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# RESOLVING THE STATUTORY TUG-OF-WAR: THE OVERRIDING POWER OF IBC SECTION 238 AGAINST SPECIALIZED REGULATORY STATUTES


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## Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) contains a broad non-obstante clause in Section 238. The clause provides that the Code shall have effect notwithstanding anything inconsistent in any other law. Since 2016, that clause has been invoked against specialised regulatory statutes, including real estate regulation, state depositor-protection legislation and statutory dues. This article argues that Section 238 is a rule of priority, not a repeal. It operates only where a genuine inconsistency exists, and it must be applied with attention to the purpose of the regulatory statute in question. The article proposes a structured inquiry that courts and practitioners can apply to these conflicts.


## I. Introduction

Indian insolvency law has changed its centre of gravity. Before 2016, insolvency was spread across the Sick Industrial Companies (Special Provisions) Act, 1985, the Companies Act, 1956, and a range of recovery statutes. Creditors and regulators each pursued their own remedies. The IBC replaced this with a single, time-bound process, managed by a creditor-in-control committee and supervised by an adjudicating authority.[1] The Supreme Court upheld this design in *Swiss Ribbons Pvt. Ltd. v. Union of India*, emphasising the Code's objective of reviving distressed enterprises within a fixed timeframe.[2]

[1] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

[2] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India).

A single-window design of that kind must confront other laws. India has many specialised statutes that regulate particular sectors or protect particular classes of persons. Real estate buyers are protected under the Real Estate (Regulation and Development) Act, 2016 (RERA). Depositors in certain financial establishments are protected under state statutes. The State and other public bodies hold statutory dues. Each of these statutes has its own enforcement machinery, and each can point in a different direction from the Code.

The Code answers this problem in Section 238, which states that the Code's provisions "shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."[3] The clause is short, but its consequences are wide. Courts have used it to quash regulatory proceedings, to stay attachments and to direct that claims be resolved before the adjudicating authority.[4]

This article asks a narrower question than whether Section 238 is valid. It asks how far the overriding power extends, and what a court should do when the Code and a specialised statute genuinely collide. The argument is that Section 238 creates a rule of priority that applies only to real inconsistency, and that the scope of that priority should be decided by reference to the purpose of both statutes. The question matters in practice because the same insolvency can attract a homebuyer's complaint, a state attachment order and a tax demand at once. A court that answers the question carelessly risks either leaving the Code toothless or erasing protections that Parliament and the state legislatures deliberately created.

## II. The Text of Section 238 and Its Companion Provisions

Section 238 is part of a larger architecture of priority. Its operation has to be understood alongside three other provisions.

First, Section 14 imposes a moratorium on the institution or continuation of suits and proceedings against the corporate debtor, and on the enforcement of security interests. Section 14(1)(c) expressly covers action to "foreclose, recover or enforce any security interest," including action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

[3]Insolvency and Bankruptcy Code, 2016, No. 31, § 238, Acts of Parliament, 2016 (India).

[4]*Dreamz Infra India Ltd. v. Competent Authority*, W.P. No. 13477 of 2020 (Karn. High Ct. May 24, 2021) (India) [date to be verified].

Interest Act, 2002.[5] The moratorium is therefore the Code's first and most direct mechanism for displacing other enforcement routes.

Second, Section 31 gives an approved resolution plan binding effect on the corporate debtor and on its creditors, guarantors and other stakeholders. Once the adjudicating authority approves a plan, it is binding, and the Code expects that rights against the debtor will be settled through the plan rather than through parallel enforcement.[6]

Third, Section 238A makes the Limitation Act, 1963 applicable, as far as may be, to proceedings before the adjudicating authority and the appellate tribunal.[7] The provision shows that the Code is not a freestanding regime. It borrows procedural rules from general law, and it is drafted to integrate with other statutes where the legislature has chosen to do so.

Section 238 must be read against this background. The Code does not simply declare its own primacy. It creates specific mechanisms, such as the moratorium and the binding plan, which are designed to produce the outcomes the clause protects. Where a regulatory statute produces a different outcome through a different process, the question is whether it is "inconsistent" in the sense that Section 238 requires.

The distinction between a conflict of outcomes and a conflict of processes is central here. Two statutes can reach different results on the same facts without being inconsistent if each sets out its own route to that result and both routes can be followed. The difficulty arises when a regulatory statute directs a claimant or an authority to enforce against the same asset, in the same period, through a process that the Code has already suspended. In that situation, compliance with one statute necessarily means non-compliance with the other, and Section 238 is engaged. The architecture of the Code therefore gives a court a principled starting point: look first to the moratorium, then to the plan, and only then to whether the regulatory statute can be honoured alongside them.

[5]Insolvency and Bankruptcy Code, 2016, No. 31, § 14(1)(c), Acts of Parliament, 2016 (India); Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, No. 54, Acts of Parliament, 2002 (India).

[6]Insolvency and Bankruptcy Code, 2016, No. 31, § 31(1), Acts of Parliament, 2016 (India).

[7]Insolvency and Bankruptcy Code, 2016, No. 31, § 238A, Acts of Parliament, 2016 (India); Limitation Act, 1963, No. 36, Acts of Parliament, 1963 (India).

A useful way to see the architecture is to compare what each provision does at the moment of conflict. The moratorium operates at the level of enforcement: it stops a creditor from taking steps against the debtor or its assets. The binding plan operates at the level of outcome: it fixes what each stakeholder receives. Section 238 operates at the level of priority: it tells a reader which of two conflicting commands governs. Confusing these levels is a common source of error in submissions. A party who argues that a regulatory statute is inconsistent with the moratorium is making a different claim from one who argues that the same statute is inconsistent with the plan, and each claim requires its own analysis.

The architecture also reveals the Code's internal logic. The moratorium is temporary by design, because it is meant to last only while the resolution process is pending. The plan is final once approved, because finality is what allows a business to be restructured with confidence. Section 238 is general in form but must be applied in a way that respects these time-bound and outcome-bound features. A reading of the overriding clause that extended the moratorium beyond its purpose, or that reopened an approved plan through a regulatory route, would be inconsistent with the scheme that Section 238 is meant to protect.

## III. How Courts Read a Non-Obstante Clause

Non-obstante clauses are a familiar feature of Indian legislation. Their usual function is to tell the reader that one provision shall prevail over another in case of conflict. The clause does not, however, automatically repeal the other law. A court still has to identify a conflict, and it has to decide how far the conflict goes.

Three principles should guide the reading of Section 238.

The first is that the clause is triggered by inconsistency. The text of Section 238 uses the word "inconsistent," and the word limits the clause. Two statutes that address different matters, or that can be complied with together, are not inconsistent merely because they operate in the same field. A court must therefore first ask whether compliance with one statute would necessarily violate the other.

The second principle is that the clause is directed at the Code's objectives. The Supreme Court in *Swiss Ribbons* read the IBC as a statute built around time-bound resolution and the preservation

of value.[8] Section 238 should be read to give effect to those objectives, not to defeat other legitimate public purposes unrelated to insolvency. A regulatory statute that protects homebuyers, depositors or the public purse serves a different objective, and the court must examine whether that objective is actually in conflict with the Code's.

The third principle is that the court should prefer a harmonious construction wherever one is available. Indian courts have long applied this approach to conflicts between statutes. The principle is well established, and it applies here with particular force because the IBC and sectoral statutes both reflect legislative choices made at different times for different purposes. A court should not read an overriding clause so broadly that it erases a regulator's jurisdiction over matters the Code does not address.

These principles produce a three-step inquiry: (a) is there a genuine inconsistency; (b) what is the purpose of the regulatory statute, and does that purpose concern insolvency; and (c) can both statutes be given effect by distinguishing their domains? The sections that follow apply this inquiry to three recurring conflicts.

## IV. Three Collisions

### *A. Real Estate Regulation Under RERA*

The clearest conflict arises in real estate. Homebuyers are often financial creditors of a developer, and they can invoke the IBC by filing a petition under Section 7. They can also seek relief before the RERA authority or the appellate tribunal. Two questions follow. Does the Code displace RERA's jurisdiction, and if not, which forum should decide a particular claim?

RERA is not silent on this. Section 79 bars civil courts from entertaining matters that the authority or the appellate tribunal is empowered to determine.[9] Section 88, however, provides that the Act shall be "in addition to, and not in derogation of," other laws in force.[10] The two provisions point towards a shared jurisdiction rather than an exclusive one.

[8] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 S.C.C. 17 (India).
[9] Real Estate (Regulation and Development) Act, 2016, No. 16, § 79, Acts of Parliament, 2016 (India).
[10] Real Estate (Regulation and Development) Act, 2016, No. 16, § 88, Acts of Parliament, 2016 (India).

The Supreme Court addressed the relationship in *Imperia Structures Ltd. v. Anil Patni*. The Court treated the remedies as complementary and read the statutory scheme to preserve the homebuyer's options, rather than treating the IBC as an automatic bar to RERA.[11] That reasoning fits the inquiry set out above. The purposes of the two statutes are not identical. RERA regulates the developer's conduct, including registration, disclosure and delay. The Code regulates the resolution of the developer's insolvency. Where a homebuyer seeks a refund or possession, both statutes may address the same claim, but the Code's concern is the collective resolution of the company's debts, which the moratorium secures.

The sensible resolution is that once a corporate insolvency resolution process is admitted, the moratorium and the adjudicating authority take control of claims against the debtor, and regulatory proceedings that would enforce those claims against the debtor's assets must yield. Regulatory functions that do not seek to recover money or enforce assets, such as disclosure obligations or the grant of registration, may continue, but they should not produce outcomes that defeat the moratorium.

The position of the homebuyer deserves particular attention. An allottee who has paid money to a developer is exposed to the risk that the developer's assets will be consumed by competing creditors, and the Code's collective process is designed to prevent a race to enforcement. At the same time, a homebuyer may not be served well if the insolvency process delays the completion of a project that the buyer has financed. A court applying the inquiry should therefore ask whether the regulatory remedy would produce a recovery that the resolution process would otherwise have to fund, and whether the regulatory proceeding would divert assets needed for the plan. Where the answer is yes, the Code's priority is engaged. Where the regulatory remedy operates against the buyer's own contract or against the developer's non-financial obligations, the two statutes can often run side by side.

### *B. State Depositor-Protection Statutes*

The conflict is sharper where a state statute provides a self-contained recovery mechanism. In *Dreamz Infra India Ltd. v. Competent Authority*, a homebuyers' insolvency petition had been admitted under Section 7 and a corporate insolvency resolution process had begun. A Competent

[11] *Imperia Structures Ltd. v. Anil Patni*, (2020) 10 S.C.C. 783 (India) [pinpoint to be verified].

Authority under the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 nonetheless proceeded to attach the company's properties. The Karnataka High Court held that the IBC prevailed, quashed the Competent Authority's proceedings and directed that the attached properties be released.[12]

The decision illustrates the overriding effect in its clearest form. Once the Code's process is set in motion, the state recovery process cannot run in parallel against the same assets. The inconsistency here is genuine: the Competent Authority's attachment and the Code's moratorium both seek control over the same property and cannot both be satisfied.

The case also shows the limits of the inquiry. The depositor statute's purpose is protecting depositors from fraudulent financial establishments. That purpose is legitimate, and a court should not treat the Code as having silently abolished it. What the Code displaces is the parallel enforcement of claims against the debtor once insolvency has begun. Once the process concludes, or where a claim falls outside the debtor's insolvency, the depositor statute may operate again. Overriding power, in other words, is temporal and claim-specific as well as subject-specific.

A further point follows from the facts. The depositors in such cases are often numerous and unsophisticated, and their interests cannot be left to the discretion of a single company's management. The Code addresses this through the committee of creditors and the requirement that the resolution plan be approved by the adjudicating authority. A court that displaces a depositor statute should therefore be satisfied that the Code's process gives depositors a realistic opportunity to be heard and to recover, not merely that the Code is formally in force. The overriding power is most persuasive when the alternative process is capable of protecting the same people the regulatory statute was designed to protect.

### *C. Statutory Dues and the Primacy of the Approved Plan*

The third collision concerns claims by public authorities. Governments and their agencies hold statutory dues, and these may conflict with a resolution plan that gives them less than their claim. Here the Supreme Court's decision in *Committee of Creditors of Essar Steel India Ltd. v. Satish*

[12] *Dreamz Infra India Ltd. v. Competent Authority*, W.P. No. 13477 of 2020 (Karn. High Ct. May 24, 2021) (India) [date to be verified].

*Kumar Gupta* is central.[13] The Court held that an approved resolution plan binds all stakeholders, including governmental authorities, and that the commercial wisdom of the committee of creditors deserves deference. The Court's reasoning rested on the Code's structure, especially Section 31, rather than on Section 238 alone.

This matters for the overriding inquiry. In the statutory-dues context, the Code's primacy does not depend on an express contest between two statutes. Section 31 binds the state, and the committee's decision is not reviewable by a tax or regulatory authority acting outside the process. Section 238 reinforces that result, but the source of the rule is the Code's own scheme. A court applying the inquiry would ask whether the regulatory statute's claim is one the Code resolves, and if so, whether the claim is to be resolved through the plan.

The distinction is important because not every statutory due is extinguished. The Code's priority affects how claims are enforced and paid, not whether the underlying liability exists. A public body retains its statutory character, and what the Code requires is that its recovery occur within the insolvency process.

The government's position in such disputes usually rests on the public character of the dues, which are said to be unlike ordinary commercial debts. That argument has force, because public revenue serves a public purpose and its collection is not a private matter. The response, reflected in the Code's structure, is that the public purpose is also served by the revival of a viable enterprise that continues to pay taxes, employ workers and supply goods. A plan that maximises the value of the company may therefore advance the public interest even where it compromises a particular statutory claim. The inquiry does not resolve this tension by declaring one side right. It asks whether the Code's scheme has already weighed that interest, and if it has, whether the regulatory claim can be recovered through the plan without being defeated.

## V. The Limits of the Overriding Power

Section 238 should not be read as a blank cheque. Four limits follow from the analysis above, and a fifth follows from the procedural character of insolvency.

[13] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531 (India) [pinpoint to be verified].

First, the clause requires inconsistency. Where a regulatory statute can be complied with alongside the Code, both should be given effect. A court that treats every regulatory provision affecting a company in distress as displaced by Section 238 would make the clause far broader than its text.

Second, the clause operates on the Code's domain. The IBC governs the resolution of corporate insolvency, the moratorium, the treatment of claims and the resolution plan. It does not govern matters outside that process, such as the licensing, safety or professional conduct obligations that a sectoral regulator imposes on an enterprise regardless of its financial condition. Those obligations do not become inconsistent with the Code merely because the company is insolvent.

Third, the overriding power is temporal. It applies while the insolvency process is active. Once the process ends, through approval of a plan, liquidation or withdrawal, the moratorium lapses and other laws resume their ordinary operation, subject to the outcome of the process.

Fourth, the clause must be read in a manner consistent with constitutional limits and with the Code's own objectives. *Swiss Ribbons* confirms that the IBC is a legitimate legislative scheme, but its legitimacy rests on a balance between creditors, debtors and other stakeholders. An overriding clause that stripped away protections for vulnerable claimants without any link to the resolution process would undermine that balance and invite challenge.

Fifth, the overriding power must be exercised through a reasoned order. A court or tribunal that displaces a regulatory statute should identify the provision said to be inconsistent, explain why compliance with both statutes is impossible, and state the period for which the priority applies. Reasons of this kind allow regulators, creditors and affected persons to know which rules govern their conduct, and they allow appellate review to test whether the power was used within its proper limits. An unexplained invocation of Section 238 would generate uncertainty of the very kind the Code was designed to remove.

## VI. A Resolution Framework

Drawing these threads together, a court facing a Section 238 conflict could apply a four-step framework.

**Step one: identify the conflict.** The court should identify the precise provision of the regulatory statute that is said to be inconsistent with the Code, and the precise provision of the Code it

allegedly conflicts with. A general claim that a statute "interferes" with insolvency is not enough. The conflict must concern the same claim, asset or process.

**Step two: identify the purpose of each statute.** The court should ask what the regulatory statute protects and whether that protection depends on the debtor remaining outside insolvency. Homebuyer protection, depositor protection and the collection of public dues have different purposes. Each purpose must be weighed against the Code's object of time-bound resolution.

**Step three: test for harmonious operation.** If both statutes can operate, through distinct forums, distinct claims or sequencing, the court should give effect to both. The overriding power should be used to resolve genuine conflicts, not to replace a harmonious reading.

**Step four: determine the scope of priority.** Where a genuine conflict remains, the court should decide the reach of the Code's priority in light of the moratorium, the approved plan and the time frame. It should specify whether the priority is temporary, claim-specific or subject-specific, and should record the reasons for that choice.

This framework has two advantages. It preserves the Code's central function, which is the collective resolution of a distressed company's affairs. It also protects the regulatory purposes of sectoral statutes, which would otherwise be lost to a broad reading of Section 238. The framework's cost is that it asks more of courts than a simple rule of automatic supremacy would. That cost is justified, because the alternative is a set of conflicting decisions that leave both creditors and regulators uncertain about which rules apply.

The framework has a further benefit in cases where the Code and a regulatory statute are both intended to protect the same group. In such cases a court can ask whether the two processes could be sequenced so that each group receives the protection the legislature intended. Sequencing is often the most practical answer. A regulatory determination may be made first, with its result carried into the resolution process as a claim, or the resolution process may proceed first and the regulatory remedy may then operate on what remains. The choice between these orders should be guided by the purpose of each statute, not by a preference for one forum over another.

## VII. Conclusion

Section 238 is one of the most consequential provisions in the IBC. It was drafted to ensure that the Code's process could not be defeated by other laws, and in practice it has been used to resolve several important conflicts. But an overriding clause is a rule of priority, and priority has to be applied with discipline. The question is not whether the IBC prevails over a regulatory statute in the abstract, but whether, on the facts of a particular claim, the two statutes are genuinely inconsistent, and if so, how far the Code's priority extends.

The authorities discussed here point towards a middle course. The Supreme Court has treated the Code as a complete and purposive scheme, and has refused to let parallel enforcement undermine a resolution plan. At the same time, the Court has recognised that sectoral statutes such as RERA are complementary, not extinguished. A court that applies the four-step framework can give effect to both the Code's objective of value-preserving resolution and the regulatory purposes of other statutes. That is the most principled way to resolve the statutory tug-of-war, and it is consistent with the text of Section 238 itself.

The framework is also a discipline for practitioners. A creditor, a regulator or a debtor who frames an argument around Section 238 should be able to identify the inconsistency, the purpose at stake and the period for which priority is claimed. Arguments framed in those terms are more likely to persuade, and they make the eventual judgment easier to reason about and to apply in later cases.