CREDITOR DUTY AT THE TWILIGHT ZONE: A CRITICAL ANALYSIS OF *BTI 2014 LLC V SEQUANA SA* [2022] UKSC 25 AND ITS IMPLICATIONS FOR DIRECTORS' DUTIES UNDER INDIAN COMPANY LAW

Satsang Kumar, LLM Scholar (Constitutional Law), Dr Ram Manohar Lohiya National Law University, Lucknow.

ABSTRACT

The decision of the United Kingdom Supreme Court in BTI 2014 LLC v Sequana SA [2022] UKSC 25[1] is a landmark in company and insolvency law. For the first time the highest court in England was squarely asked to determine the existence, scope, content, and trigger of the so-called creditor duty the obligation on directors to have regard to creditor interests when a company's financial health deteriorates. The court unanimously held that such a duty exists, that it arises as a qualification upon the primary fiduciary obligation under Section 172(1) of the Companies Act 2006 (UK),[2] and that it is triggered when a company is actually insolvent, on the brink of insolvency, or probably heading for insolvent liquidation or administration. Critically, a mere real risk of future insolvency does not suffice.

This paper goes through the judgment issue by issue covering the existence of the duty, its applicability to dividend decisions, its content, and the trigger question and offers some critical observations on the reasoning. It then sets the ruling in its comparative context, looking briefly at Australia and New Zealand. Most importantly, it asks what all of this means for India, examining Section 166(2) of the Companies Act 2013 and the creditor-protection framework of the Insolvency and Bankruptcy Code 2016, and argues that Indian law has the conceptual resources to develop a creditor duty of its own, modelled on though not identical to the principle affirmed in Sequana.

Keywords: Creditor Duty; Directors' Fiduciary Duties; Insolvency; Section 172 Companies Act 2006; Section 166(2) Companies Act 2013; IBC 2016; West Mercia Rule; Twilight Zone; Corporate Governance.

[1] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25.
[2] Companies Act 2006 (UK), s 172(1).

I: INTRODUCTION

Company law is a discipline in perpetual motion. The modern corporation is a nexus of competing interests shareholders who own it, employees who keep it running, creditors who fund it, and directors who govern it. When things go well, these interests tend to coexist without too much friction. It is when a company approaches the edge of financial viability that the hierarchy fractures, and the law has to step in. The question of how directors must behave when a company is on the brink of insolvency sits right at this fault line.

The Supreme Court's decision in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25,[3] handed down on 5 October 2022, is the most authoritative judicial pronouncement on this question in the common law world. The proceedings arose from a dividend payment of €135 million made in 2009 by AWA (Arjo Wiggins Appleton Ltd) to its sole shareholder, Sequana SA. AWA was technically solvent at the time. It went into insolvent administration nearly a decade later, in October 2018. The assignee of AWA's claims, BTI 2014 LLC, sought to recover the dividend from AWA's former directors on the basis that the payment breached a duty to protect creditor interests even where there was only a real risk of future insolvency.

Both the High Court and the Court of Appeal rejected the claim.[4] The Supreme Court unanimously dismissed the further appeal but in doing so delivered a judgment of over 160 pages that maps the terrain of the creditor duty with more precision than any earlier decision. This paper examines the judgment issue by issue, places it in comparative context, and explores what it might mean for Indian company law.

II. THE CASE: BACKGROUND AND PROCEDURAL HISTORY

A. THE CORPORATE AND TRANSACTIONAL BACKGROUND

AWA carried on business in environmental insurance and investment contracts. By 2009, it had one long-term contingent liability of considerable potential magnitude: financial responsibility for the clean-up of pollution affecting a river in the United States. The quantum of this liability was genuinely uncertain at the time it could range from modest to very significant depending on ongoing legal proceedings and environmental assessments. Despite

[3] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [4]-[6] per Lord Reed (introductory summary of proceedings).
[4] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [1] per Lord Reed.

this, AWA's balance sheet and cash-flow position was formally solvent.

Against this background, AWA's directors resolved to distribute a dividend of €135 million to Sequana SA.[5] The directors executed the required solvency statements under Section 643(1) of the Companies Act 2006, certifying that in their opinion AWA would be able to pay its debts as they fell due over the next twelve months. The dividend was therefore lawfully paid in compliance with the statutory distribution regime.

The environmental liability continued to crystallise over the years that followed. By October 2018 nine years after the dividend AWA entered insolvent administration. The estimated clean-up costs had by then far exceeded the company's residual resources.

B. THE CLAIMS AND LOWER COURT DECISIONS

BTI 2014 LLC, as assignee of AWA's claims, argued that in paying the dividend, AWA's directors had breached a duty to consider or act in accordance with the interests of creditors. The central argument was that the directors knew or ought to have known there was a real risk of the company becoming insolvent, and that this risk alone was enough to trigger the creditor duty.

The High Court dismissed the claim. The Court of Appeal upheld the dismissal but accepted that a creditor duty exists in English law and is engaged when a company is insolvent, on the brink of insolvency, or probably heading for insolvency becoming paramount at the point of actual insolvency.[6] On the facts, however, AWA was not insolvent or approaching insolvency in any of those senses. A real risk of future insolvency was not enough. BTI appealed to the Supreme Court, pressing for the lower real risk threshold.

III. THE BENCH

The five-member bench comprised Lord Reed (President), Lord Hodge (Deputy President), Lord Briggs, Lord Kitchin, and Lady Arden. Lord Briggs delivered the majority judgment, with which Lord Kitchin agreed. Lord Hodge delivered a concurring judgment. Lord Reed and Lady Arden each concurred in the outcome but diverged in certain respects from the majority, particularly on the nature and extent of the duty. The multiplicity of opinions unanimously

[5]Companies Act 2006 (UK), s 643(1) (solvency statement requirement for private company distributions).
[6]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [10] per Lord Reed.

agreeing on the result but not always on the reasoning reflects just how doctrinally complex this area is.

IV. ISSUE 1: THE EXISTENCE OF CREDITOR DUTY IN ENGLISH LAW

A. THE RULE IN WEST MERCIA

The doctrinal origins of the creditor duty in English law lie in *West Mercia Safetywear Ltd v Dodd* [1988],[7] where the Court of Appeal held that directors of an insolvent company cannot disregard the interests of creditors in favour of shareholders. This proposition sometimes called the rule in *West Mercia* entered the stream of English company law without ever being authoritatively confirmed by a higher court. Its scope remained a subject of debate and uncertainty for over thirty years.

The rule itself drew on an earlier Australian decision, *Kinsela v Russell Kinsela Pty Ltd* (1986),[8] in which Street CJ of the New South Wales Court of Appeal articulated the conceptual basis with particular clarity: when a company is insolvent, its assets are in substance the property of its creditors, and the shareholders have no legitimate interest in seeing those assets dissipated. This economic logic runs through the whole of the *Sequana* judgment.

B. RULING OF THE SUPREME COURT

The Supreme Court unanimously confirmed the existence of the creditor duty, though the justices differed in their conceptual approach.[9] Lord Briggs, writing for the majority, located the duty in the common law rather than statute. He reasoned that it is best understood as a qualification upon the primary fiduciary duty under Section 172(1) of the Companies Act 2006 to act in the way most likely to promote the success of the company for the benefit of its members. Section 172(3) of the Act expressly preserves any rule of law requiring directors in certain circumstances to consider or act in creditor interests a provision Lord Briggs read as

[7] *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250 (CA), 252 per Dillon LJ, approving *Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722.
[8] *Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722 (NSWCA), Street CJ at 730: 'In a solvent company the proprietary interests of the shareholders entitle them as a general body to be regarded by the directors as the risk-takers to whom the enterprise belongs. Where insolvency threatens, the interests of creditors intrude.')
[9] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [172]-[180] per Lord Briggs; [52]-[54] per Lady Arden.

recognising, without itself creating, the common law duty.[1011]

Lord Hodge, agreeing with Lord Briggs, placed considerable weight on the economic rationale.[12] As a company approaches insolvency, the residual value of its assets constitutes, in substance, the fund from which creditors will be paid. The economic interest of creditors therefore increases relative to shareholders as financial condition deteriorates. This shift in economic reality provides the moral and rational foundation for requiring directors to have regard to creditor interests.

Lady Arden's approach was notably different.[13] She was prepared to ground the creditor duty directly in Section 172(3) and formulated the obligation as having two limbs: a positive duty to have regard to creditor interests, and a negative duty not to take actions that would materially harm those interests. Her formulation is more protective of creditors than the majority's, though its practical significance in most cases may be limited.

The court unanimously rejected any suggestion that the creditor duty constitutes a freestanding obligation owed directly to creditors.[14] The duty is owed to the company, not to individual creditors or shareholders. Consistent with this, the principle of ratification whereby shareholders may ratify directors' breaches of duty has no application when the company is near insolvency and any ratification would prejudice creditor interests. The logic is straightforward: when the company's assets effectively belong to the creditors, the shareholders cannot authorise their dissipation.

The court also noted that cognate duties had been recognised in Australia since *Walker v Wimborne* (1976) and in New Zealand since *Nicholson v Permakraft* (1985), lending the duty a convergent common law pedigree.[15]

[10]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [193]-[197] per Lord Briggs.
[11]Companies Act 2006 (UK), s 172(3): 'The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.'
[12]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [228]-[230] per Lord Hodge.
[13]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [55]-[68] per Lady Arden.
[14]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [203]-[207] per Lord Briggs.
[15]*Walker v Wimborne* (1976) 137 CLR 1 (HCA); *Nicholson v Permakraft (NZ) Ltd* [1985] 1 NZLR 242 (NZCA).

V. ISSUE 2: APPLICABILITY OF CREDITOR DUTY TO LAWFUL DIVIDEND DECISIONS

A distinct and important question was whether the creditor duty can apply at all to a dividend that is lawful under the statutory distribution regime in Part 23 of the Companies Act 2006.[16] The argument for exclusion ran as follows: Parliament has enacted a comprehensive code governing distributions; directors who comply with that code should be free from any additional common law overlay.

The Supreme Court firmly rejected this argument.[17] Two reasons were given. First, Section 172(3) expressly preserves rules of law without any carve-out for decisions made in compliance with other parts of the Act. The legislature did not exclude the common law rule from operating alongside Part 23. Second, and more practically: the Part 23 tests are based on the balance sheet. It is entirely possible for a company to show a distributable surplus on the balance sheet while simultaneously being unable to meet its debts as they fall due that is, to be cash-flow insolvent. It would be both unjust and incongruous if directors could in such circumstances strip the company's residual assets through a technically lawful dividend, leaving creditors without recourse.[18]

This is an important holding. It means formal statutory compliance is a necessary but not always sufficient condition for a valid dividend decision. Where the company is insolvent or bordering on insolvency, directors must overlay the statutory analysis with a genuine consideration of creditor interests. The practical message for directors advising on dividend decisions in periods of financial stress is that a balance sheet certificate alone is not enough.[19]

VI. ISSUE 3: THE CONTENT OF THE CREDITOR DUTY

Perhaps the most doctrinally nuanced part of the judgment is its treatment of what the creditor duty actually requires not just when it is triggered, but what it demands once triggered. The court's answer is graduated, not fixed, and depends on the depth of the company's financial difficulties.

[16]Companies Act 2006 (UK), Part 23 (ss 829–853).
[17]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [210]-[215] per Lord Briggs.
[18]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [216]-[222] per Lord Briggs.
[19]*BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [240]-[245] per Lord Hodge.

A. THE TRIGGER POINT

Lord Briggs articulated the content of the duty by reference to a trigger point of financial distress.[20] When a company is solvent and operating normally, the interests of the company are synonymous with the long-term interests of its shareholders, and there is no independent creditor duty. When a company is insolvent and insolvent liquidation or administration is inevitable, creditor interests become paramount: directors must give primacy to creditor interests, and shareholders whose equity is notionally worthless fade to irrelevance.

In the middle the twilight zone the duty requires directors to give appropriate weight to creditor interests alongside, and potentially in tension with, shareholder interests.[21] Where those interests conflict, directors must exercise judgment about the appropriate balance. This is not a mechanical formula; it requires the kind of considered commercial judgment that characterises the broader good faith duty. It is not always easy to apply in practice, and the court was honest about that.

B. LADY ARDEN'S OPINION

Lady Arden's opinion is worth examining separately.[22] She located the purpose of the creditor duty in protecting the creditors' economic interest in the company's assets the fund from which creditors will be satisfied in any insolvency. She drew a careful distinction between the positive obligation to have regard to creditor interests and the negative obligation not to take action that materially harms those interests. The latter is, she suggested, the more fundamental: directors need not actively promote creditor welfare in the way they promote shareholder wealth, but they must not distribute assets or incur fresh liabilities in ways that erode the creditor fund.

Her Ladyship also emphasised the informational dimension: directors must maintain adequate financial information systems so they are aware of the company's true financial position at all material times. A director who is uninformed about impending insolvency because of poor financial monitoring cannot use that ignorance as a defence.

[20] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [157]-[164] per Lord Briggs.
[21] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [163] per Lord Briggs.
[22] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [70]-[78] per Lady Arden.

C. THE WRONGFUL TRADING PARALLEL

Lord Hodge drew an instructive parallel between the creditor duty and wrongful trading liability under Section 214 of the Insolvency Act 1986 (UK).[23] Both operate at the boundary of insolvency and share a common rationale: protecting creditors from the consequences of directors continuing to trade or distribute assets at a time when the shareholders' equity has ceased to have economic substance. The parallel reinforces the point that the creditor duty is not an anomalous imposition on directors but a natural complement to the broader statutory framework for managing the approach to insolvency.

VII. ISSUE 4: THE TRIGGER POINT OF THE CREDITOR DUTY

The question that most directly determined the outcome of the appeal was when the creditor duty is triggered. The court's answer was clear: a real risk of future insolvency is not enough.

A. THE STANDARD ADOPTED

The court formulated the trigger in graduated terms that mirror the graduated content discussed above.[24] The duty is engaged when the directors know or ought to know that:

i. the company is actually insolvent unable to pay its debts as they fall due (cash-flow insolvency) or with liabilities exceeding assets (balance-sheet insolvency); or

ii. the company is bordering on insolvency, in the sense that insolvency is imminent and inevitable absent some corrective action; or

iii. insolvent liquidation or administration is probable meaning there is a real and not merely fanciful probability of the company entering one of those formal processes.

A real risk of future insolvency even a well-grounded and material risk of the kind AWA's directors knew existed falls below this threshold.[25] The duty does not engage merely because the company might become insolvent at some uncertain future date. The risk must have crystallised into something more immediate and concrete.

[23] Insolvency Act 1986 (UK), s 214 (wrongful trading).
[24] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [155]–[160] per Lord Briggs; [249]–[253] per Lord Hodge.
[25] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [170] per Lord Briggs.

B. THE RATIONALE FOR THE HIGHER THRESHOLD

The court's reasons for adopting a higher threshold than real risk are both pragmatic and principled.[26] A real risk test would impose significant uncertainty on directors of solvent companies that carry any long-term contingent liabilities environmental obligations, product liability exposure, pension deficits. Such companies are very common. If directors were required to act primarily in creditor interests whenever such a risk existed, the ordinary incentive structure of company law which places directors in the service of shareholder value creation would be fundamentally distorted.

The court also noted that creditors are not helpless. Commercial creditors particularly institutional lenders have contractual means of protecting themselves: covenants, security interests, negative pledges, acceleration clauses. They can price insolvency risk into their lending terms. The creditor duty supplements, but does not replace, these private law protections.

C. THE UNRESOLVED QUESTION

One question was deliberately left open by Lord Reed and Lady Arden: whether subjective knowledge of directors is strictly necessary for the duty to be engaged, or whether objective constructive knowledge ought to have known is sufficient in all circumstances.[27] The majority formulation suggests an objective element, but the precise interplay between subjective awareness and objective attribution in the twilight zone was not fully resolved. This is likely to generate further litigation.

VIII. CRITICAL OBSERVATIONS ON THE JUDGMENT

The decision in *Sequana* is to be welcomed for the clarity it brings to a previously murky area. Several aspects are nonetheless worth commenting on critically.

First, the multiplicity of opinions, five justices, four separate judgments while analytically rich, introduces uncertainty at the margins. The majority and concurring judgments agree on outcomes but diverge in conceptual approach, particularly on the basis of the duty and its precise content in the twilight zone. Practitioners advising directors in distress situations will

[26] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [175]-[178] per Lord Briggs.
[27] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [185]-[189] per Lord Briggs; [36]-[40] per Lord Reed.

have to navigate this plurality carefully.

Second, the holding that the duty is owed to the company rather than directly to creditors has real practical consequences. Enforcement depends on a liquidator or administrator bringing a claim on behalf of the company. Creditors themselves cannot sue directors for breach of the duty, even when the breach has directly diminished the fund available to them. This may feel like cold comfort to unsecured creditors who have already been left with very little.

Third, the twilight zone between mere risk and bordering-on-insolvency remains incompletely mapped. The graduated model is intellectually coherent but operationally difficult. Directors in practice will find it genuinely hard to know, at any given moment, exactly where on the spectrum their company sits, and therefore exactly what level of creditor regard is required. The judgment calls for judgment, which is both its strength and its limitation.

Fourth, the observation that creditors can protect themselves contractually is accurate for sophisticated institutional lenders but somewhat understates the vulnerability of trade creditors and small unsecured creditors who have no such leverage. The policy tension here is real, and the court's resolution drawing the trigger line at probable insolvency rather than real risk may not be sufficiently protective of this class of creditor.

IX. THE COMPARATIVE DIMENSION: AUSTRALIA AND NEW ZEALAND

The Supreme Court in *Sequana* made plain that the creditor duty is not a peculiarly English invention.[28] It is part of a shared common law heritage.

A. AUSTRALIA

The High Court of Australia recognised in *Walker v Wimborne* (1976)[29] that directors of a corporate group must, in exercising their powers, take account of the interests of the company's creditors. This proposition was developed further in *Kinsela v Russell Kinsela Pty Ltd* (1986), where Street CJ articulated the economic rationale that runs through all of this area: when a company is insolvent its assets are in substance the property of creditors, not shareholders.

Australian law has, if anything, moved further than English law, with the Corporations Act

[28] *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [112]-[120] per Lord Briggs (comparative law survey).
[29] *Walker v Wimborne* (1976) 137 CLR 1 (HCA), 6–7 per Mason J.

2001 imposing insolvent trading liability on directors under section 588G a provision that operates in a manner analogous to wrongful trading under Section 214 of the Insolvency Act 1986 (UK). The *Sequana* judgment is likely to be influential in Australia in clarifying the trigger point for the common law duty, though Australian courts will ultimately reach their own conclusions.

B. NEW ZEALAND

In *Nicholson v Permakraft (NZ) Ltd* (1985),[30] Cooke J of the New Zealand Court of Appeal held that directors owe a duty, in certain circumstances, to creditors as a class, particularly where the company is of doubtful solvency or insolvent. This decision has been influential throughout the common law world and was cited with approval in *Sequana.* The New Zealand Companies Act 1993 subsequently codified creditor-protective duties in section 135 (reckless trading) and section 136 (incurring obligations not likely to be met).

The convergence of England, Australia, and New Zealand around the core principle provides a strong normative foundation for the development of analogous obligations in other common law systems, including India.

X. THE INDIAN DIMENSION: CREDITOR DUTY UNDER THE COMPANIES ACT 2013 AND THE IBC 2016

A. THE GAP IN THE COMPANIES ACT 2013

Indian company law does not expressly recognise a creditor duty of the kind affirmed in *Sequana.* Section 166(2) of the Companies Act 2013[31] the closest Indian analogue to Section 172(1) of the UK Act requires a director to act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of the environment. The provision is wider in scope than its UK counterpart, but it does not mention creditors.

The word 'community' in Section 166(2) is the natural candidate for judicial expansion to include creditors. The argument is not complicated: creditors are members of the business community whose financial interests are directly affected by the manner in which directors

[30] *Nicholson v Permakraft (NZ) Ltd* [1985] 1 NZLR 242 (NZCA), 249 per Cooke J.
[31] Companies Act 2013 (India), s 166(2).

discharge their responsibilities. A purposive reading of Section 166(2), informed by the legislative intent to move beyond pure shareholder primacy, could accommodate creditors within that concept. This question has not yet been authoritatively addressed by any Indian court, and it is a ripe issue for judicial development.

B. THE IBC 2016 AS A CREDITOR-PROTECTIVE FRAMEWORK

The more significant development in Indian law for present purposes is the Insolvency and Bankruptcy Code 2016.[32] The IBC represents a fundamental shift in the philosophy of Indian insolvency law: from debtor-protection to creditor-empowerment. The Code's Preamble expressly identifies maximisation of the value of assets and the balancing of interests of all stakeholders as among its central objectives.

Under Section 17(1)(b) of the IBC, the moment an insolvency petition is admitted, the powers of the board of directors stand suspended and vest in the Interim Resolution Professional.[33] This displacement of directors effected by the mere admission of a petition, without any finding of wrongdoing reflects a legislative judgment that, once insolvency is established, the directors should no longer manage assets that in equity belong to the creditors. The functional logic is identical to that which underlies the creditor duty in *Sequana:* when the residual value of the company's assets represents the creditors' claims, the directors' authority must yield.

The IBC's distribution waterfall in Section 53[34] governs the priority of claims in liquidation. Secured creditors and certain categories of unsecured creditors rank ahead of equity shareholders, reflecting the same economic hierarchy that the creditor duty in English law seeks to protect prospectively, at the pre-insolvency stage. The question is whether Indian law should develop a corresponding pre-insolvency obligation on directors operating in the twilight zone that anticipates and complements the IBC's post-insolvency machinery.

C. THE SUPREME COURT OF INDIA'S APPROACH IN SWISS RIBBONS

The Supreme Court of India in *Swiss Ribbons Pvt Ltd v Union of India* (2019)[35] upheld the

[32]Insolvency and Bankruptcy Code 2016 (India), Preamble and s 3(6).
[33]Insolvency and Bankruptcy Code 2016 (India), s 17(1)(b): upon admission of insolvency application, the board of directors stands suspended and the Interim Resolution Professional assumes management of the corporate debtor.
[34]Insolvency and Bankruptcy Code 2016 (India), s 53.
[35]*Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17 (SC India), [28].

constitutional validity of the IBC and, in doing so, gave considerable weight to the Code's creditor-first philosophy. The court observed that financial creditors, as monitors of the credit market, are best placed to assess the viability of corporate debtors and to make the kind of restructuring decisions that the IBC contemplates. This line of reasoning is consistent with the economic rationale that underpins the creditor duty in *Sequana*: creditors as residual claimants in insolvency have the strongest incentive to ensure preservation of value, and the law should structure governance incentives accordingly.

D. THE CASE FOR JUDICIAL DEVELOPMENT OF A CREDITOR DUTY IN INDIA

The case for developing a creditor duty in India, inspired by but not replicating *Sequana*, rests on several pillars.

First, the philosophical foundation is already present. The IBC's creditor-first orientation, the Supreme Court's endorsement of it in *Swiss Ribbons*, and the Companies Act 2013's invocation of the interests of 'the community' and all stakeholders collectively create the normative environment in which such a duty can take root.

Second, the structural gap is real. The IBC addresses post-admission insolvency robustly but does not reach the critical period when directors continue to manage the company in circumstances of impending insolvency. It is precisely in this period the twilight zone that the mischief which the creditor duty is designed to prevent is most likely to occur: distribution of assets, incurring of unsustainable liabilities, or continuation of loss-making trading at creditor expense.

Third, India's courts have demonstrated willingness to develop company law doctrine purposively when statutory text is silent. A reading of Section 166(2) that brings creditors within 'community' at least in circumstances of insolvency or impending insolvency would be consistent with the broad, stakeholder-oriented language of the provision and with the policy direction established by the IBC.

Fourth, such development would align Indian company law with the mainstream of common law jurisdictions and would strengthen the credibility of the Indian corporate governance framework for international investors and creditors.

The precise formulation of a creditor duty for India need not be identical to the *Sequana* model.

Given the IBC's comprehensive post-insolvency machinery, the Indian duty might be calibrated differently perhaps with a somewhat narrower trigger, or with express safe harbours for directors who obtain and act on professional advice. These are matters for legislative and judicial development. The more fundamental point is that the case for some form of pre-insolvency creditor duty in Indian law is now stronger than it has ever been.

XI. CONCLUSION

The Supreme Court's decision in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25 is a genuine landmark in English company and insolvency law. It resolves, with authority and considerable depth, questions that had remained open for more than three decades. The creditor duty exists. Its trigger actual insolvency, imminent insolvency, or probable insolvent liquidation is higher than mere real risk, but it is engaged in circumstances that many companies face, particularly in periods of economic stress. Once engaged, it demands a genuine and graduated regard for creditor interests, which becomes paramount when the company faces inevitable insolvency.

The judgment does not burden directors unduly. In the ordinary course of solvent trading, directors continue to serve shareholders. The duty is contextual, not categorical, and calibrated to the degree of financial distress the company actually faces. The court also preserved space for directors to exercise genuine judgment, resisting the temptation to reduce the twilight zone to a mechanical rule.

For India, the judgment is more than an academic curiosity. It is a pointer. The Companies Act 2013 and the IBC 2016, read together, create the normative conditions for a pre-insolvency creditor duty that anticipates and complements the IBC's post-admission machinery. Whether that duty is developed by the courts through Section 166(2) or enacted by Parliament explicitly, the direction of travel seems clear. The interests of creditors in the twilight zone of insolvency risk deserve the protection of a directorial duty shaped by the principles that the United Kingdom Supreme Court has now so clearly articulated.

In waiting, one thing is plain enough: the question *Sequana* answers for English law is still waiting for its answer in India.

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