

MORATORIUM UNDER IBC: JUDICIAL EXPANSIONS AND THE RISK OF DILUTING ITS PURPOSE

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Abstract

When a company is drowning in debt, should the law step in to hold off the chaos or let the storm hit? The concept of a moratorium under bankruptcy law is straightforward: pause everything, take a deep breath, and try to fix what's broken. Its goal is to offer companies a fighting chance without having to deal with lawsuits or creditors tearing them apart in the middle of their recovery. However, what occurs if judges overextend this pause, protecting parties other than the company?

That's when the moratorium starts drifting from its core purpose, creating confusion, delaying justice for creditors, and raising tough questions about fairness. The moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 was introduced as a safeguard for the value of a corporate debtor's assets throughout the process of bankruptcy resolution. However, as time has passed, court interpretations have broadened their application in ways that can contradict their original intent. This essay examines how courts have expanded or improved the moratorium's parameters through significant decisions, such as those pertaining to attachments under the Prevention of Money Laundering Act, personal guarantors, and check bounce actions. While these decisions attempt to balance creditor and debtor rights, they also expose inconsistencies in how the moratorium is applied in different areas.

The article shows clearer boundaries and a return to the moratorium's original role, which is a temporary and well-defined protection to facilitate effective insolvency resolution.

Keywords: Moratorium, Judicial Expansion, Corporate Insolvency Resolution Process, Overriding Effect.

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Introduction:

The Insolvency and Bankruptcy Code, 2016, is one of the most important reforms in the Indian economy. Before the enactment of this Law, there were multiple laws that dealt with the resolution process of a company's insolvency, such as Sick Industrial Companies (Special Provisions) Act, 1985, which failed due to its backward approach in dealing with Bankruptcy issues, The Recovery of Debts due to Banks and Financial Institutions Act, 1993, which has only focused on Debt Recovery and not Insolvency Resolution, and it had a limited scope under which only the financial creditors like Banks could initiate recovery proceedings.²

This created confusion and prolonged delays for banks, companies, and other creditors attempting to recover their dues. Due to all these Reasons, the Indian Parliament enacted the Insolvency and Bankruptcy Code, 2016, to provide a time-bound process for resolving insolvency and bankruptcy, aiming to maximize asset value and ensure ease of doing business. The code was passed by both houses of Parliament in May 2016 and received presidential assent on May 28, 2016.

Section 4 of the Insolvency and Bankruptcy Code, 2016 defines that it shall include matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees.³ This protects companies from being dragged into insolvency for small, insignificant dues and ensures the process is used only for genuine cases of financial distress. Section 14 of the Insolvency and Bankruptcy Code, 2016, lays down the concept of moratorium under the Corporate Insolvency Resolution Process (CIRP).

This article explores how the courts have expanded the scope of moratorium under Section 14 of the IBC, while sometimes stretching it beyond its purpose and thus affecting the balance between the protection of the debtors and the rights of the creditors

NATURE OF MORATORIUM: SCOPE & OBJECTIVES

Moratorium, also known as a cooling-off period, is a restriction on creditors and other third parties. When a company goes through insolvency, an insolvency application is received by the Adjudicating authority (National Company Law Tribunal), which prohibits the institution

²Saloni Mathur, 'Comparative Analysis of the laws on Insolvency before and after the enactment of the Insolvency and the Bankruptcy Code' (iPleaders Blog, January 30, 2019) <<https://blog.ipleaders.in/laws-on-insolvency-before-and-after-the-ibc/>> accessed 1st August, 2025

³ THE INSOLVENCY AND BANKRUPTCY CODE, 2016, s 4

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or continuation of pending suits or proceedings, judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority against the corporate debtor transfer or disposal of assets and enforcement of security interests.⁴

The assets of the firm are frozen so that no transaction can take place (except for the essential goods). The primary objective of the moratorium is that the creditors and the interim resolution professional can work on the revival of the company without any external complications. The moratorium will come into effect from the date of admissibility of the application by the Adjudicating Authority (NCLT).⁵ It also protects the corporate debtor's operations from being severely hampered during insolvency, maximizes shareholder value by enabling a coordinated resolution procedure, and centralizes all claims resolution under the NCLT to prevent disorderly enforcement.

IBC is a complete code in itself; it overrides other laws. Whenever there is a conflict between IBC and other laws (state or central), it will prevail under Section 238 of the code itself, which has an overriding effect over other laws that are inconsistent with it to provide the corporate debtors protection, which the Supreme Court took in its first ever ruling in *Innoventive Industries Limited v. ICICI Bank Limited* (2017)⁶ in which established that debtors cannot take advantage of other laws in order to protect themselves from IBC proceedings.

SCOPE:

Actions Prohibited (During Moratorium)

- No lawsuits or legal actions against the corporate debtor have been started or are ongoing.
- No security interest enforcement, whether through the SARFAESI Act or another means.
- No creditor has recouped or alienated assets.

⁴THE INSOLVENCY AND BANKRUPTCY CODE, 2016, s 14(1)(a)-(d)

⁵ THE INSOLVENCY AND BANKRUPTCY CODE, 2016, s 14(2)-(4)

⁶Insolvency and Bankruptcy Board of India, 'Order dated 31 August 2017 in *Innoventive Industries Ltd v ICICI Bank & Anr.*, Civil Appeal Nos 8337-8338 of 2017' <https://ibbi.gov.in/webadmin/pdf/order/2017/Sep/31%20Aug%202017%20in%20the%20matter%20of%20Innoventive%20Industries%20Ltd.%20Vs.%20ICICI%20Bank%20&%20Anr.%20Civil%20Appeal%20No%20s.8337-8338%20of%202017_2017-09-01%2009:56:52.pdf> accessed 5th August, 2025

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- No significant agreements that are required for the survival of the business are terminated.

Actions Permitted (During Moratorium)

- Continuation of ongoing legal processes under Articles 226 and 227 of the Constitution before the Supreme Court and High Courts.
- Criminal cases (such as those involving fraud or misappropriation) are unaffected.
- Tax law proceedings, including those pertaining to income tax, GST, and regulatory compliance, may proceed.

Moratorium Exclusions

- Personal Guarantors: The Supreme Court decided that the moratorium does not apply to actions taken against the corporate debtor's personal guarantors.
- Criminal Proceedings: Cases that involve fraud, deception, or illegal activities are not suspended.
- Writ Petition: High Court writ petitions filed under Articles 226 and 227 are exempt from the moratorium.
- Public Utility Services: Although they may need recurring payments, essential services like water, electricity, and telecommunications cannot be discontinued

JUDICIAL EXPANSIONS: KEY RULINGS

1. Personal guarantors and Moratorium:

The Supreme Court gave Judgement in Lalit Kumar Jain vs Union of India

Lalit Kumar Jain and the other petitioners were personal guarantors for loans obtained by corporate debtors. Insolvency procedures were started against these corporate debtors and the guarantors. To enforce specific provisions of the Insolvency and Bankruptcy Code (IBC), 2016, for personal guarantors of corporate debtors, the Central Government released a notification on November 15, 2019.⁷ Petitioners opposed this notification, claiming it was arbitrary and ultra vires, and that applying the IBC selectively to personal guarantors was unlawful.

⁷ Ministry of Corporate Affairs, Notification dated 15th November, 2019
<<https://ibbi.gov.in/uploads/legalframwork/1fb8c2b785f35a5126c58a2e567be921.pdf>> accessed 6th August 2025

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So, the question arises before the courts whether the central government can issue a notification to make the personal guarantors of the corporate debtors applicable to the same, and does the approval of the resolution plan discharges the guarantor from the liabilities.

The Supreme Court said that the notification is not ultra vires as it was well within the powers of the central government. The court held that even after the approval of the resolution plan, guarantors can be held liable because the liability of the guarantor is co-extensive with that of the debtor, which means that the whole debt has to be paid.⁸

2. Section 138 NI Act read with Section 14:

P. Mohanraj and Ors. Vs. Shah Brothers Ispat Pvt. Ltd.

Diamond Engineering Pvt. Ltd., which was given steel products by Shah Brothers Ispat, who discontinued making payments. So, criminal complaints were filed under section 138 of the Negotiable Instruments Act, 1881. But during the meantime, a moratorium was declared due to which NCLAT put a hold on the proceedings.

The court must now decide if Sections 138 and 141 of the NI Act are covered under the moratorium in Section 14(1)(a) of the IBC.

The Supreme Court held that Section 14(1) of the IBC explicitly states that it bars the institution of pending or new suits during the moratorium, thereby supporting the concept of providing the corporate debtor with a 'breathing space' under the IBC. So, the proceedings of 'cheque bounce' will not start, however the proceedings can still continue against directors in their personal capacity under Section 141 NI Act.⁹

3. The moratorium does not apply to assets not owned by the Corporate Debtor:

Anand Rao Korada vs. Varsha Fabrics (P) Ltd. and Ors.

A financial creditor filed a Section 7 IBC petition before the NCLT against Hirakud Industrial Works Ltd. (Respondent No. 4) for default in loan repayment. The petition was allowed, and a moratorium was imposed. However, in order to collect

⁸*Lalit Kumar Jain v Union of India* MANU / SC / 0352 / 2021

⁹ P. Mohanraj and Ors. vs. Shah Brothers Ispat Pvt. Ltd. MANU/SC/0132/2021

outstanding dues, the Odisha High Court issued orders to auction the corporate debtor's assets in pending writ proceedings filed by the workmen's union. These High Court judgments were opposed by the Resolution Professional (Anand Rao Korada) in the Supreme Court because they violated the moratorium.

After that, the Supreme Court reversed the High Court's ruling and declared that the IBC's provisions can supersede other contradictory laws (Section 238 IBC) and allowed the worker union to file their pending dues before the RP under the IBC framework, assuring that their dues will be considered during the CIRP.¹⁰

4. PMLA attachments before CIRP initiation are outside the moratorium's purview: Varrsana Ispat Limited vs Deputy Director, Directorate of Enforcement (2019)

Before the start of the Corporate Insolvency Resolution Process (CIRP), the Directorate of Enforcement (ED) attached some of Varrsana Ispat Ltd.'s properties under the Prevention of Money Laundering Act, 2002 (PMLA). RP argued that the moratorium in Section 14 IBC forbids such attachments or the continuation of proceedings; he requested the release of the attached assets. The RP's appeal was denied by the NCLT, stating that the attachment was made prior to the moratorium.

Finally, the matter went to NCLAT and it says, "Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' is to prevent the money laundering and to provide confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto"¹¹

This decision upholds the criminal law's provisions by clearly defining the judicial distinction that the proceeds of crime under the PMLA are not covered by the IBC moratorium.

¹⁰Anand Rao Korada vs. Varsha Fabrics (P) Ltd. and Ors. MANU/SC/1602/2019

¹¹Varrsana Ispat Ltd v Deputy Director, Directorate of Enforcement, Company Appeal (AT) (Insolvency) No 493 of 2018, NCLAT, 12 July 2018 <[https://ibbi.gov.in/webadmin/pdf/order/2019/May/2nd%20May%202019%20In%20the%20matter%20of%20Varrsana%20Ispat%20Ltd%20through%20the%20RP%20of%20Anil%20Goel%20VS%20Deputy%20Director,%20Directorate%20of%20Enforcement%20%5BCA\(AT\)\(Insolvency\)%20493-2018%5D_2019-05-06%2014:52:44.pdf](https://ibbi.gov.in/webadmin/pdf/order/2019/May/2nd%20May%202019%20In%20the%20matter%20of%20Varrsana%20Ispat%20Ltd%20through%20the%20RP%20of%20Anil%20Goel%20VS%20Deputy%20Director,%20Directorate%20of%20Enforcement%20%5BCA(AT)(Insolvency)%20493-2018%5D_2019-05-06%2014:52:44.pdf)> accessed 6th August 2025

Bridging Gaps: What Needs to Change

1. PUF and Moratorium:

“During the corporate insolvency resolution process (hereinafter “CIRP”), it is the duty of the resolution professionals to look for certain transactions such as PUF (Preferential, Undervalued, Fraudulent, Extortionate credit). Based on this forensic audit, if any transaction is found to be covered under PUF, in that event the resolution professionals or the liquidator (as the case may be), has to report to the adjudicating authority (NCLT). Once the moratorium is declared, there is no protection for the old management including the suspended Board of Directors or the personal guarantors, and so different provisions of IBC can be invoked against the same persons to hold them accountable.”¹²

So, the current issue is that the moratorium only gives protection to the corporate debtors (the company itself), but it drags personal guarantors or suspended directors into multiple cases while the CIRP is going on. IBC should be amended to provide at least some limited protection to the personal guarantors and suspended directors until the key CIRP proceedings are ongoing.

2. Harmonization of Laws:

The major challenge comes during CIRP when IBC's laws conflict with other acts like the Prevention of Money Laundering Act (PMLA), SEBI Act, and NI Act, etc. While IBC aims to boost the economy and pay off debt, PMLA deals with money laundering and criminal proceeds. However, there are problems in enforcement because both statutes include powerful overriding clauses (Section 71 of the PMLA and Section 238 of the IBC). A legislative framework should be developed that explains the relationship and hierarchy between these laws in order to resolve this legal ambiguity. These can include:

- Amending the IBC to include how the PMLA, NI Act etc, will go together while ensuring the smooth process of the CIRP.

¹²Bhumika Indulia, ‘Resolution versus Penalisation: Is IBC Deviating from its Purpose?’ (SCC Times, 1st May, 2024) <<https://www.sconline.com/blog/post/2024/05/01/resolution-versus-penalisation-is-ibc-deviating-from-its-purpose/>> accessed 7th August, 2025

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- Creating coordination between the Resolution Professional and the Enforcement Director for understanding the true situation and then making decisions based on that.

3. Streamlined Enforcement Guidelines:

The requirement for the NCLT and NCLAT to interpret and apply Section 14 of the IBC consistently is becoming more and more essential. Various benches currently have contrasting views regarding the moratorium's reach, particularly when it comes to cases involving cheque bounce procedures, asset attachment under other statutes like the PMLA, or arbitration continuation. This variation affects predictability and causes confusion and delays.

There is a need for a uniform procedure to streamline the process, which can be done through Supreme Court judgments and previous NCLT/NCLAT binding precedents. This will help to streamline the process and would also reduce unnecessary litigation.

Conclusion:

The moratorium under the IBC was never meant to be a blanket cover for all liabilities. It was intended to act as a pause button, allowing businesses to organize themselves without feeling pressured to do so. However, that clarity has begun to fade as courts have broadened their scope over time. Despite their reasonable intentions, several of these actions have ended up confusing what the moratorium covers. Both parties suffer from this uncertainty. Corporate debtors receive conflicting messages about what they are protected from, while creditors are left in the dark. The boundaries of the legislation must be made more explicit. A better balance is required, one that preserves the company's assets without permanently denying creditors their rights.

At this point, a steady hand is needed, both in legislation and in how courts apply the law, to bring the moratorium back to what it was meant to be: a focused, temporary safeguard, not a legal loophole. With the right adjustments and a more

consistent approach, the moratorium can support fair resolutions and help struggling companies get back on their feet.



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