
FROM MORATORIUM TO IMMUNITY: A DOCTRINAL STUDY OF SECTIONS 14 AND 32A IBC AND THEIR APPLICABILITY TO QUASI-CRIMINAL PROCEEDINGS UNDER SPECIAL PENAL STATUTES

Milan Tyagi, O.P. Jindal Global University

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) aims to revive financially distressed companies and maximise the value of their assets rather than merely recover debts. During the Corporate Insolvency Resolution Process (CIRP), Section 14 imposes a moratorium which pauses civil suits and all the proceedings of recovery nature against the corporate debtor. Albeit, the Supreme Court has clarified that certain proceedings under special statutes such as the Negotiable Instruments Act, 1881 and the Prevention of Money Laundering Act, 2002 are quasi-criminal in nature and therefore may continue even during the moratorium period. This creates an uncertainty as to how we interpret Section 32A of the IBC, which provides that once a resolution plan is approved, the corporate debtor gets immunity from past offences and is given a “*clean slate*”. This research addresses a simple but important question: if quasi-criminal proceedings are not halted during CIRP, whether these proceedings are terminated or not after the resolution plan has been approved under section 32A of the IBC? Using case laws and scholarly theories, this study explains that the law prioritises revival of the company and confidence of new investors.

Keywords: Insolvency and Bankruptcy Code, Moratorium, Clean Slate Doctrine, Quasi-Criminal Proceedings, Corporate Debtor Liability, Resolution Plan, Penal Statutes.

I. INTRODUCTION:

The introduction of the Insolvency and Bankruptcy Code, 2016 (“IBC”) has been a breath of fresh air in the Indian insolvency regime. Before this, the scenario in India was a bit like a house of cards. It was a highly fragmented and inefficient system with multiple legislations and bodies governing it,¹ characterised by low amount of recovery rates for the investors, which ultimately affected the economy as India moved further into the global economy.² The IBC sought to remedy these deficiencies by introducing a time-bound, creditor-in-control process that prioritises value maximisation and the preservation of the corporate debtor as a going concern.³

The cornerstone of this scheme is ‘*moratorium*’, used in relation to the Corporate Insolvency Resolution Process (CIRP), which is the suspension of proceedings against the insolvent corporate debtor,⁴ and thus the suspension of the dissipation of company assets; the provision is said to have been intended to increase the efficiency of the resolution process as it should be conducted in a well-organized and coordinated way.⁵ However, judicial interpretations have permitted certain quasi-criminal proceedings particularly under the Negotiable Instruments Act, 1881 and the Prevention of Money Laundering Act, 2002 to continue during CIRP, thereby creating a doctrinal tension.

This interpretative development poses a substantive tension, when interpreted in conjunction with Section 32A, introduced in 2020, making immunity against previous offences available to the corporate debtor under the endorsement of a resolution plan⁶: does the quasi-criminal proceedings survive to the approval of the resolution plan, or is it extinguished under the clean slate doctrine found in Section 32A? It is contended in this paper that although Section 14 can be adopted to permit some form of continuation of quasi-criminal proceedings, depending on the nature of this, Section 32A should be construed as putting out corporate liability after the resolution to make the insolvency regime effective and intact.

¹ Aaditya. Bhatt, ‘Historical Evolution of the Insolvency and Bankruptcy Code (IBC): A Transformational Journey in Indian Insolvency Law’ (*Bhatt & Joshi Associates*, 10 February 2022)

<<https://bhattandjoshiassociates.com/the-insolvency-and-bankruptcy-code-2016/>> accessed 2 April 2026.

² ‘IBC - The Journey So Far - Part I | PDF | Bankruptcy | Liquidation’

<<https://www.scribd.com/document/520327483/1-IBC-The-Journey-So-Far-Part-I>> accessed 2 April 2026.

³ Bankruptcy Law Reforms Committee, *Report of the BLRC* (2015).

⁴ IBC 2016, s 14.

⁵ *ibid*

⁶ Insolvency and Bankruptcy Code (Amendment) Act 2020.

II. Law-making Architecture: Moratorium, Resolution and the Clean Slate Doctrine.

The IBC has their legislative framework built on the theory of economics and institutional design, as envisioned by the Bankruptcy Law Reforms Committee (BLRC). This vision underlined by the Committee requires an effective insolvency regime that allows a quick reallocation of resources away to productive uses, increasing the overall economic efficiency.⁷ The introduction of a moratorium under Section 14 achieves this goal, as it provides a window of time during which the corporate debtor is not subject to external influences, and whether it will be viable. Section 14 organizes the non-commencement of suits, execution proceeds and enforcement proceedings against the corporate debtor, so that the resolution process is not damaged by the actions of the creditors.⁸ The Insolvency Law Committee further clarified that the moratorium is essential to maintain the corporate debtor as a going concern and to prevent value erosion caused by fragmented litigation.⁹ The moratorium is not an absolute though. The courts have taken its coverage out of context to avoid some criminal and quasi-criminal cases, which resulted in ambiguity in its use. This ambiguity is especially great when it comes to how the insolvency law interacts with other regulatory frameworks, including the PMLA. Section 32A of the Insolvency and bankruptcy Code (amendment) Act 2020 concerns the different, yet closely related issue the responsibility of the corporate debtor to past offences, to the extent that one of the provisions vests this responsibility with immunity against the corporate debtor and its assets, once a resolution plan is approved and the management or control of the corporate debtor changed.

It has been the subject of scholarly comment to describe Section 32A as a sort of reset mechanism that allows the resolved party not to bear the historical liabilities of the entity, thereby drawing resolution applicants to it and providing the insolvency regime with a chance to succeed.¹⁰ In *Manish Kumar v Union of India*, the Supreme Court affirmed that Section 32A was a necessary mechanism to prevent the impact of past liabilities, on As with the design of this legislation, a twofold purpose is pursued: securing the existence of the corporate debtor under CIRP with Section 14, Section 32A aims at providing the existence of the settled part with no prior obligations. It is difficult to reconcile these provisions with the fact that we still

⁷ BLRC Report (n 3)

⁸ IBC 2016, s 14.

⁹ Ministry of Corporate Affairs, Report IBC 2016, s 14. of the Insolvency Committee (20 February 2020)

¹⁰ Nilay Mishra and Meghna Pareek, 'SECTION 32A OF THE IBC: FROM PRINCIPLES TO PRECEDENTS AND WHAT COMES NEXT'.

have quasi-criminal proceedings under other statutes.

III. Juridical Character of Quasi-Criminal Proceedings: Compensation or Punishment.

The key to the attention of proceedings under the IBC is their categorization which is either civil, criminal, or quasi-criminal. The quasi-criminal proceeding take the median position of being both a private enforcement and a public regulation. This two-fold nature is most clearly seen in the cases to which Section 138 of the Negotiable Instruments Act is applied, but which are rather compensational in essence, and designed to enforce the obligations to pay money that result in commercial dealings.¹¹ By comparison, proceedings under the Prevention of Money Laundering Act are punitive and regulatory in nature, and have a robust public law component that sets them apart as strictly civil or compensatory measures.¹² The difference between these categories is not just academic but can be of a big implication in the application of the Section 14 and Section 32A. When a procedure is primarily recovery-oriented, then it can undermine the collective insolvency process by permitting individual creditors to circumvent the resolution mechanism. On the other hand, in case the proceeding has a wider social good motive, then its continuity can be peculiar even in insolvency.

To clarify this distinction, courts have taken a utilitarian approach to the issue by analyzing the underlying purpose of the proceedings and not its formal categorization. Nevertheless, this has not been systematically practiced resulting in ambiguity on doctrines. The absence of a prescribed system of making the distinction amid varied forms of quasi-criminal proceedings has further complicated the intercourse between the law of insolvency and other regulative systems.

IV. Issues in the Judicial Interpretation of Section 14: Selective Continuation and Doctrinal Ambiguity.

The jurisprudential interpretation of Section 14 has progressed through a sequence of rulings which has endeavoured to block the goals of insolvency law with other jurisdictional rival structures of law. In *P Mohanraj Vs. Shah Brothers Ispat Pvt Ltd*, the Supreme Court held that proceedings under Section 138 of Negotiable Instruments Act are subject to the moratorium

¹¹ Negotiable Instruments Act 1881, s 138.

¹² Prevention of Money Laundering Act 2002.

since they are quasi-criminal, but are largely compensatory in their nature.¹³

Nonetheless, this has been brought into some degree of nuance by successive developments in the courts. Courts have drawn the distinction between prosecution of the corporate debtor on one hand, and prosecution of its directors or officers, recognising that prosecution of the directors or officers is not held up by the moratorium. This difference is a manifestation of the fact that insolvency law safeguards the corporate personage but not individuals.

Courts have taken a different approach in the context of Prevention of Money Laundering Act. In *Deputy Directorate of Enforcement v Axis Bank*, the Delhi High Court said that the act of attaching property under the PMLA is not a recovery tool, but a tool to deny criminals the proceeds of crime.¹⁴ However, such action may persist despite the moratorium. This point of departure brings out a basic conflict in the legal reasoning. Although in CIRP, the courts understand the need to maintain the corporate debtor, they also aim at supporting the goals of the other regulatory bodies. The outcome is a piecemeal jurisprudence which is not based on a consistent doctrine.

The doctrinal ambiguity encompassing Section 14 is more evident if we look into the case of *Ajay Kumar Bishnoi v Tap Engineering*,¹⁵ where the Madras High Court adopted a different route and ruled that criminal prosecutions under Section 138 of the Negotiable Instruments Acts should not be barred by Moratorium and will continue irrespective of the CIRP process. The term “prosecution has been deliberately omitted in Section 14 of the Code to signal that the criminal liabilities operates outside the ambit of insolvency law. This reveals an essential divergence, while the Supreme Court in *P. Mohanraj*¹⁶ characterised Section 138 as primarily compensatory, Ajay Bishnoi brings forward the penal dimension of the proceeding under Section 138 of the Negotiable Instruments Act, justifying their continuity.

Noteworthy, judicial interpretation has been mostly restricted to the level of moratorium and little has been given to the consequences of the Section 32A after the resolution. The implications of this gap in the jurisprudence are serious because it remains undecided whether the proceedings that qualify as quasi-criminal will remain valid after a resolution plan is

¹³ *P Mohanraj v Shah Brothers Ispat Pvt Ltd* (2021) 6 SCC 258.

¹⁴ (2019) 259 DLT 369.

¹⁵ *Ajay Kumar Bishnoi v Tap Engineering* 2020 SCC OnLine Mad 22579 (Mad HC).

¹⁶ *P Mohanraj v Shah Brothers Ispat Pvt Ltd* (2021) 6 SCC 258 (SC).

approved.

V. Section 32A as well as the Extinguishment of Corporate Criminal Liability.

The Insolvency Law Committee's report highlighted the need for Section 32A to alleviate the concerns of resolution applicants who might be dissuaded from proposing resolution plans due to the fear of being held liable for past offences committed by the corporate debtor.¹⁷ Section 32A is one of the most significant changes in the history of the insolvency regime which introduced the "*clean slate doctrine*" at the core of the contemporary insolvency law. In this, expressly, the corporate debtor shall be liable to no actions in the offences committed by the corporate debtor before the CIRP is commenced unless the resolution scheme is adopted and there is a change in the management.

The justification of this provision has an economic basis. Section 32A provides immunity against historical liabilities so that applicants to stand down an insolvency may seek to resolve endless debts offered by the corporate debtor without attempting to use common assets to do so, and accordingly, in order to achieve efficiency in the allocation of resources.

Simultaneously, the clause does not absolve those liable to the crime such as promoters, directors, and any other persons in control at the same time providing a clean slate to the corporate body. Section 32A interacts with the statutes like the PMLA in a complicated way. In order to enforce the claims of the action, enforcement agencies have proposed that the proceeds of crime cannot be legitimised in an insolvency action and that properties should still be attached. But this interpretation can create the danger of weakening the finality of the process of resolution and deflecting investment.

To interpret Section 32A purposely the aspect that must be identified is that the interpretation is meant to override other conflicting provisions even where otherwise the law may authorize the continuity of quasi-criminal proceedings. The non obstante language of Section 238 of the IBC wherein the Code is made to override incongruent language of other laws strengthens this.

The National Company Law Tribunal in the case of *Varrsana ispat v Directorate of Enforcement*,¹⁸ held that any proceedings relating to the Prevention of Money Laundering Act,

¹⁷ Ministry of Corporate Affairs, RepoIBC 2016, s 14. rt of the Insolvency Committee (20 February 2020)

¹⁸ *Varrsana Ispat Ltd v Directorate of Enforcement* Company Appeal (AT) (Insolvency) No 493 of 2018 (NCLAT, 2 May 2019).

2002 falls outside the ambit of Section 14 as they are connected to the penal domain and not recovery of debt. This leads to ambiguity as to the application of Section 31A, as on one hand the provision seeks to encapsulate the corporate debtor from previous offences, enforcement agencies may still go against the assets of the debtor. Moreover, this exposes a structural limitation of the clean slate doctrine especially where the interaction takes place of IBC with other public laws.

In line with this quasi-criminal actions against the corporate debtor or its assets should be obviated when the resolution plan is approved. Nevertheless, the process of prosecuting offenders who have committed the crime can go on and uphold a balance between economic expediency and law responsibility.

VI. Comparative and Theoretical Perspectives Fresh start and Corporate Personality.

A comparative study of insolvency regimes shows that the doctrine of clean slate is not specific to India but is a core tenet of the modern insolvency law. The notion of a fresh start, according to which reorganised entities can act without established liabilities and, thus, contribute to economic recovery, is used under Chapter 11 of the United States Bankruptcy Code, as well as under the insolvency regime of the United Kingdom.¹⁹, in the latter, the idea of a fresh start promotes the focus on corporate rescue and the continuity of viable businesses.

In theoretical terms, the doctrine of clean slate can be based on the principle of corporate personality, which assumes the entity of a corporation as separate than its shareholders and management. Section 32A supports this idea by dividing the responsibility of wrongdoing between that of the individual and the debtor the corporation.

An additional reason why this strategy is relevant is the law and economics theory, which highlights the significance of efficient distribution of resources and the confidence of investors. Section 32A protects the corporate debtor by providing an insulation against the past liabilities of the company and as such the assets which are insured in the case of these companies can be transferred to more productive purposes thus making those economies more efficient.

This practice, however, has to be weighed against the aims of criminal law which aim to prevent offenders as well as to make them accountable. The difficulty is how to balance these

¹⁹ US Bankruptcy Code, Chapter 11.

conflicting goals without compromising on economic effectiveness as well as legal integrity.

VII. Critical Analysis and Findings: To Doctrinal Coherence and Policy Clarity.

The strain between Section 14 and Section 32A portrays a greater incompatibility between the criminal enforcement regime and the insolvency law. On the one hand, the maintenance of quasi-criminal proceedings is relevant to the interests of the population, which are deterrence, accountability, financial integrity and protection. Conversely, placing such liabilities on the corporate debtor defeats the collective and rehabilitative characteristics of insolvency procedures. A sound solution to this conflict involves the use of a functional and goal oriented approach, which will meet the goals of the IBC. Majorly recovery-oriented proceedings must be extinguished when the resolution plan has been passed, since it is inconsistent with the clean slate doctrine. Bankruptcy procedures which are of greater public use are permissible, but not against the corporate debtor.

The rationale of the decision of the Supreme Court in *Manish Kumar* confirms the necessity of paying more attention to the revival of the economy and investor trust in insolvency regulations.²⁰ Policy wise, the process of harmonising the interaction between the IBC and other regulatory framework needs to be made more clear. This can be done by a change of law or judicial interpretation that spells out what happens to quasi-criminal proceedings once it has been resolved.

Finally, Section 32A should be seen to prevail over the extension of quasi-criminal investigation on the corporate debtor following resolution. This type of interpretation would bring into harmony the conflicting aims of insolvency and criminal law, would create a doctrine coherence and would support the transformative capacity of IBC to be used as end of economic revival and institutional reform.

²⁰ *Manish Kumar* (n 14).