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SWISS RIBBONS PVT. LTD. V. UNION OF INDIA, (2019) 4 SCC 17

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INTRODUCTION

Swiss Ribbons Pvt. Ltd. v. Union of India was the first major constitutional challenge to the Insolvency and Bankruptcy Code, 2016 (IBC). The petition questioned provisions relating to tribunal procedures, the classification of financial and operational creditors, operational creditors' rights, the validity of Information Utilities, withdrawal under Section 12A, and the retrospective application of Section 29A(c), alleging violations of Articles 14, 19(1)(g), and 21 of the Constitution.

ISSUES RAISED

- I. Whether the appointment of NCLT and NCLAT members (excluding the President) violates judicial directions in *Madras Bar Association (III)*, rendering their orders invalid.
- II. Whether administrative control by the Ministry of Corporate Affairs and absence of regional NCLAT benches violate judicial independence and access to justice, as per *Madras Bar Association (II)*.
- III. Whether the differential treatment of financial and operational creditors under Sections 21 and 24 of the IBC is arbitrary and violates Article 14.
- IV. Whether the 90% CoC voting threshold under Section 12A for withdrawal of insolvency proceedings is arbitrary and contrary to *Uttara Foods*.
- V. Whether the framework and functioning of Information Utilities under the IBC affect creditor rights and violate principles of fairness.
- VI. Whether Section 29A(c), due to its retrospective application, NPA-based disqualification, and one-year cutoff, violates constitutional rights.

VII. Whether Resolution Professionals exercise quasi-judicial powers beyond their administrative role, violating natural justice.

I. APPOINTMENT OF MEMBERS OF NCLT AND NCLAT IS AS PER THE MADRAS BAR ASSOCIATION RULING

In the case of *Madras Bar Association v. Union of India*¹, issues concerning the constitution of NCLT/NCLAT, qualification of technical members and constitution of Select Committee were addressed by the Apex Court. The Court highlighted various defects in the procedure relating to their constitution and further issued directions to Union. It was again contended in *Swiss Ribbons* that Section 412(2)² remains a conflicting provision due to the difference in the number of judicial and executive members appointed in the Select Committee i.e., two judicial and three executive members. The Supreme Court observed that this discrepancy under Section 412 has already been resolved by the Companies (Amendment) Act, 2017, thereby bringing equality in their number.

II. THE ADMINISTRATIVE FUNCTIONING OF THE TRIBUNALS

The petitioners successfully argued that having **only one NCLAT bench in New Delhi** contradicts the Supreme Court's ruling in *Madras Bar Association v. Union of India*³, where the Court held it unreasonable to expect litigants to travel across the country to access appellate remedies. To reduce hardship, the Court had directed the Union to set up **a bench in every High Court's jurisdiction**, or at least **a circuit bench in each state**. In this case, the Supreme Court reiterated that directive and ordered the Union to establish **circuit benches within six months** of the judgment.

Additionally, in *Union of India v. R. Gandhi*⁴, the Court had clearly stated that **only the** Ministry of Law and Justice should provide administrative support to tribunals. However, it was brought to the Court's attention that NCLT and NCLAT continued to function under the Ministry of Corporate Affairs, contrary to this directive. The Court, reaffirming its earlier stance, ordered the Union to comply with its 2010 ruling **in letter and spirit**.

¹ *Madras Bar Association v. Union of India*, (2014) 10 SCC 1

² The Companies (Amendment) Act, 2017 (Act 1 of 2018) s. 412(2)

³ *Madras Bar Association v. Union of India*, (2015) 8 SCC 583

⁴ *Union of India v. R. Gandhi, President, Madras Bar Association*, (2010) 11 SCC 1

III. The Differential Treatment of Financial and Operational Creditors is not Against the Constitutional Spirit but Instrumental to Meet the Ends of Justice

The differential treatment between financial and operational creditors under the Insolvency and Bankruptcy Code (IBC) was challenged as violative of **Article 14**⁵ of the Constitution. Petitioners argued that the classification lacked intelligible differentia and rational nexus to the objective of the Code. They highlighted that:

- a) An operational debtor can dispute claims before proceedings are initiated, but no such notice is required from a financial creditor to a financial debtor.
- b) Operational creditors can attend Committee of Creditors (CoC) meetings only if their claim exceeds 10% of total debt.
- c) Even then, they have no voting rights under Sections 21⁶ and 24⁷ of the IBC.

In *Shayara Bano v. Union of India*⁸, the petitioners contended this was arbitrary. However, the **Supreme Court upheld the constitutionality of the classification**, relying on the **Bankruptcy Law Reforms Committee Report, 2015**, and other legal frameworks. The Court observed that financial creditors (primarily banks) are typically fewer, secured, and better equipped to assess the debtor's viability, whereas operational creditors are numerous, unsecured, and usually lack the resources or documentation necessary for such assessments.

Financial creditors offer working capital, while operational creditors supply goods or services using that capital. Defaults to financial creditors are easier to verify due to extensive records, unlike operational creditors who often face complex litigation or arbitration to prove dues. Thus, the classification was held to be reasonable and not arbitrary.

On the issue of notice, the Court clarified that **IBC focuses on “default” rather than “inability to pay”**, and financial creditors must prove default. Since financial transactions are well-documented, a notice requirement was unnecessary. In contrast, operational creditors must serve notice to prevent premature proceedings and allow potential settlements. Moreover, under Section 7(5), financial creditors must serve a copy of their application on the debtor, who can file objections in response.

⁵ The Constitution of India, art. 14

⁶ The Insolvency And Bankruptcy Code, 2016 (Act 31 of 2016), s. 21

⁷ The Insolvency And Bankruptcy Code, 2016 (Act 31 of 2016), s. 24

⁸ *Shayara Bano v. Union of India*, (2017) 9 SCC 1

The **composition and voting rights within the CoC** were also challenged. The Court, referencing the BLRC Report, held that **financial creditors are better placed to evaluate the debtor's restructuring prospects**, while operational creditors are typically concerned with recovery rather than resolution. Hence, it is justified that only financial creditors vote on resolution plans. Nevertheless, operational creditors with claims exceeding 10% of the debt may attend CoC meetings (Section 21), and they retain the right to appeal under Section 63(1) to protect their interests.

Thus, the **Supreme Court found no violation of Article 14**, holding that the differential treatment was based on clear and constitutionally valid reasoning.

IV. The Validity of Section 12A Upheld

Section 12A of the IBC, which allows withdrawal of insolvency applications⁹, was challenged for giving excessive control to the CoC, as it requires 90% approval for withdrawal, with no explicit provision for withdrawal after admission by the adjudicating authority.

The Supreme Court clarified that once insolvency is initiated under Sections 7–9, it becomes a collective process and cannot be withdrawn solely by an individual creditor. However, before CoC is constituted, the NCLT may permit withdrawal under Rule 11 of the NCLT Rules, 2016. The Court also held that if the CoC unreasonably rejects a fair settlement, the NCLT has the power to override such a decision.

V. Information Produced by the Information Utilities is a *Prima Facie* Proof and is Subjected to Rebuttal

It was argued by the petitioners in the present case that the certificate that is issued by the information utilities concerning the occurrence of default is similar to the preliminary decree which is passed without any adjudication.

The Apex Court scrutinized Regulations 20¹⁰ and 21¹¹ of the IBBI (Information Utilities) Regulations 2017 and held that the information provided by the information utilities is merely a *prima facie* proof of default and, if required, can be rebutted by the corporate debtor.

⁹ The Insolvency And Bankruptcy Code, 2016 (Act 31 of 2016), s. 12A

¹⁰ Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, regulation 20

¹¹ Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, regulation 21

VI. Administrative and not the Quasi-judicial Functions Exercised by the Resolution Professional

It was contended by the petitioners in the instant case that the resolution professional exercises powers that are more of quasi-judicial nature than administrative. The Court examined Regulations 10, 12, 13 and 14 of CIRP Regulations along with Section 18 of IBC and held that the resolution professional act as a facilitator in the resolution procedure and is under the continuous supervision of NCLT and CoC which has a right to replace him by two-third of its majority if not satisfied with his performance. Unlike resolution professional, the liquidator primarily acts as a quasi-judicial authority in the insolvency process who examines and adjudicate claims of the creditors.

VII. Section 29A is Prospective and Constitutionally Valid

Since its inception, the Insolvency and Bankruptcy Code (IBC) has undergone continuous judicial scrutiny, with courts identifying the need for modifications through various cases. In **November 2017**, **Section 29A** was introduced, disqualifying certain individuals from being resolution applicants—such as willful defaulters, undischarged insolvents, those convicted for offences with imprisonment exceeding two years, or those disqualified from being directors under the Companies Act, 2013.

It was argued that **Section 29A's retrospective application** unfairly barred former promoters from participating in the resolution process, leading to delays and increased litigation. Petitioners also contended that imposing a **blanket ban**, including on efficient promoters and even their **relatives under Section 29A(j)**, regardless of their involvement in the defaulter's business, was arbitrary.

The Supreme Court, relying on *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*¹², held that resolution applicants do **not have a vested right** to submit plans, and that retrospective application does not inherently violate rights. A law is not retrospective simply because it affects existing interests or relies on past conduct.

Regarding arbitrariness, the Court found it **reasonable to exclude** individuals unable to repay their own debts from the resolution process. The disqualification is **not based solely on misconduct**, and including both errant and efficient promoters is constitutionally valid. The

¹² *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Ors.*, [2018] ibclaw.in 31 SC

Court also clarified that the restriction on **relatives under Section 29A(j)** applies only if they have a **business connection** with the promoter.

IMPLICATIONS

The *Swiss Ribbons* judgment upheld the constitutional validity of the IBC, affirming its primary aim—reviving corporate debtors over liquidation. This led to key amendments enhancing resolution efficiency and creditor confidence. The third amendment introduced a 330-day resolution limit, clarified in *Essar Steel* to allow exceptions under Articles 14 and 19(1)(g). The fourth amendment added Section 32A granting conditional immunity to new promoters, revised Section 7(1) to set filing thresholds, and ensured continuity in services and professional oversight. Section 10A later suspended new filings during the COVID-19 period. Together, these reforms—shaped by judicial input—fortified the IBC’s practical and legal framework.