

ORBIT'S LEGAL PULSE



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Policy Insights



Colonial Roots to Contemporary Trade: The Evolution of Lading Bills

The Indian Bills of Lading Act, 1856 was modelled on the UK Bills of Lading Act, 1855 and codified two core mercantile customs:

- i. when the property in the goods passes by consignment or endorsement, the rights of suit and corresponding liabilities under the contract of carriage pass to the consignee/endorsee; and
- ii. a bill of lading held by a genuine buyer is conclusive

proof of shipment against the carrier, except where the error was caused entirely by someone else's fraud and without the carrier's fault. This principle is set out in the Act's three sections on transfer of rights, stoppage in transit, and the conclusive evidence rule.

On the contrary, the **Bills of Lading Bill, 2025**, introduced in 2024 and passed in 2025 by the Lok Sabha, updates the **169-year-old colonial law** while keeping its core principles intact. It continues to ensure that rights and liabilities transfer with the bill of lading and that genuine holders can rely on it. The Bill also grants the central government the authority to issue directions for implementing the law and places greater emphasis on protecting buyers by holding carriers accountable when goods are not actually loaded, thereby preventing them from denying shipment. Overall, the new law modernizes and strengthens the existing framework to meet the needs of present-day trade and regulation.

In simple terms, under the earlier 1856 Act, when the ownership of goods was transferred through a bill of lading, the new owner got the goods and related rights, but if the goods were never actually loaded on the ship, the ship's crew or carrier could deny responsibility by claiming the goods weren't onboard.

On the other hand the new 2025 Bill, the new owner not only gets the goods and full legal rights, but they can also fully trust the bill of lading, even if the goods were not actually loaded at the time. This means the ship's crew or carrier can no longer deny the validity of the bill and must take responsibility and accountability of the goods which gives greater protection to genuine buyers.

Significance for Banking and Finance

Bills of lading form the foundation of trade finance as they serve three key functions:

1. **Security:** Allowing banks to take effective security over goods.
2. **Negotiable instruments:** Transferable by endorsement and delivery, enabling discounting and secondary market liquidity.

Clear statutory confirmation that rights and liabilities pass with the new Bill, 2025 and that a bona fide holder can conclusively rely on the representation of shipment, reduces documentary risk, minimizes fraud disputes, and encourages banks to finance shipments.

This ultimately lowers transaction costs and working capital expenses for exporters and importers.

The new Bill, 2025 provides modernized framework, together with government rule-making powers, also promotes standardization, supervisory clarity, and better alignment with banking practices and digital processes, providing greater certainty for lenders, insurers, and capital market participants involved in trade risk.

RBI Bars Pre-Payment or Foreclosure Fees to Individual Borrower

Reserve Bank of India (RBI) through its **Directions on Prepayment Charges on Loans, 2025**, has released a thorough framework, particularly for individuals and Micro and Small Enterprises (MSEs) in exercise of its powers conferred by Sections 21, 35A and 56 of the Banking Regulation Act, 1949, Sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934 and Section 30A of the National Housing Bank Act, 1987.



These rules were created in response to research that revealed banks and NBFCs' inconsistent and stringent pre-payment charge policies, which frequently discourage borrowers from moving lenders or making early loan repayments. The RBI has reaffirmed its stance that loans with variable interest rates given to individual borrowers including housing loans must not be subject to prepayment or foreclosure fees. The circulars from 2012 and 2014 were the first to incorporate this with the above directions, the RBI has now laid down a uniform regime effective from January 1, 2026, which will be applicable to all demand loans and term loans sanctioned or renewed from January 1, 2026 and shall bar pre-payment charges in a wide range of scenarios which will include floating-rate loans to individuals and MSEs, which is subject to defined institutional categories and loan limits the new circular also need disclosure of such charges upfront and stops retrospective levies.

With the exception of payment banks, the directive would apply to all commercial banks, cooperative banks, NBFCs, and All India Financial Institutions. Regardless of the loan's source of funding, co-obligants, or full or partial repayment, the exemption is applicable. Dual and special rate loans that have a floating rate at the time of repayment are also included. There is no minimum lock-in time needed, for the loans that are exempt from this regulation, lenders are required to include any prepayment fees in the key facts statement, loan agreement, and sanction letter. Restrictive clauses were being used by some lenders to keep clients from moving to better loan arrangements, so the new regulations are intended to stop these abuses and improve consumer protection.

If a loan is sanctioned/renewed before January 1, 2026 but disbursed thereafter, in that case the Prepayment Directions apply based on the sanction date. A loan sanctioned before January 1, 2026 is outside the scope, even if disbursed later. Conversely, any loan sanctioned on or after January 1, 2026 falls within scope.

Do the provisions also apply to loans with dual or special rates, which are a combination of fixed and floating rates?

If the loan is on a floating rate at the time of prepayment, the Prepayment Directions will apply in the case of a dual rate or special rate, which is a combination of fixed and floating. The lender's board-approved policy will control payments at the time the loan is on a fixed rate. It should be noted that the current HFC Directions forbid HFCs from assessing prepayment penalties on fixed-rate home loans that were repossessed with their own resources.

Special Provision for Cash Credit and Overdraft Facilities:

For cash credit and overdraft facilities, borrowers will not be charged any prepayment fees if they notify the Lender in advance that they don't intend to renew the facility and successfully close the account on the specified due date. Also, if the early repayment is initiated by the lender itself, no prepayment charges can be imposed. Also, if the lender had previously waived such charges, they cannot impose them retroactively at the time of prepayment.

Repealed Provision:

With this new circular coming into picture instructions contained in the circulars mentioned below which is also issued by RBI will be repealed from the effective date of these directions. The following list is given below.

Sr. No	Circular	Date	Subject
1	DBOD.No.Dir.BC.107/13.03.00/2011-12	June 05, 2012.	Home Loans - Levy of Fore-closure Charges/ Pre-payment Penalty
2	RPCD.CO.RCBD.BC.No.84/03.03.01/2011-12	June 15, 2012.	Home Loans - Levy of Fore - Closure Charges/ Pre-payment Penalty
3	RPCD.CO.RRB.BC.No.85/03.05.033/2011-12	June 18, 2012.	Home Loans - Levy of Fore - Closure Charges/ Pre-payment Penalty
4	UBD.BPD.(PCB)CIR.No.41/12.05.001/2011-12	June 26, 2012.	Home Loans - Levy of Fore-closure Charges/ Pre-payment Penalty by Urban Co-operative Banks (UCBs)
5	DBOD.Dir.BC.No.110/13.03.00/2013-14	May 07, 2014.	Levy of Foreclosure Charges/ Pre-payment Penalty on Floating Rate Term Loans
6	UBD.CO.BPD.PCB.Cir.No.64/12.05.001/2013-14	May 26, 2014.	Levy of Foreclosure Charges/ Pre-payment Penalty on Floating Rate Term Loans
7	RPCD.CO.RCBD.RRB.BC.No.102/07.51.013/2013-14	May 27, 2014.	Levy of Foreclosure Charges/ Pre-payment Penalty on Floating Rate Term Loans
8	DBR.Dir.BC.No.08/13.03.00/2019-20	August 02, 2019	Levy of Foreclosure Charges/ Pre-payment Penalty on Floating Rate Term Loans
9	Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021	February 17, 2021	Paragraph 85.7
10	Master Direction - Reserve Bank of India (Non-Banking Financial Company - Scale Based Regulation) Directions, 2023	October 19, 2013	Paragraph 45.7.4



The Banking Laws (Amendment) Act, 2025 – A New Chapter in Financial Governance

In April 2025, the Central Government introduced **The Banking Laws (Amendment) Act, 2025** (“Amendment Act”). The amendment was intended to make multiple changes to the older banking laws. The purpose behind this amendment is to improve the governance standards in the banking sectors; to ensure the protection for depositors and investors; to improve the audit quality in public sector banks, and in respect to the cooperative bank it talks about the increase in the tenure of their directors.

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The Amendment Act represents a significant and much needed reform aiming for the modernization of India’s banking regulatory framework. By aligning the outdated provisions in laws such as the Banking Regulation Act, 1949, the State Bank of India Act, 1955, and the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980 with the Companies Act, 2013. The Amendment Act promotes consistency, transparency, and enhanced governance across both private and public sector banks. Key reforms include strengthening the framework for handling unclaimed financial assets through mandated transfers to the Investor Education and Protection Fund (IEPF), updating audit-related provisions to ensure higher standards and independence, and extending director tenures in cooperative banks in line with constitutional norms. These changes aim to protect depositors and investors, improve public accountability in banking institutions, and ensure that the legislative framework keeps pace with evolving financial and governance practices in the sector.

The key changes of the Amendment Act is captured as below:

<u>The Banking Laws (Amendment) Act, 2025</u>	Banking Regulation Act, 1949 ("1949 Act")	Existing Provision	Amendment
Section 3	Section 5(ne)	Substantial Interest in a company by focusing on the beneficial ownership of shares.	Earlier the threshold limit for the applicability was rupees Five Lakhs, which has now been increased to "rupees two crores"
Section 4	Section 10	Tenure of the Board Director (other than the chairperson and whole-time director)	The tenure of the director has been increased from 8 years to 10 years
Section 5	Section 16 (3)	Provides for the list of directors excluded from the Prohibition stipulated under Section 16(1)	Inclusion of director of a central co-operative bank elected to the Board of the state co-operative bank in which he is a member.
<u>The Banking Laws (Amendment) Act, 2025</u>	State Bank of India Act, 1955 ("1955 Act")	Existing Provision	Amendment
Section 15	Section 38 A	Provides for the provision of transfer of unpaid or unclaimed "dividend"	The term "dividend" replaced by the word "money" The term money has broader meaning as it may include any unpaid or unclaimed amount too.
Section 16	Section 38 A (3), (4) and (5)	Inserted	The legislative intent is to align with the governance over the unclaimed finance of the State Bank of India with the broader regulatory framework as provided under the Companies Act, 2013, more particularly to Sections 124 and 125 which provides for the provision of transfer of unclaimed dividends, interest, shares, and other amounts to the Investor Education and Protection Fund (IEPF).
Section 17	Section 41	Audits	Now the provision of Section 141 of the Companies Act 2013 shall be applicable for auditor's qualification and, remuneration shall be fixed by the State Bank of India.
<u>The Banking Laws (Amendment) Act, 2025</u>	Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 ("1970 Act")	Existing Provision	Amendment
Section 18	Section 10 (2)	Qualification of the auditor and remuneration	The provision of Companies Act, 2013 shall be applicable for the auditor's qualifications. And the remuneration is at the discretion of the "corresponding new bank may fix".
Section 19	Section 10 B	Transfer of unpaid or unclaimed dividend to Unpaid Dividend Account	The term "dividend" replaced by the word "money".
<u>The Banking Laws (Amendment) Act, 2025</u>	Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 ("1980 Act")	Existing Provision	Amendment
Section 20	Section 10 (2)	Qualification of the auditor and remuneration	Now the provision of section 141 of the Companies Act, 2013 shall be applicable for the auditor's qualifications. And the remuneration is at the discretion of the "corresponding new bank may fix".

Emerging Trends



The Guarantee Engine: Strategic Support for Infrastructure Development

On July 17, 2025, the Government of Maharashtra in its progressive step to facilitate sustainable urban infrastructural development approved a loan guarantee in favour of **Mumbai Metropolitan Region Development Authority (MMRDA)** to support the funding for six metro rail projects to create a 300-km metro network by the end of the decade. The corridors will include Metro Lines 5 (Thane-Bhiwandi-Kalyan), 6 (Swami Samarth Nagar-Vikhroli), 9 (Dahisar East-Mira Bhayandar), 10 (Gaimukh-Shivaji Chowk, Mira Road), 11 (Wadala-CSMT), and the 3.3-km underground extension of Metro Line 7 from Gundavali to the international airport via Marol.

Such state backed guarantee, enabled the MMRDA to secure funds from multilateral lending institutions like Asian Development Bank (ADB) and Asian Infrastructure Investment Bank (AIIB) for their projects which are either under construction or in advance stages of planning. This is not the only example where the multilateral institute is lending for the infrastructural development. Recently, the New Development Bank (NDB) has co-financed projects with the ADB, providing \$260 million towards the Mumbai Metro Rail Systems Project.

Furthermore, the Japan International Cooperation Agency (JICA) has been a key lending institution, extending substantial support, including a significant Official Development Assistance (ODA) loan of JPY 144,795 billion (approximately INR 8,200 crore at the time) in March 2017 for the Mumbai Trans-Harbour Link (MTHL) project, India's longest sea bridge, which was inaugurated in January 2024. JICA also committed a loan of JPY 13,235 crore (approximately 57.2% of the total cost) for the Mumbai Metro Line 3 project. These development highlights the use of government backed guarantees in the infrastructure financing, as an instrument to facilitate funding of public infrastructure through multilateral lending institution.

Government-Backed Loan Guarantees - A Legal and Financial Mechanism

A government-backed loan guarantee is a contingent liability wherein the State Government assures repayment of loans, in the event of a default by the borrowing agency. State Governments often provide guarantees on behalf of various PSEs or Cooperative Institutions or Urban Local Bodies, etc. to various banks and financial institutions for financing developmental schemes/projects. Such guarantees are typically provided as per the provision of Article 293 of the Indian Constitution which specifically outlines the conditions under which states can borrow money within India keeping their consolidated fund as security, and such guarantee is also extended through framework of the State Financial Rules, for example in Maharashtra, it is regulated through provisions laid down in the Maharashtra Fiscal Responsibility and Budget Management (FRBM) Act, 2005, and related guidelines issued by the State Finance Department.

Under these frameworks the guarantees are subject to annual limits fixed under the budget estimates of the State. The borrowing party remains primarily liable for repayment, while the State's role is limited to a secondary obligation. The guarantee enables the borrower to secure more favourable loan terms, including lower interest rates and longer repayment periods and mitigates risk and can be raised with no collateral security offerings.

Extent and Implications of the Guarantee

While the exact quantum of the guarantee will be governed by the financing agreements and state budgetary ceilings, typically, state governments cap their exposure to a fixed percentage of their Gross State Domestic Product (GSDP) as per fiscal prudence norms. Moreover, to manage fiscal risks, the Guarantee Redemption Fund (GRF) provisions are often invoked, wherein a corpus is created by the State to cover potential defaults.

Positive Aspects of Such Government Guarantees

From a legal and policy standpoint, such guarantees offer multiple benefits:

a) Credit Enhancement:

It is very evident that the state-backed guarantee significantly strengthens the credit profile of the borrowing party, thus enhance its financial credibility. Such guarantees encourages both domestic and international lenders to extend the credit on more convenient terms, as the guarantee provides an additional layer of security and mitigates the repayment risk in the event of any default.

b) Public-Private Synergy:

It encourages PPPs and hybrid models of funding by reducing risk perception and make the projects more suitable for blended finance arrangement, combining public guarantees with private or institutional investment.

c) Timely Completion:

It also ensures that there is continuous fund flow for essential public infrastructure without delays caused by financing gaps.

d) Cost Efficiency:

With the government's backed guarantee, borrowers can also access loans at concessional interest rates that may not be available otherwise. Thus, it provides access to long-term, low-cost funding, reducing the overall project cost.

e) Reduces Collateral Security:

With the government's backed guarantee, the borrowers have no burden to provide additional collateral securities, thus will give benefits to small and medium-sized enterprises (SMEs).

f) Reduced Fiscal Burden (Potentially):

While government-backed guarantees involve potential liabilities, they can also reduce the immediate fiscal burden on the state government. Instead of directly investing in projects, the government can leverage private capital through guarantees, freeing up public funds for other priorities.

Conclusion

Such government-based loan guarantees reflect fiscal intervention balancing infrastructure growth with financial prudence. These guarantees act as an instrument which enables infrastructure development particularly in those sectors where long gestation period and high capital intensity may caution private and institutional investors. By providing government or to say sovereign assurances of repayment in event of any default these guarantees enhance the creditworthiness of the borrowing parties and unlocking access for them to concessional funding and reduce the overall cost of capital for public infrastructure projects. In other words, it can be said that that these guarantees strike a balance between the developmental imperative and financial discipline. It also allows the government to leverage their credit standing judiciously while ensuring that the contingent liabilities are transparently managed and capped within prudent threshold. It facilitates more engagement with multilateral lenders and encouraging more blended finance structures in order to foster public-private partnerships by mitigating project risks. And since the urbanisation is accelerating aligning with the infrastructure demand, if state backed guarantees are used strategically and reasonably, it can be considered as a powerful tool to drive inclusive, sustainable and resilient economic development.



RERA : Enhancing Transparency and Accountability

For years, buying a home in big Metropolitan cities in India felt like a gamble. Promises were made on glossy brochures and grand ads by the Developers and Builders, but what buyers often got was delay, confusion, and frustration. There was no clear way to hold builders accountable, and legal recourse were very limited against these Builders. That changed with the arrival of the **Real Estate (Regulation and Development) Act, 2016 (RERA)**.

RERA marked a turning point. It brought order to chaos and gave Flat buyers a fighting chance in a system that had long favoured the developers. That is where RERA stepped in.

One of the most powerful features of the act is mandatory registration of Builders as Developer under RERA. Builders cannot advertise or sell projects unless they are officially registered with RERA. Similarly, another quiet revolution RERA has sparked is the professionalization of the sector is that real estate agents are also required to get themselves Registered under RERA too and face real penalties if they mislead clients. That has led to a leaner but more trustworthy marketplace. This alone had weeded out a lot of fly-by-night operators. Under RERA certain key terms like “carpet area” and “built-up area” have also been defined properly, and this eventually closed the loopholes that were often used to mislead the flat buyers about the actual size of the flat/home they were paying for. By covering major issues where there was not any previous check and balances for the builders, on the inception of the RERA, the major shift was that non-serious Builders/Developers, who were not comfortable with the compliances, were weeded out from the field.

But transparency is not just about definitions. RERA requires developers to publicly disclose project details – everything from land titles to layout plans and progress timelines. These details are posted online, so buyers can track where their money is going and how far along construction really is. Crucially, 70% of the funds collected from buyers must be kept in an escrow account only used for that specific project. That’s been a game-changer in preventing financial mismanagement. Dispute resolution is another area where RERA has made a real impact. If buyers feel shortchanged, they can now take their grievances to a dedicated RERA authority, which is supposed to resolve issues within 60 days. It’s not perfect everywhere, but it is a major step forward from the years-long legal battles people used to face.

Still, implementation is not uniform across all states. Some states have embraced it more fully than others. But public access to compliance data, coupled with increasing digital awareness, is helping close that gap. Cities like Mumbai have seen a visible shift projects are more likely to be completed on time, and buyer confidence has rebounded.

In some of the citations of the High Court and Supreme Court, it is established that the interest of the home buyers is protected prima facie and the object of RERA to bring transparency is maintained in the real estate field.

One significant judgment that reinforced the intent behind RERA was the Supreme Court’s ruling in **M/s. Newtech Promoters and Developers Pvt. Limited v. State of UP & Ors** (2021) SCC OnLine SC 104.

The appellant, Newtech Promoters and Developers Pvt. Ltd. (referred to as the Promoter), was engaged in real estate development in Uttar Pradesh.

In this case, several homebuyers filed complaints, citing delays in possession and seeking refunds along with interest. The UP RERA Authority responded by issuing refund orders through single-member benches. The Promoter, instead of following the statutory route of appeal which would have required a pre-deposit chose to challenge these orders by filing writ petitions before the High Court under Articles 226 and 227 of the Constitution. The Promoter’s arguments were twofold:

- That single-member benches lacked the authority to issue refund orders,
- And that the pre-deposit condition was unconstitutional and imposed an unreasonable burden.

After the High Court rejected these writs, the Promoter escalated the matter to the Supreme Court. The primary issue before the Court, therefore, was whether refund orders by single-member benches were valid, and whether the pre-deposit clause withstood constitutional scrutiny.

The Supreme Court, in its verdict, upheld the core tenets of the Real Estate (Regulation and Development) Act, 2016 (RERA).

Notably:

- It affirmed that RERA applies retrospectively to ongoing projects lacking a completion certificate.
- It upheld the authority of RERA bodies and adjudicating officers to issue recovery warrants for sums owed to allottees.
- It validated the constitutionality of the pre-deposit, requiring promoters to deposit a portion of the awarded amount before an appeal can be entertained.

The Court addressed several pivotal questions:

1. **Applicability of RERA** – It clarified that the Act applies even to projects launched before its enactment, provided they remained incomplete at the time RERA came into force.
2. **Authority to Issue Recovery Warrants** – The judgment confirmed that RERA authorities have the power under Section 40(1) to enforce refund orders through recovery mechanisms, including the principal amount and applicable interest.
3. **Pre-Deposit Requirement** – The Court held that the requirement under Section 43(5) is constitutionally sound. It considered the condition reasonable and consistent with the right to appeal, finding no violation of Articles 14, 19(1)(g), or 300A.
4. **Delay in Filing Appeals** – The judgment made it clear that RERA bodies cannot condone delays beyond the time frame specified in Section 44(2), emphasizing the need for strict compliance with statutory timelines.

The protections extended to homebuyers under this judgment significantly strengthened RERA's enforcement mechanism. These include:

1. **Refund with Interest** – Homebuyers have an unqualified right to claim a refund with interest if possession is delayed beyond the contractual timeline.
2. **Compensation** – Buyers are entitled to claim compensation in cases of false assurances, construction defects, or breach of terms by the developer.
3. **Interest for Delay** – In cases where buyers opt to remain invested in the project despite delays, they are entitled to receive monthly interest at the rate prescribed by RERA.
4. **Right to Possession** – Buyers also retain the right to demand possession of their property in accordance with the terms of the agreement.

By endorsing RERA's structure and upholding its refund and enforcement mechanisms, the Supreme Court's ruling reaffirmed the Act's purpose: to deliver prompt relief, ensure accountability from developers, and secure the financial interests of homebuyers. At the same time, the judgment curbed attempts by developers to exploit legal loopholes to delay or sidestep their responsibilities. RERA is not a silver bullet, and challenges remain. But the shift it has triggered is undeniable. It has restored a sense of balance, giving buyers the tools to make informed decisions and holding developers accountable. If the momentum continues and awareness spreads, RERA won't just be a reform, it will be a lasting foundation for how real estate is done right in India



Judicial Precedents



Invocation of Personal Guarantee in unequivocal terms

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in its judgment dated 30th January 2025 in *State Bank of India v. Mr. Deepak Kumar Singhania*, considered an important procedural aspect concerning the initiation of the Insolvency Resolution mechanism against Personal guarantors under the Insolvency and Bankruptcy Code, 2016, “IBC” specifically evaluating the requirements laid down in the PGIRP Rules, 2019. The key issue before the Appellate Tribunal was whether sending a Demand Notice in Form B under Rule 7(1) of the PGIRP Rules amounts to invoking the Corporate/Personal Guarantee and thus meets the requirements for initiating insolvency proceedings under Section 95 of the IBC.

Facts

In the case concerning the insolvency of LML Ltd. (Corporate Debtor), the State Bank of India (SBI), which had extended financial facilities to the Corporate Debtor, sought to initiate insolvency proceedings against one of its personal guarantors, Mr. Deepak Kumar Singhania, who along with two others had executed a Deed of Personal Guarantee dated 28.03.2005. Following the order of liquidation of LML Ltd. On 04.05.2022, SBI issued a demand notice under Rule 7 of the PGIRP Rules, seeking Rs. 125.05 crore from the Guarantor in respect of a Guarantee dated 23.03.2018. This was followed by a Section 95 IBC application filed on 28.05.2022,

with the alleged default dated 01.01.2017. The Adjudicating Authority, however, refused to admit the application on the ground that the Guarantee had not been lawfully invoked before the Form B notice was served. Challenging this finding, SBI filed an appeal before the National Company Law Appellate Tribunal (NCLAT).

Legal Issue

Whether a Demand Notice issued under Rule 7(1) in Form B may be regarded as an effective invocation of the personal guarantee, thereby enabling the initiation of proceedings under Section 95 of the IBC?

Key Findings of the NCLAT

- a. Triggering the Guarantee is a prerequisite before filing a Section 95 petition, for the personal guarantor to be recognized as a 'debtor' under Rule 3(1)(e) of the PGIRP Rules, 2019, the guarantee must be invoked by the creditor and must remain unpaid in full or part. Without such invocation, no default can be said to exist.
- b. Service of a Demand Notice in Form B under Rule 7(1) shall not be deemed as activation or enforcement of the guarantee. Proper invocation must precede the notice and must be carried out in accordance with the provisions of the Guarantee Deed.
- c. The plea to read the word “and” in Rule 3(1)(e) as “or” was declined by the Tribunal. It emphasized that both conditions being a Personal Guarantor and Guarantee being invoked must be fulfilled for the Application to be maintainable.
- d. In the Section 95 application must reflect actual default by the guarantor, which arises only after invocation. Therefore, absence of invocation renders the stated default date irrelevant.
- e. Form B does not explicitly require proof of invocation, the statutory framework requires that default by the Guarantor must exist before issuance of the notice, inherently presuming that the guarantee has already been invoked.
- f. The Tribunal upheld the Adjudicating Authority’s decision, confirming that the Application under Section 95, IBC was premature and not maintainable due to non-invocation of the guarantee.

The Banks/Financial Creditors ought to ensure to invoke the guarantee through clear communication of invocation of Bank Guarantee before initiating insolvency proceedings.

The Insolvency Insider



Resetting the Clock: NCLAT Defines Default Post-Restructuring

In a landmark decision that promises to settle long-standing debates, the National Company Law Appellate Tribunal (NCLAT) has ruled in **Gangadhar A. Kotian v. Catalyst Trusteeship Limited**, on whether a default occurring after restructuring of debt can be treated as a fresh cause of action under the **Insolvency and Bankruptcy Code (IBC)**.

The case arises from complicated financial dealings involving Bombay Rayon Clothing Ltd., which had stood as a corporate guarantor for debentures issued by its group company, Reynold Shirting Limited. When the borrower defaulted in June 2020, the account was declared a Non-Performing Asset (NPA) during the moratorium period under Section 10A of the IBC, which barred creditors from initiating insolvency proceedings for defaults within that timeline.

In an effort to avoid insolvency litigation, both parties agreed to a restructuring deal in December 2022, with a fresh repayment schedule. However, when an installment due in March 2023 was missed, the financial creditor invoked the corporate guarantee and moved the National Company Law Tribunal (NCLT) under Section 7 of IBC.

The tribunal faced the pivotal question: Does the March 2023 default trigger a fresh insolvency proceeding, or is it barred by the protection offered under Section 10A for the original 2020 default?

The defense argued the “clock cannot be reset” post Section 10A and relied on prior judgments to claim that the original default timeline remains sacrosanct. They also challenged the neutrality of the Insolvency Resolution Professional appointed in the case.

On the other hand, the financial creditor maintained that the corporate guarantee was a continuing one and the restructuring agreement created a new, independent repayment schedule. Since the debtor defaulted on the newly agreed terms in 2023, it should be treated as a fresh default, not barred by Section 10A.

The NCLAT sided with the creditor, emphasizing the sanctity of contractual terms. It noted that the guarantee explicitly survived restructuring, remained enforceable after partial payments, and that the restructuring agreement expressly stipulated that any breach post-restructuring would constitute a fresh default.

Rejecting the Section 10A bar for the post-restructuring default, the tribunal stated that relief under the Code is not an “**eternal amnesty**” and is governed by clear timelines set by mutual agreements.

We are at the view that this landmark judgment marks a pivotal and forward-thinking advancement in India’s insolvency framework, decisively reinforcing the transformative power of restructuring to effectively “**reset the clock.**” It empowers creditors with a clear and legitimate pathway to enforce their claims, eliminating the risk of indefinite procedural shields that hinder timely resolution. By reaffirming the Insolvency and Bankruptcy Code (IBC) as a nuanced and balanced framework, the ruling adeptly protects debtors navigating crisis periods while unwaveringly upholding creditors’ rights to swift recovery once financial normalcy is restored. Crucially, it underscores that continuing guarantees remain enforceable unless expressly waived, highlighting the paramount importance of contractual clarity and pragmatic commercial principles. This precedent not only delivers a resounding victory for creditors seeking certainty but also bolsters confidence and resilience in India’s financial markets, paving the way for sustainable economic growth and robust market discipline.



Resolution Isn't Redemption: NCLT Clarifies Post-CIRP Guarantor Liability

The **National Company Law Tribunal (NCLT), New Delhi Bench-IV**, in a landmark decision delivered on 15 July 2025 dealt with an important legal issue regarding corporate guarantor's liability following the resolution of a principal borrower's debt under the **Insolvency and Bankruptcy Code, 2016 (IBC)**. The question of whether the approval of a resolution plan and the later assignment of the debt eliminate the continuing liability of a corporate guarantor is addressed in the case **IFCI Ltd. v. ACCIL Hospitality Pvt. Limited**. The NCLT's ruling upholds the idea that a guarantee does not expire just because the principal debt has been paid off or transferred. Even though IFCI Ltd. acknowledged the guarantor's ongoing liability, their application under Section 7 of the IBC was ultimately rejected on the grounds of limitation.

Background of the Dispute

The case facts are based on a loan sanctioned to **Asian Colour Coated Ispat Ltd. (ACCIL)** by IFCI Ltd. in 2014. ACCIL Hospitality Pvt. Ltd. executed a corporate guarantee for the loan of ₹150 crore. The account was declared NPA in 2016 for default. The guarantee was invoked on 11 January 2017.

ACCIL was thereafter put through a CIRP (Corporate Insolvency Resolution Process) mandated by IBC. In October 2020, the Resolution Plan of JSW Steel Coated Products Ltd. was approved. The principal borrower was issued a No Due Certificate (NDC) under this this plan and the debt was transferred to Hasaud Steels Ltd. which is a Special Purpose Vehicle of JSW Steel However, It to be noted that the CIRP also retained **"Excluded Rights"** with the original lenders which

include right to enforce guarantees and third-party securities.

ACCIL Hospitality Pvt. Ltd. was the corporate guarantor against which IFCI initiated CIRP in 2021, wherein they were claiming that the liability of guarantee continued even after the approval of Resolution Plan. The application had been filed under Section 7 of the IBC, which allows a financial creditor to initiate the corporate insolvency resolution process (CIRP) against a corporate debtor when a default has occurred. IFCI had claimed that the default continued on the part of the guarantor. ACCIL Hospitality contended that the cause of action had been extinguished upon assignment and that the debt was not recorded in IFCI's record anymore.

Issues

The NCLT examined two important issues:

1. Whether a financial creditor still proceed against a corporate guarantor, if the debt has been transferred to a third party in case the Resolution Plan for a principal borrower has been approved.
2. Considering that the petition was filed in 2021 and the guarantee was invoked in January 2017, is it possible that such proceedings are barred by limitation?

Ruling And Legal Reasoning

Reference was also made to the landmark decisions of the Supreme Court in *Lalit Kumar Jain v. Union of India* (2021) 9 S.C.C. 321 (India). whereby it was held that the liability of a guarantor is co-extensive with that of the principal borrower and the same is not discharged on the insolvency resolution of the latter under the IBC.

Third-party guarantees and mortgages were among the "Excluded Rights" that were expressly protected in the Resolution Plan in the ACCIL case. The Tribunal acknowledged that these rights were never given to Hasaud Steels and instead stayed with IFCI, allowing IFCI to take legal action against the guarantor on its own.

Nonetheless, the Tribunal also carefully considered when IFCI filed its Section 7 application. The three-year statute of limitations expired in January 2020 because the guarantee had been invoked in January 2017 and as a result, the 2021 application was barred by limitation. The Tribunal rejected IFCI's argument that the 2020 Athena Energy ruling constituted a new cause of action, stating that a legal clarification cannot bring back a claim that has already expired.

The NCLT emphasized that in spite of the fact that the **"Excluded**

Rights retained the substantive right to enforce the guarantee, the petition could not be maintained because of the procedural restrictions in Limitation Act, 1963 and since there was no recognition of liability and payment the statute of limitations under Sections 18 or 19 of the Limitation Act could not be extended.

Conclusion

By reaffirming that a corporate guarantor's liability is not eliminated by the approval of a resolution plan and subsequent debt assignment, the July 2025 NCLT order in IFCI Ltd. vs. ACCIL Hospitality Pvt. Ltd. represents a progressive shift in insolvency jurisprudence. Even after the resolution process, the Tribunal maintained the creditor's right to pursue legal action against the guarantor on the basis of an independent contract of guarantee, citing significant rulings such as Athena Energy and Vikas Aggarwal. Nonetheless, owing to the fact that the guarantee was enforced in the year 2017 and the filing of the CIRP in the year 2021 after the deadline of three years had lapsed, the application was denied due to lack of limitation. The earlier NCLAT order is focused on duplicity. This new order is a more reasonable and advanced interpretation of the corporate guarantor liability post-resolution, making a compromise between the substantive rights and the procedural discipline. The choice highlighted two lessons that the practitioners and stakeholders should consider one being the Resolution Plans must be examined carefully to understand the scope of the rights applicable and duties of the guarantors remaining and second to defend their rights according to Section 7 of the IBC, lenders should act quickly, especially when it comes to guarantees filed years before.



Non-Return of Expired Bank Guarantee not a default under IBC

In a significant ruling, **National Company Law Tribunal (NCLT)** in the case of **Canara Bank (erstwhile Syndicate Bank) Vs. Gannon Dunkerley & Co. Limited** dismissed a Section 7 petition under the Insolvency and Bankruptcy Code, 2016. The Tribunal held that the Corporate Debtor had duly complied with the terms of a One-Time Settlement (OTS), and there was no existing default that could justify initiation of the Corporate Insolvency Resolution Process (CIRP).

Canara Bank had filed a petition under Section 7 of the IBC seeking initiation of CIRP against Gannon Dunkerley & Co. Ltd. for an alleged financial default of ₹43.26 crores. The debt originated from a working capital facility of ₹100 crores extended in 2016 as part of a consortium lending arrangement led by State Bank of India. The account was classified as a Non-Performing Asset (NPA) in 2019.

An earlier petition was filed by Canara Bank in 2021 but disposed of in November 2022 when restructuring negotiations were underway. Following failure of the restructuring proposal due to the borrower's inability to obtain the required RBI credit rating, the bank sought restoration of the petition.

Facts of the Case

- The Gannon Dunkerley proposed an OTS of ₹22 crores during the pendency of the restored petition.
- Canara Bank accepted the OTS on 20.12.2024, stipulating payment within 90 days and return of original bank guarantees or creation of 100% cash margin.
- The respondent paid the entire ₹22 crores in five tranches within the stipulated period, with the final payment made on 12.03.2025.
- One of the bank guarantees (₹2.56 crores) was returned; the second (₹10.42 crores), issued to a government body, expired uninvoked on 31.05.2025.
- The bank claimed that failure to return the second bank guarantee violated the OTS terms, thus reviving the original default.

Arguments

Petitioner (Canara Bank)

The respondent defaulted on the condition of the OTS by not ensuring return or 100% cash margin for the second bank guarantee. Due to this breach, the OTS stood revoked and the original default of ₹43.26 crores revived. The petition should be admitted under Section 7(5)(a) of IBC to initiate CIRP.

Respondent (Gannon Dunkerley & Co. Ltd.)

The entire OTS amount of ₹22 crores was paid within the agreed timeline. The only outstanding formality was the return of the second bank guarantee, which expired uninvoked and unrenewed. The petitioner suffered no financial loss, and therefore no default can be alleged. Continued prosecution of the petition was an abuse of process and violative of Section 65 of IBC, which bars fraudulent or malicious proceedings.

Findings of the Tribunal

The NCLT dismissed the petition with detailed reasoning:

1. **Existence of Debt & Default:** The debt of Rs. 43.26 crores, while admitted initially, was modified by mutual agreement to Rs. 22 crores through the OTS. The full OTS amount was paid, curing the default.
2. **Effect of OTS Compliance:** Compliance with the OTS effectively modified the debt obligation and cured prior defaults. Return of the expired bank guarantee was a procedural condition that could not revive the original debt.
3. **Expired Bank Guarantee Irrelevant:** The Second bank guarantee expired without being invoked. Failure to return the Bank guarantee did not create financial exposure to the petitioner, thereby not amounting to default.
4. **Objective of IBC:** The IBC is not a debt recovery mechanism. Since no default exists post-OTS compliance, initiating CIRP would be contrary to the Code's intent.

Conclusion

The NCLT's judgment reiterates that insolvency proceedings under the IBC cannot be construed as recovery tool, especially in the absence of actual default. Full compliance with an agreed OTS, including payment timelines, was held to supersede earlier defaults, even where minor procedural conditions remained unfulfilled due to no fault of the debtor.





KNOW YOUR LAWS



Right of Hindu Husband in Property of Deceased Wife

The Law of inheritance in respect properties (both movable and immovable) is a part of Family Law -which is personal laws of each community resides in India and such law differs from community to community. The two major communities -Hindu have their own personal laws and Muslim community have their own laws. Hindus are governed by the Hindu Succession Act, 1956 (“**HS Act**”) and Muslims are governed by Muslim Personal Law (Sharita) Application Act, 1937.

Other separate communities like Jains and Sikhs are also governed by the Hindu Succession Act, 1956 in respect of the inheritance provisions relating succession of properties. As regards to Christian, Jews and Parsis their inheritance rights are governed in accordance with the provisions of Indian Succession Act, 1925.

The intention of author in this brief article is to focus only on the Right of Hindu Husband in Property of Deceased Wife under HS Act.

Legal Framework of HS Act:

The purpose of HS Act is to codified the customary laws of Hindu Society in the matter of “Intestate” succession among Hindus. Therefore, distribution of properties is devolved on the basis of the nature of transfer of the properties. Such a transfer may be by way of Intestate succession and testamentary succession.

a. Testamentary succession

The object of law of testamentary is that when a person, during his/her lifetime, transfers his /her properties by way of “Will”, such properties will be distributed, after their death, in accordance with scheme of distribution as laid down in his /her Will.

b. Intestate succession

The Law of intestate succession is applicable in a situation where a person has died without “Will” and his/her properties shall be distributed in accordance with the rules as laid down in the Hindu Succession Act, 1956 -which determine the relationship of person with the deceased person. Such succession to heirs depends upon the relationship of heirs with the deceased persons.

Succession to the Property of a Hindu Female:

Under the HS Act, the property of a Hindu female, for intestate succession, is broadly categorized such as (a) Property inherited from her father or mother; (b) Property inherited from her husband or father-in-law; and (c) Property acquired by any other means, whether by inheritance or otherwise. In case a Hindu female dies intestate, the succession to her property is governed primarily by Section 15 (1) down the order of heirs , and provisions of such Section are reproduced below for easy reference :

The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;*
- (b) secondly, upon the heirs of the husband;*
- (c) thirdly, upon the mother and father;*
- (d) fourthly, upon the heirs of the father; and*
- (e) lastly, upon the heirs of the mother.*

Special Rules under Section 15(2) of HS Act

Property inherited from her father or mother:

Under Section 15(2) (a) of HS Act, the husband is excluded to inherit from Property inherited from her father or mother by his deceased wife, if his wife dies intestate without leaving any children or children of a predeceased child. In such situation , the property will revert to the heirs of her father , not to her husband.

Exception : Pursuant the Hon'ble Karantaka High Court Judgment Sujatha v. B.N. Narayanaswamy – Karnataka HC (2012), if property received as a gift or Stridhan (e.g., wedding gifts) or by way Will from her father or mother shall be treated as the absolute property of deceased wife. Therefore, such property is not governed by Section 15(2) and instead falls under Section 15(1) and Husband can claim his share as per provisions of Section 15 (1) as mentioned in above para 3.

Property inherited from her husband or father-in-law:

Incase , if deceased wife is received property from her husband or father-in-law dies intestate without leaving any children or children of a predeceased child, then such property devolves upon the heirs of her husband, as if the property had originally belonged to him.[Section 15 (2) (b)]

Judicial Decision

Bombay High Court Case

The issue before Bombay High Court In the case of **Tarabai Dagdu Nitaware Vs. Narayan Keru Nitaware - 2018 SCC Online Bom 91 : (2018) 2 Mah LJ 242: (2018) 2 AIR Bom R 98:AIR 2018(NOC) 708 Bom** was -Can a husband be considered a legal representative for his deceased wife in respect of property she inherited from her father under Section 15(2)(a) of the Hindu Succession Act, 1956?

The Hon'ble Bombay High Court held that the Husband has no right in the property of wife which was inherited by her from her father or mother in accordance with the Section 15(2) (a) of the Hindu Succession Act. The Hon'ble Court further observed that the intention of legislature is in nature of protective intent to preserve inherited property in the parental line in the absence of children and succession of inherited property by a female Hindu does not automatically include the spouse unless general conditions under Section 15(1) are met. Such condition mentioned above para 3 .

Supreme Court Case

It may be noted that Supreme Court in various cases namely, **Omprakash v. Radhacharan & Ors. (2009) 15 SCC 66, Bhagat Ram (D) by LRs. v. Teja Singh (D) by LRs. (2002) 1 SCC 210** also held that if the female inherited property from her father or mother, and she dies without any children, that property devolves not on the husband, but on the heirs of her father.

Conclusion

In our view the husband can claim on such property inherited by wife from her parents , if wife transfers her property in favour of husband by way of Will and/or by Gift during the life time. Further, if property received as a gift or Stridhan (e.g., wedding gifts) or by way Will from her father or mother, shall be treated as the absolute property of deceased wife and husband shall be treated as heirs in accordance with provisions of Section 15(1) of HS Act.



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