plaintiff; and*

*c. Pass a decree of declaration that the Letter dated 20.03.2020 (Doc. 16) and letters dated 05.10.2023 (Doc. 17), were never issued by Defendant No. 2 (CLE), Defendant No. 1 (Vihaan) to the Plaintiff and were never received by the Plaintiff; and*

*d. Pass a decree of Mandatory Injunction directing the Defendant No. 1 to file a true and correct statement of their account disclosing:*

*(i.) the dates and amounts of disbursal on the said Loan Agreement; and*

*(ii.) the dates and amounts of repayment under the said Loan Agreement; and*

*(iii.) the statement of account showing details and giving particulars of debit entries, and if debit entry relates to interest, then setting out also the rate of, and the period for which, the interest has been charged; and*

*(iv.) the details of any other charges claimed in the said loan account; and*

*e. Pass a decree directing the reconciliation and rendition of accounts of the Defendant No. 1 to 5 through an independent and reputable firm of Chartered Accountants, and pending such reconciliation and rendition of accounts and the other reliefs, pass a decree of Mandatory Injunction restraining the Defendant No. 1 from in any manner enforcing the said Loan Agreement or the purported Business Transfer Agreement dated 06.03.2020; and*

*f. Pass such other or further orders as this Hon'ble Court may deem just, fit, and proper in the facts and circumstances of the case and in the interest of justice.*"

99. The grievance of the plaintiff, at its root, stems from the filing of the Section 7 Petition, before the NCLT, by the defendant no. 1. Defendant no. 1 has, both before this Court and before the NCLT, relied upon the BTA for proving the debt it holds *qua* the plaintiff. Under the BTA, the defendant no. 1 claims, the debt which defendant no. 2 had held, on the strength of the said Loan Agreement, stood assigned in its favour, thereby entitling it to institute proceedings under Section 7 of the IBC.

100. Per contra, the case of the plaintiff is that defendant no. 1 does not hold any debt *qua* the plaintiff, which could entitle it to institute the Section 7 petition. The plaintiff has pleaded as such in paras. 17 and 21 of the plaint which reads as under:

> "*17. The cause of action for filing the present suit arose when Vihaan (D-1) filed a Petition under Section 7 of the IBC before the NCLT, New Delhi i.e., C.P. (IB) No. 389 (PB)/2024 seeking initiation of CIRP, in spite of the fact, that no amount was due and payable to Vihaan or CLE…*
>
> *XXXX XXXX XXXX*
>
> *21. Furthermore, the entire controversy revolves around a loan facility of Rs. 80 Crores and a purported assignment agreement termed as "Business Transfer Agreement" dated 06.03.2020, by virtue of which the Vihaan (D-1) has created an event of default against the Plaintiff in respect of the loan of Rs. 80 Crores. While it is the specific stand of the Plaintiff that no amount, as alleged under the purported "BTA" is due or payable by the Plaintiff to either Defendant No. 1 or 2, since the entire debt stand extinguished and discharged, in pursuance of various payments being made to the Vihaan (D-1) and upon execution of SPA dated 26.02.2024 between Anant Raj and Hallow, wherein CLE (D-2) was a Confirming Party.*"

101. In furtherance of the plaintiff's claim pertaining to the non-existence of debt as against defendant no. 1, the plaintiff has also claimed that the BTA is forged, fraudulent and *non-est* in law; and further that the CIRP under the IBC has been initiated fraudulently.

102. Moreover, consistent with and flowing from its stands, the plaintiff has also contended that the letter dated 20.03.2020, issued by defendant no. 2 to the plaintiff, informing the latter that the loan under the said Loan Agreement stood assigned as per the BTA; and letter dated 15.10.2023, issued by defendant no. 1 to the plaintiff notifying an event of default and

invocation of pledge of shares, have also been claimed as being forged, fraudulent and *non-est* in law.

103. It is, therefore, clear that the primary relief of the plaintiff is the declaration it has sought that the loan advanced to the plaintiff under the said Loan Agreement is fully discharged, no amounts are payable under the same to defendant nos. 1 or 2, and resultantly no debt is held by defendant no. 1. The other reliefs sought by the plaintiff flow from, and are consequent to, this primary relief contained in prayer clause (a) of the plaint.

104. In the instant case, the determination as to whether defendant no. 1 holds debt *qua* the plaintiff under the BTA or the same has been discharged is a question which falls for the determination of the NCLT under the provisions of the IBC. Further, whether the agreement/instrument, on the basis of which the existence of debt is claimed, is fraudulent can also be determined by the NCLT under Sections 65, 75, 60(5)(c) of the IBC read with the relevant NCLT Rules, 2016. The claim of the plaintiff that the defendants have in collusion with each other, initiated the CIRP, can further be adjudicated upon by the tribunal. The question whether the BTA is fabricated or forged is — *first*, a sub-issue or an incidental question, needed to be determined and answered, to decide the broad question of the existence of debt; and *second*, a question capable of adjudication under Section 75 of the Code.

105. It is, therefore, the case that the reliefs prayed for by the plaintiff, and the issues so raised in the plaint, fall within the domain of the NCLT's jurisdiction. The questions which are needed to be answered, for

adjudicating the *lis* in the instant case, are determined by the NCLT as a broad wholistic question, for instance the issue pertaining to the existence of debt; or as a sub-issue needed to determine a broader question, for instance the veracity of the BTA to determine the fraudulent initiation of CIRP.

106. In both the above-cases, the dispute as detailed in the plaint, falls under the jurisdiction of the NCLT, to be determined in accordance with the IBC. Resultantly, the power of a civil court to entertain the present suit is, therefore, statutorily barred.

107. It is also important to further stress upon the true nature of the instant suit. As the plaint itself narrates, the trigger for the present action has been the initiation of proceedings under the specialised statute, namely, the IBC. The plaint, thus, while couching itself in declaratory overtones, in essence, is aimed at getting an anti-tribunal injunction. Reliance may also be placed on para. 50 of ***Frost International Limited v. Milan Developers and Builders Private Limited and Anr.*** (supra), which reads as under:

> *"**50.** On a holistic reading of the plaint and on consideration of the reliefs sought by the plaintiff, we find that the said reliefs are barred by law inasmuch as no, the plaintiff can (sic cannot) be permitted to seek relief in a suit which would frustrate the defendants from initiating a prosecution against the plaintiff or seeking any other remedy available in law. In fact, the attempt made by the plaintiff to seek such a declaratory relief is, in substance, to seek a relief of injunction against the defendants, particularly Defendant 1, but framed it in the nature of a declaratory relief. In other words, the plaintiff has sought an injunction against Defendant 1 from seeking remedies in law on account of the cheque issued by the plaintiff for a sum of Rs 56 lakhs being dishonoured."*

Essentially, in the instant case, by clever and skilful drafting, a sub-issue/incidental issue which naturally the tribunal, in this case the NCLT,

was bound to adjudicate upon, is portrayed as being an independent declaratory claim, not capable of being granted and adjudicated by the specialised tribunal.

108. During the course of the hearing, it was also suggested that the present issue is *res integra*, however, upon carefully analysing the law it seems that if at all the present issue has not been directly touched by judicial opinion, it is so because it is not an issue to begin with. Lord MacMillan has loosely been attributed as saying that every case which reaches the court is the fault of the draftsman who could not draft with sufficient clarity and precision. In the instant case, however, it seems that the law is absolutely clear, all authorities appear to be fully aligned with the scheme of the IBC and favouring the common conclusion reached by the Court.

109. It is also apposite to further caution against this new breed of anti-tribunal suits, which are fundamentally premised upon taking away from the powers of a tribunal, established under a specialised statute, manned by technical and judicial members. Civil courts ought to, when such a claim is raised before them, carefully scrutinise the plaint, strip it from its artificial nomenclature and find the real substance of the relief being sought. If, upon such scrutiny, it emerges that the suit is an attempt to interdict, stall, or pre-empt proceedings before a statutory tribunal, or to secure a determination on an issue which squarely falls within the jurisdiction of such tribunal, the civil court must decline to entertain the action at the threshold.

110. To permit otherwise would be to allow litigants to achieve indirectly what they are barred from doing directly, thereby rendering otiose the

legislative intent behind the creation of specialised fora. The discipline of jurisdiction demands that civil courts exercise restraint and deference in such matters, lest the carefully calibrated statutory architecture be dismantled by artful pleading.

111. In the considered view of this Court, the present plaint is a textbook example of a proceeding which, though clothed as a civil declaratory action, is in reality an impermissible collateral attack on the jurisdiction and functioning of the NCLT under the IBC. Entertaining such a suit would amount to judicially endorsing forum shopping and procedural circumvention.

112. To emphasise upon the nature of the instant case, a few dates and events may again be looked into:

112.1. The Section 7 Petition for initiating CIRP was filed by the defendant no. 1 before the NCLT on 02.07.2024;

112.2. The plaintiff/corporate debtor, thereafter, filed I.A. No. 1012/2025 before the NCLT under Section 60(5) read with Section 65 of the IBC on 21.02.2025, to which a reply was filed by the defendant no. 1 on 04.06.2025;

112.3. While the Section 7 Petition and the plaintiff's I.A. No. 1012/2025 was pending, on 07.08.2025 the present suit came to be filed and a plea of urgency was raised, warranting this Court to allow the plaintiff's I.A. 19371/2025 seeking exemption from mandatory

pre-institution mediation under Section 12A of the Commercial Courts Act, 2015;

112.4. Upon pleadings being completed, the parties were heard at length on 09.10.2025, 06.11.2025 and 20.11.2025.

113. A judgement compilation of 530 pages was submitted by the plaintiff, and another set of loose judgements roughly running into 146 pages was also tendered. A note containing "*written arguments on behalf of the plaintiff*" with annexures, was put before the court, and another "*supplemental note of arguments*" was also submitted for the Court's consumption. Certainly, a convenience compilation was also given by the plaintiff to this Court. The defendant no. 1, submitted its "*written submissions*", "*brief outline submissions*", and a "*short note*", along with a two-volume judgement compilation containing 775 pages. Of course, there were also additional loose judgements, as also documents, tendered to this Court by defendant no. 1. Ultimately, the record for adjudicating the interlocutory applications ran into 1000s of pages for the Court to consider. The learned counsel have undoubtedly rendered assistance, more than perhaps what was really necessary, in this particular case.

114. The state of the pendency of cases has been dwelled upon too many times by this Court, as also other institutions, it is thus not appropriate to again re-agitate, in detail the state of our judiciary. It would suffice to state that litigants are awaiting justice, and Courts, naturally operate under limitations of, *inter alia*, time, resources, and persons. It must be candidly stated that to hear this case, which on the face of it should never have been

filed, another matter had to be adjourned. Some other litigant was forced to delay his relief because the plaintiff/corporate debtor wanted to be heard on an urgent basis.

115. A substantial time was spent hearing the case, studying the record, scrutinising the authorities relied upon by the parties, and rendering this judgement. This time could have been spent redressing the grievance of a *bona fide* litigant coming to this Court to seek justice. Allowing the present suit to be simply dismissed would be deeply unfair to the ordinary litigant who was forced to delay his day in Court.

116. In the considered opinion of the Court, it has now become necessary to come down heavily on luxury litigation and use costs as a means to filter out superfluous litigation. It is true that, normally, judicial authorities refrain from imposing costs, but under the facts of the present case, to establish a certain degree of deterrence, costs quantified to the tune of Rs. 2,00,000 are directed to be deposited by the plaintiff with the Delhi State Legal Services Authority ('DSLSA') (A/c No. 18580110053263, UCO Bank, Branch : Rouse Avenue, IFSC : UCBA0003364) within a period of four weeks from today.

117. The amount so deposited shall be utilized by the DSLSA for providing counselling/psychological support to the victims of offences under the Protection of Children from Sexual Offences Act, 2012.

**X. ORDER**

118. The I.A. 22971/2025, filed by the defendant no. 1, under Order VII Rule 11 of the CPC is allowed. The plaint is rejected. Pending applications if any, stand disposed of.

119. Nothing expressed herein shall be construed as an expression on the merits of the claims of the respective parties *qua* debt and allied issues.

**PURUSHAINDRA KUMAR KAURAV, J**

**JANUARY 05, 2026**
*P*