

## Reining in Misuse of IBC for Recovery

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### 1. Introduction

The jurisprudence under the Insolvency and Bankruptcy Code, 2016 ("IBC") has steadily evolved to draw a clear line between insolvency resolution and debt recovery. In its recent decision in ***Anjani Technoplast Ltd. Versus Shubh Gautam*** - [2026-TIOLCORP-22-SC-IBC](#), the Hon'ble Supreme Court has once again reinforced this distinction, reminding stakeholders that **IBC is not a recovery mechanism**. The ruling arrives at a time when the Code is increasingly invoked in situations that test its foundational purpose, often blurring the boundary between collective insolvency resolution and individual debt enforcement.

The judgment is significant not merely for its outcome but for the clarity with which it revisits first principles. By placing emphasis on the object, structure, and safeguards within the IBC, the Court has cautioned against its strategic misuse as a substitute for execution proceedings. In doing so, it restores the conceptual discipline that must govern the invocation of insolvency jurisdiction.

### 2. Factual Background

The appellant preferred the appeal under Section 62, assailing the order of the National Company Law Appellate Tribunal, Principal Bench, New Delhi ("the NCLAT"). By that order, the NCLAT set aside the order of the National Company Law Tribunal, New Delhi Bench ("the NCLT") and directed the admission of a petition filed under Section 7 of the IBC by the respondent.

The respondent is a money lender and had advanced a loan to the appellant which remained unpaid. Subsequently, the parties entered into a compromise deed, which too was not honoured by the appellant. Instead of proceeding with execution of the decree arising from the compromise, the respondent invoked Section 7 of the IBC before the NCLT, asserting that the decretal amount constituted a financial debt and that the appellant had defaulted.

### 3. Proceedings before the NCLT

The NCLT dismissed the petition on four principal grounds. First, it held that a decree holder constitutes a separate category under Section 3(10) of the IBC and does not ipso facto qualify as a "financial creditor" under Section 5(7). Second, the Tribunal found that the alleged debt did not satisfy the definition of "financial debt" under Section 5(8), particularly in the absence of material demonstrating disbursal against consideration for the time value of money.

Third, the NCLT noted that the appellant was a solvent and operational enterprise with substantial revenues and workforce, thereby negating any real insolvency concern. Finally, and most importantly, it held that **IBC is not a recovery mechanism**, observing that the respondent was attempting to enforce a civil court decree through insolvency proceedings rather than through execution.

### 4. Proceedings before the NCLAT

The NCLAT reversed the NCLT's findings on multiple grounds.

#### 4.1 On Financial Debt and Time Value of Money

The Appellate Tribunal held that the loan agreements expressly stipulated interest and repayment timelines, thereby satisfying the requirement of time value of money under Section 5(8).

#### 4.2 On Existence of Financial Creditor Relationship

It concluded that the juridical relationship between the parties as financial creditor and corporate debtor stood established through the loan agreements themselves.

### 4.3 On Relevance of Decree and Interest

The NCLAT observed that the NCLT failed to appreciate that the contractual interest preceded the higher interest awarded in the decree, thereby reinforcing the financial nature of the transaction.

### 4.4 On Decree as Cause of Action

Placing reliance on multiple Supreme court judgements, the Appellate Tribunal held that a decree gives rise to a fresh cause of action to initiate proceedings under Section 7 within three years.

### 4.5 On Allegations of Fraud

The Appellate Tribunal rejected the appellant's plea of fraud, noting that the decree had not been challenged on such grounds before the High Court and could not be questioned at the appellate stage.

On these reasoning, the NCLAT directed admission of the Section 7 application.

## 5. Issue Before the Supreme Court

The Hon'ble Court framed the central issue in the following terms:

*"whether, in the facts and circumstances of this case, the initiation and continuation of the Corporate Insolvency Resolution Process under the IBC is justified and whether the respondent can seamlessly resort to the insolvency process as a substitute for the execution of a Civil Court decree. In other words, an alternative execution process is a recovery mechanism."*

## 6. Submissions of the Petitioner

The petitioner contended that the invocation of Section 7 was a clear abuse of process, as the respondent, being a decree holder, had an effective remedy in execution proceedings. It was argued that the alleged debt was disputed, the company remained solvent, and the proceedings were initiated solely to coerce payment rather than to resolve insolvency. Emphasis was placed on the settled position that **IBC is not a recovery mechanism**, and that its misuse undermines the statutory scheme.

## 7. Submissions of the Respondent

The respondent argued that the decretal amount constituted a financial debt and that default was evident. It was submitted that the existence of a decree provided a fresh cause of action under Section 7, and that the Code does not bar a financial creditor from invoking insolvency merely because alternative remedies exist.

## 8. Discussion & Findings of the Supreme Court

### 8.1 On the Object of IBC

The Court reaffirmed that the legislative object of the IBC is resolution and revival, not recovery. Relying on *Swiss Ribbons (P) Ltd. v. Union of India ((2019) 4 SCC 17)* - [2019-TIOLCORP-01-SC-IBC](#), it reiterated that the Code is a beneficial legislation aimed at preserving the corporate debtor as a going concern. The process is not adversarial but protective, intended to maximise value for all stakeholders rather than serve individual recovery interests.

Further reliance was placed on other decisions to emphasise that insolvency proceedings cannot be used as a backdoor mechanism for debt enforcement.

### 8.2 Regarding Distinction Between IBC and Recovery Statutes

The Court clarified that while recovery may incidentally occur, it is not the objective of the Code. A creditor invoking IBC purely for payment of dues acts contrary to its spirit, especially where alternative remedies such as execution are readily available.

### 8.3 Regarding Misuse of IBC as Recovery Mechanism

Referring to Section 65 of the IBC, the Court highlighted that the statute itself contemplates penalties for fraudulent or malicious initiation of insolvency proceedings. This provision serves as a statutory safeguard against misuse and reinforces that **IBC is not a recovery mechanism**.

#### **8.4 Regarding Contradictory Stands by Respondent**

The Court observed that inconsistent positions taken by the respondent across forums undermined the certainty of the alleged debt. Insolvency proceedings, which have far-reaching consequences, cannot be founded on disputed or shifting claims.

#### **8.5 Regarding Right of Decree Holder to Initiate Insolvency**

While acknowledging that a decree may furnish a fresh cause of action, the Court held that such right is not absolute. The critical inquiry remains whether invocation of IBC, in the facts of the case, constitutes misuse or an attempt to bypass ordinary remedies.

### **9. Application of Principles to the Present Case**

Applying these principles, the Court found that the respondent had deliberately avoided execution proceedings despite holding a decree. The appellant was a solvent entity, had deposited a substantial amount before the High Court, and continued to contest the quantum of liability.

In these circumstances, the initiation of CIRP was held to be nothing more than an attempt to use insolvency as a pressure tactic. The Court unequivocally termed this conduct an abuse of process, holding that the respondent sought to employ the IBC as a substitute for debt enforcement rather than for genuine insolvency resolution.

### **10. Conclusion**

The decision in *Anjani Technoplast* is a timely reaffirmation of the disciplined use of insolvency jurisdiction. At a conceptual level, it restores the balance between creditor rights and the structural integrity of the IBC framework. By rejecting the use of insolvency proceedings as a coercive tool, the Court has preserved the Code's identity as a collective resolution mechanism rather than an individual enforcement remedy.

Equally, the judgment sends a clear message to litigants and practitioners that strategic invocation of IBC, divorced from its intended purpose, will not find favour with the Court. The emphasis on substance over form, and on intent over technical eligibility, ensures that the Code remains aligned with its foundational objective of economic revival.

### **11. Lessons from the Judgment**

The ruling underscores that while the IBC is a powerful remedy, it is not an all-purpose tool. Creditors must carefully assess whether their objective aligns with insolvency resolution or merely with recovery. The existence of a decree, by itself, does not justify insolvency proceedings. The test is one of purpose, bona fides, and the surrounding factual matrix.

For practitioners, the decision serves as a reminder that **IBC is not a recovery mechanism**, and any attempt to use it as such, risks not only dismissal but also potential consequences under Section 65. The discipline imposed by this judgment will likely shape future litigation strategy, ensuring that the Code is invoked in cases of genuine financial distress rather than as a shortcut to enforcement.

**[The views expressed are strictly personal.]**

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