IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2819 OF 2026

Indian Bank	…	Petitioner
Vs.		
Shabbir Abbas Patel and others	…	Respondents

WITH

WRIT PETITION (L) NO. 22742 OF 2026

RBL Bank Limited	…	Petitioner
Vs.		
State of Maharashtra and others	…	Respondents

WITH

WRIT PETITION (L) NO. 24045 OF 2026

RBL Bank Limited	…	Petitioner
Vs.		
State of Maharashtra and others	…	Respondents

AND

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3374 OF 2026

Godrej Finance Limited	…	Petitioner
Vs.		
Ashok Rajkumar Gupta and others	…	Respondents

WITH

WRIT PETITION NO. 7805 OF 2026

Asset Reconstruction Co. India Limited and others	…	Petitioner
Vs.		
Veer Gurjar Aluminium Industries Pvt. Ltd. & ors.	…	Respondents

WITH

WRIT PETITION NO. 7587 OF 2026

Apna Sahakari Bank Limited and another	…	Petitioners
Vs.		
M/s. Image Industries Pvt. Ltd. and others	…	Respondents

WITH

WRIT PETITION NO. 7600 OF 2026

Apna Sahakari Bank Limited and another … Petitioners
Vs.
M/s. Gandharv Farms and Resorts Pvt. Ltd. & ors. … Respondents

WITH

WRIT PETITION NO. 7598 OF 2026

Apna Sahakari Bank Limited and another … Petitioners
Vs.
M/s. Warna Industries Limited and others … Respondents

Mr. Amir Arsiwala a/w Mr. Ahmed Padela i/b The Law Point for Petitioner in WP/2819/2026.

Mr. Mayur Khandeparkar a/w Ms. Kruti Bhavsar, Ms. Angel Pandey, Mr. Abhishek Pandey and Mr.Aniruth Purushothaman for Respondent No. 1 to 3 in WP/2819/2026.

Mr. Charles D'Souza a/w Mr. Archit Virmani, Ms. Pragati Gothi, Ms. Richa Shukla, Mr. Atul Gupta, and Mr. Rupak Sawangikar i/b Archit Virmani for Petitioner in WP/3374/2026.

Mr. Rohit Agarwal a/w Ms. Kruti Bhavsar, Mr. Abhishek Pandey and Ms. Angel Pandey for Respondent Nos.1 to 4 in WP/3374/2026.

Mr. Rohaan Cama a/w Mr. Charles D'Souza, Mr. Rupak Sawangikar, Ms. Pragati G. and Ms. Somya Tripathi i/b T N Tripathi & Co. for Petitioner in WP/7805/2026.

Mr. Harish Adwant (through V.C.) for Respondents in WP/7805/ 2026.

Mr. Charles D'Souza a/w Ms. Pragati Gothi, Mr. Nikhil Rajani, Ms. Mrunalini Deshpande and Ms. Arya Chougule i/b M/s. V. Deshpande & Co. for Petitioner in WP/7587/2026, WP/7598/2026 & WP/7600/ 2026.

Mr. Viraj Parekh a/w Mr. Shamant Satiya, Ms. Shubhra Swami, Mr. Priyansh R. Jain and Mr. Punit Agarwwal for Respondent Nos. 2 to 4 in WP/7587/2026 and Respondent No.2 in WP/7598/2026.

Mr. Shamant Satiya a/w Mr. Priyansh R. Jain and Mr.Punit Agarwwal for Respondent No.2 in WP/7600/2026.

Mr. Shadab S. Jan a/w Ms. Sabeena Mahadik, Mr. Pankaj Uttaradhi and Mr. Bhargav Samant for Petitioner in WPL/22742/2026 and for Petitioner in WPL/24045/2026.

Mrs. Anupamaa Pawar, AGP for Respondent No.1-State in WPL/ 22742/2026.

Mr. Anirudh Hariani a/w Ms. Kruti Bhavsar, Mr. Abhishek Pandey and Ms. Angel Pandey for Respondent No.2 in WPL/22742/2026.

Mr. Prashant Kamble, AGP for Respondent No.1-State in WPL/ 24045/2026.

Ms. Kruti Bhavsar a/w Mr. Abhishek Pandey and Ms. Angel Pandey for Respondent No.2 in WPL/24045/2026.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

Reserved on : **AUGUST 14, 2026**
Pronounced on: **SEPTEMBER 18, 2026**

JUDGEMENT : (*Per Justice Manish Pitale*)

. The question that arises for consideration in these writ petitions is as to whether sub-section (4) of Section 96 of the Insolvency and Bankruptcy Code 2016 (IBC) introduced by way of amendment with effect from 26.05.2026 operates retroactively? In other words, whether Section 96(4) of the IBC, stating that the said provision shall not apply where an application is filed under Sections 94 or 95 thereof for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor, applies to such applications already filed and pending or that it would apply only to applications filed after the aforesaid sub-section (4) is added by way of amendment to Section 96 of the IBC.

2. The parties in support of the proposition that the amendment applies retroactively emphasize that the amendment was brought about to address the mischief of rampant misuse of the interim moratorium under Section 96 of the IBC triggered upon filing of applications under Sections 94 and 95 thereof. The parties resisting such an interpretation insist that sub-section (4) of Section 96 of the IBC introduced by way of amendment with effect from 26.05.2026 applies prospectively i.e. to applications filed under Sections 94 and 95 of the IBC after the amendment has come into force.

3. Although a learned Single Judge of this Court in a recent judgement and order dated **24.07.2026** passed in **Commercial**

Arbitration Petition No.620 of 2021 (*Tata Capital Financial Services Limited Vs. Neel Motors LLP and others*) has taken a view that the said amendment is retroactive in operation, elaborate submissions have been made by learned counsel for the rival parties in these writ petitions, relying upon the said judgement on the one hand, while on the other hand, an endeavor is sought to be made to demonstrate that the view could be said to be erroneous. The learned counsel for the parties have made submissions on the said question of law in the context of the respective factual matrix of each writ petition. Therefore, in this judgement in Part-I, the question of law is being discussed and decided and thereafter, in Part-II, the facts pertaining to individual writ petitions are considered to dispose of the writ petitions in the light of the findings on the question of law and application of the findings to the facts of each case.

4. The submissions of the counsel are being referred hereinbelow on the aforesaid question of law. While dealing with individual writ petitions, the factual submissions would be referred, so as to dispose of the writ petitions, *inter alia*, in the light of findings rendered on the aforesaid question of law.

PART-I

SUBMISSIONS ON THE QUESTION FOR CONSIDERATION

5. Mr. Cama, learned counsel appearing for the petitioner in Writ Petition No.7805 of 2026 submitted as follows:-

(a) Sub-section (4) to Section 96 of the IBC was introduced by way of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 and by Notification issued by the Central Government, it was made effective from 26.05.2026. It was specifically submitted that the said provision introduced by way of amendment operates retroactively, meaning thereby that it applies prospectively from the date of the Notification but it must apply to pending proceedings. On this basis, it was contended that interim moratorium under Section 96 of the IBC, even in respect of pending proceedings shall cease to operate with effect from 26.05.2026.

(b) Much emphasis was placed on the words ‘is filed’ used in sub-section (4) to Section 96 introduced by way of amendment. It was submitted that the said words indicate that all applications filed under Section 96, including those pending, would be covered under the said provision introduced by way of amendment. Hence, the interim moratorium operating under Section 96 in pending applications would also cease to operate with effect from 26.05.2026. It was submitted that the introduction of sub-section (4) in Section 96 of the IBC was essentially remedial in nature as the Legislature clearly desired to address the mischief of misuse of the interim moratorium under Section 96 of the IBC. By relying upon judgements of the Supreme Court in the cases of *Board of Control for Cricket in India (BCCI) Vs. Kochi Cricket Private Limited and others*, **(2018) 6 SCC 287** and *M. Rajendran and others Vs. KPK Oils and Protiens India Private Limited and others*, **(2026) 3 SCC 505**, it was submitted that the said amendment clearly applied retroactively to pending proceedings also.

(c) It was submitted that the operation of the interim moratorium was not a ‘vested right’ in the debtor, and therefore, the aforesaid amendment ought to apply even to pending proceedings. Reliance was placed on judgements of the Supreme Court in the cases of *Ellora Paper Mills Limited Vs. State of M.P.*, **(2022) 3 SCC 1**; *TRF Limited Vs. Energo Engg. Projects Limited*, **(2017) 8 SCC 377** and *Perkins Eastman Architects DPC Vs. HSCC (India) Limited*, **(2020) 20 SCC 760**, to contend that similar amendments clarifying the legal position introduced in the Arbitration and Conciliation Act, 1996 were applied retroactively even to pending proceedings.

(d) By placing reliance on the judgments in the cases of *Vineeta Sharma Vs. Rakesh Sharma*, **(2020) 9 SCC 1** and *Securities and Exchange Board of India (SEBI) Vs. Rajkumar Nagpal*, **(2023) 8 SCC 274**, the concept of 'retroactive operation' was elaborated and it was submitted that the interim moratorium ceased to operate upon the aforesaid amendment coming into operation with effect from 26.05.2026. In this context, reliance was also placed on the said recent judgement of a learned Single Judge of this Court in the case of **Tata Capital Financial Services Limited Vs. Neel Motors LLP and others** *(supra)*.

(e) The learned counsel for the petitioner made elaborate submissions on the mischief sought to be addressed by Legislature by introducing sub-section (4) to Section 96 of the IBC. In this context, reference was made to the report of the Select Committee on the IBC (Amendment) Bill 2025 presented to the Lok Sabha. By referring to the relevant portions of the said report, particularly the recommendations made therein, it was submitted that the whole purpose of introducing the amendment was to address the mischief of misuse of interim moratorium under

Section 96 of the IBC by unscrupulous debtors, which had resulted in frustrating the object of the IBC. It was submitted that when the purpose of introducing the amendment was to cure such a mischief, not applying the same to pending proceedings would be a travesty.

(f) The learned counsel for the petitioner addressed the submissions made on behalf of the contesting respondents. It was submitted that the reliance placed on judgement in the case of *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, **(1957) 1 SCC 180** was wholly misplaced because the said case concerned the question of a vested right of appeal being taken away. In the present case, the contesting respondent could not claim a vested right of interim moratorium and therefore, it was submitted that the question of law ought to be answered in favour of the petitioner by holding that the amendment applies retroactively.

6. On the other hand, Mr. Adwant, learned counsel appearing on behalf of the contesting respondent in the said petition submitted as follows:-

(a) Literal rule of interpretation has to be applied as it is the elementary rule of construction / interpretation of statutes. Applying the same to Section 96(4) of the IBC introduced with effect from 26.05.2026 shows that such amendment applies prospectively to applications filed under Section 96. The amendment cannot apply to pending proceedings. It was submitted that such literal rule of interpretation was recognized even in the *Mimansa* Rules of Interpretation referred to by the Supreme Court in the case of *B.*

Premanand Vs. Mohan Koikal, **(2011) 4 SCC 266**. The learned counsel also referred to other commentaries on the concept of literal interpretation.

(b) Much emphasis was placed on the words ‘shall not apply where an application is filed’ used in sub-section (4) of Section 96 of the IBC introduced by way of amendment, to contend that such words indicate only prospective application on and from the date, the amendment came into operation. In this context, the learned counsel for the contesting respondent referred to Sections 18, 23, 31 and 68 of the IBC, to contend that the Legislature had specifically spelt out and clarified wherever the amendment was to operate retrospectively or to pending proceedings.

(c) By placing reliance on the jugement of the Supreme Court in the case of *Vijaya Kumari Vs. Union of India*, **(2026) 2 SCC 96**, it was submitted that classification of a Statute as either substantive or procedural would not determine whether it operated prospectively, retrospectively or retroactively. It was submitted that even if the contention raised on behalf of the petitioner that the interim moratorium under Section 96 of the IBC was procedural in nature was to be accepted for the sake of argument, the same cannot be a determinative factor to hold in favour of the petitioner.

(d) Reliance was placed on judgement of the Supreme Court in the case of *Rakesh Bhanot Vs. Gurdas Agro Private Limited*, **(2025) 6 SCC 781**, to emphasize upon the critical importance of interim moratorium under Section 96 of the IBC, which provides an opportunity to the debtor to reorganize financial affairs without immediate threat of creditor's actions. On this basis, it was submitted that such a critical protection could not be taken away by introduction of the said amendment and addition of sub-section (4) to Section 96 of the IBC. Reliance was also placed on a judgement of the Division Bench of Calcutta High Court in the case of *Ambootia Tea Exports Pvt. Ltd. and others Vs. Sri Rani Sati Abasan Pvt. Ltd.*, **2026 SCC OnLine Cal 10219**, to contend that the aforesaid amendment was not applied by the Calcutta High Court to a pending suit. On this basis, it was submitted that the question of law deserves to be answered by holding that the aforesaid amendment applies prospectively and that, it cannot apply to pending proceedings.

7. Mr. Arsiwala, learned counsel appearing for the petitioner in Writ Petition No.2819 of 2026 submitted as follows:-

(a) It was submitted that the observations and recommendations made by the Select Committee of the Parliament on the IBC (Amendment) Bill 2025 clearly addressed the rampant misuse of interim moratorium under Section 96 of the IBC. It was recorded in the said report that various stakeholders, including members of the National Company Law Tribunal (NCLT) had indicated that appropriate amendment was necessary so that unscrupulous debtors were prevented from misusing the provisions of Sections 94, 95 and 96 of the IBC, to frustrate legitimate actions undertaken by the creditors. In this context, the learned counsel for the petitioner referred to the Mischief Rule of Interpretation. It was submitted that the aforesaid amendment ought to be interpreted in a manner that took forward the object of addressing the aforesaid mischief. Applying the said Rule, it was submitted that the amendment must apply to pending proceedings also, thereby demonstrating that Section 96(4) ought to operate retroactively.

(b) In this context, it was submitted that even this Court in its judgement and order dated **18.03.2026** passed in **Writ Petition (L) No.5157 of 2026** (*Rozina Firoz Hajiani and others Vs. Union of India and others*), had taken judicial notice of the rampant misuse of interim moratorium under Section 96 of the IBC. It was submitted that when the Legislature had responded by introducing the said amendment, the object of the same ought not to be frustrated by holding that while it would apply to applications filed under Sections 94 and 95 on and from 26.05.2026, the same would not apply to pending applications. This would frustrate the very object of introduction of the amendment.

(c) It was submitted that the interim moratorium triggered under Section 96 of the IBC is purely procedural in nature and it is only for the period till the resolution professional submits report under Section 99 thereof. A distinction was sought to be made between such interim moratorium and the moratorium introduced under Section 101 of the IBC. On this basis, it was submitted that there was no question of there being any ‘vested right’ towards interim moratorium under Section 96 of the IBC.

(d) In this regard, reference was also made to judgement of the

Supreme Court in the case of *Dilip B. Jiwrajka Vs. Union of India*, **(2024) 5 SCC 435**, to contend that till the stage of Section 100 of the IBC pertaining to admission of an application is reached, no judicial determination takes place. On this basis, it was reiterated that the amendment in the present case introduced in sub-section (4) of Section 96 of the IBC is clearly procedural in nature and hence, it must operate retroactively. In order to emphasize the said aspect, reliance was placed on judgements of the Supreme Court in the cases of *Shanti Conductors Private Limited Vs. Assam Electricity Board*, **(2019) 19 SCC 529**; *Trimbak Damodhar Raipurkar Vs. Assaram Hiraman Patil*, **1961 SCC OnLine SC 397**; *Dilip Vs. Mohd. Azizul Haq and another*, **(2000) 3 SCC 607**; *State Bank's Staff Union (Madras Circle) Vs. Union of India*, **(2005) 7 SCC 584**; and *J. S. Yadav Vs. State of Uttar Pradesh*, **(2011) 6 SCC 570**.

(e) It was submitted that the contesting respondent is not justified in relying on Section 6 of the General Clauses Act, 1897 because in the present case, we are not concerned with repealing of an Act. It was sought to be emphasized that mere filing of a petition under Sections 94 and / or 95 of the IBC, does not constitute a 'completed transaction' and hence, introduction of the amendment must apply to such applications that are filed and pending. In this regard, reliance was placed on judgement of the Supreme Court in the case of *Manish Kumar Vs. Union of India*, **(2021) 5 SCC 1**. Thereupon, the learned counsel for the petitioners relied upon various provisions of the IBC, to contend that wherever the Legislature indicated prospective operation of an amendment, it was expressly provided.

(f) It was submitted that Section 96(1)(b)(ii) of the IBC would not oust the jurisdiction of the competent court or a tribunal, but, it merely creates a bar, procedural in nature, which has been removed by way of amendment, which needs to be applied even to pending applications in the interest of justice. Thereupon, the learned counsel for the petitioner proceeded to distinguish the judgements upon which reliance was placed on behalf of the contesting respondents.

8. On the other hand, Mr. Khandeparkar, learned counsel appearing for the contesting respondents in the said writ petition, while opposing the contentions of the petitioner, submitted as follows :

(a) It was submitted that the sub-section (4) of Section 96 introduced by way of the said amendment in the IBC w.e.f. 26.05.2026 cannot apply retrospectively. It was submitted that the interim moratorium operating in favour of the said respondents was an immunity or a shield, which would be taken away if the said provision, added by way of amendment, is applied even retroactively. It was emphasized that such immunity or shield was a substantive right or at least an existing right, which could not be taken away by the amendment.

(b) It was submitted that as per settled law, a statute is *prima facie* prospective in nature, unless it is expressly or by necessary implication having retrospective operation. In the present case, a plain reading of sub-section (4) of Section 96 of the IBC, introduced by way of the said amendment, does not indicate that it can apply to pending applications filed under Sections 94 or 95 of the IBC. The said provision would apply only to applications filed on and after 26.05.2026 i.e. the date on which the amendment came into effect.

(c) It was submitted that if it is held otherwise, the effect would be detrimental to all the parties, including the petitioner, as the benefit of extension of limitation under Section 179(3) of the IBC would be taken away. It was submitted that therefore, such an existing right or benefit for the creditor would also be adversely affected, which cannot be countenanced and this further demonstrates the error on the part of the petitioner in insisting that the said amendment should apply retroactively.

(d) It was further submitted that sub-section (4) of Section 96 of the IBC introduced by way of amendment, creates a sub-class within a class, as it applies only to debts of personal guarantors to a corporate debtor as opposed to the pre-amendment situation, when the interim moratorium applied to all debts. If it is applied retrospectively or retroactively, Section 96(4) of the IBC would be rendered susceptible to challenge as being violative of Article 14 of the Constitution of India.

(e) It was submitted that the said amendment cannot be said to be clarificatory or declaratory in nature. It was submitted that since an existing right was being taken away, it ought to apply only prospectively.

(f) It was submitted that prior to IBC being enacted and coming into force, the existing statutes operating in the field were Presidency-Town Insolvency Act, 1909 and

Provincial Insolvency Act, 1920. Even though IBC came into force, proceedings under the said existing statutes continued and Sections 96 to 100 of the IBC were specifically held not to operate retroactively. In this context, reliance was placed on judgements of the Supreme Court in the cases of *State Bank of India vs. V. Ramakrishnan & Anr.,* **(2018) 17 SCC 394** and ***Dilip B. Jiwrajka Vs. Union of India*** (*supra*).

(g) It was submitted that a comparison of the language used in Section 14 of the IBC, as compared to Section 96 thereof, would show that the contentions raised on behalf of the petitioner, while claiming that the amendment operates retroactively, cannot be sustained and therefore, the said contentions deserve to be rejected.

9. In Writ Petition No. 7587 of 2026, 7598 of 2026 and 7600 of 2026, Mr. D'Souza, learned counsel appearing for the petitioner-bank submitted as follows :

(a) It was submitted that the amending Act had to be considered in the light of the statement of objects and reasons and the notes on clauses concerning the bill introduced in the year 2025, which ultimately led to the aforesaid amendment introducing sub-section (4) in Section 96 of the IBC w.e.f. 26.05.2026. It was submitted that a proper reading of the objects and reasons for the very enactment of the IBC and the aforesaid statement of objects and reasons for introducing the latest amendment, would show that the said amendment in Section 96 of the IBC has to be read retroactively and it must be applied to pending proceedings also and that holding otherwise would defeat the very purpose of the amendment.

(b) Much emphasis was placed on the misuse of the interim moratorium triggered under Section 96 of the IBC, upon filing of applications under Sections 94 and 95 thereof. It was submitted that the stakeholders concerning the dynamic working of the IBC had repeatedly reported such rampant misuse by debtors of the said interim moratorium. This included the members of the NCLT and other such adjudicatory bodies. The Constitutional Courts, including this Court, took note of the mischief and indicated that chronic defaulters were misusing the said provision, which frustrated the very object of enactment of the IBC and it also frustrated the steps taken by creditors legitimately for recovery of their dues.

(c) In this regard, reliance was placed on recent judgment and order of this Court in the case of **Rozina Firoz Hajiani Vs. Union of India and others** (*supra*), as also *Bank of Baroda vs. Union of India & Anr.,* **2024 SCC OnLine Bom 3964** and *Kapole Advertising Agency & Ors. vs. Standard Chartered Bank & Ors.,* **2026 SCC OnLine Bom 2673**.

(d) Reliance was also placed on the reports of the Insolvency Law Committee of February 2020 and the Select Committee, that ultimately led to introduction of sub-section (4) in Section 96 of the IBC. It was submitted that all these reports indicated an urgent requirement of addressing the aforesaid mischief in an appropriate manner, thereby demonstrating that failure to apply the said amendment to pending proceedings/ applications would defeat the very purpose of the amendment.

(e) Reliance was placed on Mischief Rule / Heydon's Rule to contend that since the amendment was aimed at striking at such a mischief, there was no reason not to apply it to pending proceedings as mischief perpetuated in the pending proceedings, would continue to operate while applications filed after 26.05.2026 would not be susceptible to such mischief. It was submitted that failing to apply the amendment retroactively to pending proceedings would defeat the purpose of attacking the mischief, thereby indicating the fallacy in the contentions raised on behalf of the respondents. In this regard, reliance was placed on judgment of the Supreme Court in the case of *Bengal Immunity Company Limited vs. State of Bihar & Ors.*, **(1955) 1 SCC 763** and judgment of this Court in the case of *Purushottam Govindrao Bhagwat vs. State of Maharashtra & Ors.*, **2011 SCC OnLine Bom 1847**.

(f) Reference was made to the judgments of the Supreme Court in the cases of *Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.*, **(1994) 4 SCC 602** and **M. Rajendran and others Vs. KPK Oils and Protiens India Private Limited and others** (*supra*), to explain the concept of retroactive operation of a particular provision of law. It was submitted that even if this amendment was held to be procedural in nature, since it did not create any new liability or take away a vested right, it could certainly apply retroactively.

(g) Reliance was placed on judgement of the Supreme Court in the case of *Zile Singh vs. State of Haryana & Ors.*, **(2004) 8 SCC 1**, wherein it was held that the presumption against retroactivity can be refuted by necessary implication in a case where the new law is specifically made to cure an acknowledged evil.

(h) It was further submitted that in the case of *Chaman Singh & Anr. vs. Srimathi Jaikaur,* **(1969) 2 SCC 429** when a statute is curative in nature, it can operate retroactively. Reliance is also placed on judgment of the Supreme Court in the case of *Manish Kumar vs. Union of India & Anr.,* **(2021) 5 SCC 1**, to contend that declaratory, clarificatory or curative statutes involve an aspect of public interest, which require a legislature to remove defects and clarify aspects that have created doubt. In such situations, the amendment can apply to pending proceedings. In this regard, reliance was also placed on the judgments of the Supreme Court in the cases of *Commissioner of Income Tax I, Ahmedabad vs. Gold Coin Health Food Private Limited,* **(2008) 9 SCC 622** and *Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited,* **(2015) 1 SCC 1**.

(i) It was further submitted that the respondents in the said petitions had not litigated in good faith and they had suppressed the initiation of proceedings under Sections 94 and 95 of the IBC, only to divulge the same at the fag end of the proceedings, thereby indicating the mischief. Reliance was placed on the judgment of the Supreme Court in the case of *Celier LLP vs. Sumati Prasad Bafna & Ors.,* **2024 SCC OnLine SC 3727**, to contend that litigation must be conducted by the parties in good faith and no party can be permitted to abuse the process of law.

(j) It was submitted that the attempt on the part of the respondents in these writ petitions to demonstrate that introduction of sub-section (4) to Section 96 of the IBC was prospective, by comparing amendments to other provisions, was not of much use to take their case forward. It was submitted that the effect of applying the said amendment prospectively would create an anomalous situation where the mischief perpetrated in applications in pending proceedings, at the time when the amendment was introduced, would continue unabated. This would frustrate the very object of introduction of the said amendment. On the basis of the said submissions, it was asserted that the said amendment must apply to pending proceedings also and hence, it ought to be held as retroactive in nature.

10. On the other hand, Mr. Parekh, learned counsel appearing for the contesting respondents in the aforesaid three writ petitions, along with Mr. Satiya, learned counsel, submitted as follows :

(a) The learned counsel asserted that sub-section (4) introduced by way of amendment in Section 96 of the IBC, must operate prospectively on and from 26.05.2026 and that it cannot apply to pending applications and proceedings. By placing reliance on judgment of the Supreme Court in the case of **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited** (*supra*), it was submitted that certain principles emerged from the same. Much emphasis was placed on the conclusion rendered in the said judgment that every human being is entitled to arrange his affairs by relying on the existing law and such a person should not find that his plans have been retrospectively upset. It was emphasized that the aforesaid amendment cannot be permitted to apply retrospectively or retroactively, as it would have the effect of taking away the protection of interim moratorium. It was also submitted that while interpreting the said amendment, it would be appropriate to compare the language of sub-section (4) added to Section 96 of the IBC, with the language of provisions in the same statue that are indicated to operate retrospectively.

(b) It was submitted that the IBC has been amended repeatedly in the past decade and a perusal of the amendments introduced from time to time and the language used in the amended provisions, can be a guide for understanding as to whether the subject amendment in the present case can be said to operate retroactively or retrospectively.

(c) The learned counsel for the contesting respondents in the said writ petitions, then referred to a number of provisions of the IBC introduced by way of amendment from time to time and clubbed them in four categories. Firstly, the provisions introduced by way of amendment, wherein the phrase ‘it is hereby clarified’ was used making it clear that the amendment was clarificatory/declaratory and hence, retrospective. Secondly, reference was made to those provisions introduced by way of amendment that changed the existing law and which expressly stated that the same would operate retrospectively. Thirdly, reference was made to provisions added by way of amendment, which replaced existing provisions. In such new provisions added after deletion of the existing provisions, explanations were appended to make them operate retrospectively. Fourthly, those provisions added by way of amendment wherein while notifying the amendment, it was clarified that such provisions would come into effect from an anterior date.

(d) It was emphasized that the amendment in the present case introducing sub-section (4) in Section 96 of the IBC, does not fall in any of the aforementioned four categories and it is silent about retroactive or retrospective operation. In this situation, it was insisted that the said provision introduced by way of amendment, must apply prospectively.

(e) Much emphasis was also placed on fact that the words used in Section 96(4) of the IBC added by way of amendment were ‘is filed’, which is in simple present tense. It was submitted that the learned Single Judge of this Court in the recent judgment and order passed in the case of **Tata Capital Financial Services Limited Vs. Neel Motors LLP and others** (*supra*) has placed much emphasis on the said words, while holding that the amendment would apply to pending proceedings also. It was submitted that the fact that the said words were used in simple present tense was ignored by the learned Single Judge. If words such as ‘has been filed’ i.e. in present perfect tense, were to be used, the interpretation could have been different. But, in the light of the simple tense being used in the amended provision, there can be no doubt that it must operate prospectively.

(f) It was submitted that the interim moratorium being a substantive right, vested in guarantors from the date of filing of petitions under Sections 94 and 95 of the IBC, applying the amendment retroactively, cannot be permitted. In order to emphasize upon the purpose and significance of interim moratorium under Section 96 of the IBC, reliance was placed on judgment of the Supreme Court in the case of ***Dilip B. Jiwrajka Vs. Union of India*** (*supra*).

(g) It was submitted that the mischief rule, upon which the petitioner heavily relied, has its own limitation and that in any case, it cannot override the plain language of the statute. It was further submitted that all debtors could not be painted with the same brush and that wherever mischief was found, as in the case of **Rozina Firoz Hajiani Vs. Union of India and others** (*supra*), the Court would certainly be entitled to exercise its power to deal with the mischief. Hence, the Mischief Rule/Heydon's Rule cannot be applied in these cases.

(h) It was submitted that in any case, the distinction sought to be made between substantive rights and procedural rights is irrelevant for the present case. It was submitted that if the principles laid down by the Supreme Court in the case of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.** (*supra*) and *Vineeta Sharma vs. Rakesh Sharma & Ors.* (*supra*) are applied in the correct prospective, it would lead to only one conclusion and that is prospective application of the said amendment.

(i) The learned counsel for the said respondents proceeded to distinguish the judgments relied upon by the petitioners and submitted that this Court ought to reject the submissions made on behalf of the petitioners.

11. In Writ Petition (L) No. 24045 of 2026, Mr. Shadab Jan, learned counsel appearing for the petitioner submitted as follows:

(a) He adopted the contentions raised by the learned counsel for the petitioners in other writ petitions. He added that the protection of interim moratorium under Section 96 of the IBC could never be given exalted status of a vested right, so as to be immune from the operation of the said amendment. At best, it could be said to be an existing right and in this regard, reliance was placed on the judgment of the Supreme Court in the case of **Trimbak Damodhar Raipurkar Vs. Assaram Hiraman Patil** (*supra*).

(b) It was submitted that the interim moratorium under Section 96 of the IBC was only for the period till the stage of Section 100 of the IBC was reached. In such a situation, it cannot be said that once such an interim moratorium commenced, the beneficiary thereof had a vested right.

(c) It was submitted that the effect of the amendment from 26.05.2026 on the pending proceedings was only that the interim moratorium ceased to exist and if there had been any breach of the interim moratorium till 26.05.2026, it could still be remedied. But, going forward the said interim moratorium would no longer be available and this would be in consonance with the very object of introduction of the said amendment.

12. Ms. Bhavsar, learned counsel appearing for respondent No.2 in the said writ petition submitted as follows:-

(a) It was submitted that as per settled law, there is always a presumption against retrospective/retroactive operation of statute or an amendment whenever a vested or a substantive right is impaired. By referring to the judgments of the Supreme Court in the case of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.** (*supra*), **M. Rajendran and others Vs. KPK Oils and Proteins India Private Limited and others** (*supra*) and **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited** (*supra*), it was submitted that the interim moratorium operating in favour of the respondents, which is a substantive protection, cannot be taken away and that the amendment must apply only to applications/proceedings initiated after 26.05.2026.

(b) It was submitted that the very nature of protection in the form of interim moratorium introduced in the pre-amendment scenario under Section 96 of the IBC, was immediate and vested in the beneficiary. The moment an application or proceeding was filed under Section 94 or 95 of the IBC, even without any adjudicatory step, the interim moratorium was triggered, thereby indicating that such a substantive protection cannot be taken away by applying the amendment retrospectively or retroactively.

(c) It was submitted that the automatic interim moratorium that stood triggered in the pre-amendment scenario was not an incomplete transaction still under way as indicated by the Supreme Court in the case of *Securities and Exchange Board of India vs. Rajkumar Nagpal & Ors.*, **2022 SCC OnLine SC 1119**. The protection of the interim moratorium stood vested in the said respondent and it could not be said to be in the process of completion, for the reason that it continues to be a shield until the moratorium under Section 101 of the IBC is triggered. If the interpretation sought to be placed by the petitioners is accepted, such a significant substantive protection in the form of interim moratorium will stand destroyed instantly, which could not be permitted.

(d) The learned counsel further submitted that the opinion of the learned Single Judge in the case of **Tata Capital Financial Services Limited Vs. Neel Motors LLP and others** *(supra)*, holding the said amendment as having retroactive operation, failed to apply the doctrine of vested rights recognized by the Supreme Court in the case of **Garikapatti Veeraya Vs. N. Subbiah Choudhury** (*supra*). It was further submitted that the principles laid down in **SEBI Vs. Rajkumar Nagpal** (*supra*) were also applied in an erroneous manner and relevant judgments of the Supreme Court were not applied while interpreting the effect of the said amendment on pending proceedings. On this basis, it was submitted that the contentions raised on behalf of the petitioners in this regard deserve to be rejected.

13. In Writ Petition (Lodging) No. 22742 of 2026, Mr. Shadab Jan, learned counsel appearing for the petitioner reiterated his submissions recorded hereinabove in Writ Petition (Lodging) No. 24045 of 2026. He submitted that the amendment has to be applied retroactively even to proceedings pending on the date on which the amendment came into effect i.e. 26.05.2026.

14. On the other hand, Mr. Haryani, learned counsel appearing for respondent No.2 in the said writ petition submitted as follows:-

(a) By placing reliance on judgments of the Supreme Court in the cases of *Keshavan Madhava Menon vs. State of Bombay,* **AIR 1951 SC 128**, *Govind Das & Ors. vs. Income Tax Officer & Anr.*, **(1976) 1 SCC 906**, *State of Punjab & Ors. vs. Bhajan Kaur & Ors.*, **(2008) 12 SCC 112** and **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited** (*supra*), it was submitted that a statute has to be read as prospective unless the contrary is expressed or arises by necessary intendment. It was submitted that a bare reading of sub-section (4) of Section 96 of the IBC introduced by way of amendment, would show that it is absolutely silent as regards the retrospective/ retroactive operation and therefore, the presumption that it operates prospectively, must be given its proper effect.

(b) It was submitted that applying the amendment to the pending proceedings would suddenly take away the protection of the interim moratorium despite the fact that such an interim moratorium is an accrued right in itself. Such abrupt taking away of the accrued right would defeat the very purpose of the interim moratorium, which operates till the Section 100 / 101 of the IBC is reached. By referring to the judgment of this Court in the case of **Kapole Advertising Agency & Ors. vs. Standard Chartered Bank & Ors.** (*supra*), it was submitted that the interim moratorium under Section 96 of the IBC commences by operation of law and hence, its effect cannot be ignored or denuded by applying the amendment to pending proceedings, wherein such interim moratorium was already triggered.

(c) Reliance was placed on judgments of the Supreme Court in the cases of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.** (*supra*) and *Shyam Sunder & Ors. vs. Ram Kumar & Anr.,* **(2001) 8 SCC 24**, to contend that when that a procedural amendment takes away or impairs a right that is already accrued, it would not apply retrospectively or retroactively. It was submitted that in the IBC itself wherever the legislature intended that the amendment was to apply to pending proceedings, it was expressly so stated. Since, the subject amendment does not expressly indicate that it applies to pending proceedings, the contentions raised on behalf of the petitioners must be rejected.

(d) It was submitted that the remedial character of an amendment, which is supposed to address a mischief cannot enlarge its application to even pending proceedings, unless the amendment itself expressly provides for the same.

(e) It was submitted that reliance placed on behalf of the petitioners on the judgment in the case of ***Vineeta Sharma vs. Rakesh Sharma & Ors.*** (*supra*) is misplaced because in the said case, the amendment did not divest any accrued rights. The amendment being beneficiary in nature was applied retroactively and therefore, the petitioners are not justified in relying upon the said judgment. Thereupon, the learned counsel proceeded to distinguish the judgements upon which the petitioners placed reliance, in order to contend that the said contentions deserve to be rejected.

15. In Writ Petition No. 3374 of 2026, Mr. D'Souza, learned counsel

for the petitioner, reiterated his submissions recorded hereinabove on the issue of retroactive applicability of the said amendment. He further made submissions on the factual matrix of the case.

16. Mr. Agarwal, learned counsel appearing for the contesting respondents in the said writ petition, adopted the contentions raised by the learned counsel for the respondents in the connected writ petitions, to contend that the amendment cannot apply to pending proceedings and that the protection of the interim moratorium ought to continue. The learned counsel then proceeded to make submissions on the factual matrix of the said writ petition, which shall be referred to and dealt with when Writ Petition No.3374 of 2026 is considered hereinbelow.

CONSIDERATION / ANALYSIS OF SUBMISSIONS & FINDINGS

17. In the light of the aforesaid submissions advanced on behalf of the rival parties, we find that the debate really is on the question as to whether the introduction of sub-section (4) in Section 96 of the IBC by way of the said amendment operates prospectively or retroactively. It is asserted by the creditors in these petitions that the amendment should operate retroactively. Therefore, the concept of ‘retroactive' application of the amendment comes into focus.

18. The concept of ‘retroactive' application of a statute on an amendment as opposed to 'retrospective' application thereof has engaged the attention of Courts for a considerable period of time. For instance, in the case of **Dilip Vs. Mohd. Azizul Haq and another** *(supra)*, the question was as to whether an amendment introduced in the relevant statute concerning definition of a particular expression would apply to pending proceedings, in that case, in the form of an appeal. One of the contentions raised therein was that applying the amendment at the stage of the appeal would amount to retrospective application thereof when

the amendment did not expressly provide so. The Supreme Court negatived the said contention by taking recourse to the concept of 'retroactive' operation of the amendment. It was held that although the said provision added by way of amendment was prospective in force, it was retroactive in operation. It was held that the amendment came on the Statute book on the date on which the appeal, being continuation of the suit, was pending and therefore, it was found to be applicable to the pending proceeding from the date, the amendment became effective.

19. In the case of **State Bank's Staff Union (Madras Circle) Vs. Union of India** *(supra)*, the Supreme Court discussed the concept of 'retroactive' application of an amendment. In the said judgement, it was observed as follows:-

> **"21.** In *Advanced Law Lexicon* by P. Ramanath Aiyar (3rd Edn., 2005) the expressions "retroactive" and "retrospective" have been defined as follows at p. 4124, Vol. 4:
>
> "*Retroactive*.—Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have occurred in the past. — Also termed retrospective. (*Black's Law Dictionary*, 7th Edn., 1999)
>
> ' "Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion…. The foundation of these concepts is the distinction between completed and pending transactions….' T.C. Hartley, *Foundations of European Community Law*, p. 129 (1981).
>
> * * *
>
> *Retrospective*.—Looking back; contemplating what is past.
>
> Having operation from a past time.
>
> 'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in

more senses than one. In general, however, the courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time antecedent to its passing." (Vol. 44, *Halsbury's Laws of England*, 4th Edn., p. 570, para 921.)"

20. In the case of **Vineeta Sharma Vs. Rakesh Sharma** *(supra)*, the Supreme Court, while considering amendment to Section 6 of the Hindu Succession Act, held as follows:-

"60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(*a*) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1)(*a*) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(*b*) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.

61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events.

Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."

21. Thereafter, in the case of **SEBI Vs. Rajkumar Nagpal** (*supra*), while considering the applicability of a Circular issued by the Board to pending cases, the Supreme Court held as follows:-

"99. We are of the opinion that the SEBI Circular has retroactive application. In *Principles of Statutory Interpretation* by Justice G.P. Singh (14th Edn., 2016 at p. 583), it is stated that:

"The *rule against retrospective construction is not applicable to a statute merely because "a part of the requisites for its action is drawn from a time antecedent to its passing*". If that were not so, every statute will be presumed to apply only to persons born and things which come into existence after its operation and the rule may well result in virtual nullification of most of the statutes."

(emphasis supplied)

100. In *Vineeta Sharma* v. *Rakesh Sharma* [*Vineeta Sharma* v. *Rakesh Sharma*, (2020) 9 SCC 1 : (2021) 1 SCC (Civ) 119] this Court described the nature of prospective, retrospective, and retroactive laws : (SCC p. 53, para 61)

"*61*. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events."

101. The terms "retrospective" and "retroactive" are often used interchangeably. However, their meanings are distinct. This Court succinctly appreciated the difference between these concepts in *State Bank's Staff Union (Madras Circle)* v. *Union of India* [*State Bank's Staff Union (Madras Circle)* v. *Union of India*, (2005) 7 SCC 584 : 2005 SCC (L&S) 994] :

" "Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion….The foundation of these concepts is the distinction between completed and pending transactions…." [T.C. Hartley, *The Foundations of European Community Law* 129 (1981).]

102. Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective."

22. The Supreme Court recently in the case of **M. Rajendran and others Vs. KPK Oils and Proteins India Private Limited and others** *(supra)*, while discussing the principles concerning retrospective applications of legislation, made an observation even with regard to retroactive operation. The relevant portion reads as follows:-

"**192.** We may summarize the principles on retrospective application of legislations as under:

(*i*) Presumption against retrospectivity is not applicable to enactments which merely affect procedure or change the forum or are declaratory;

(*ii*) Retroactive/retrospective operation can be implicit in a provision construed in the context where it occurs;

(*iii*) Given the context, a provision can be held to apply to cause of action after such provision comes into force, even though the claim on which the action may be based may be of an anterior date;

(*iv*) A remedial statute applies to pending proceedings and such application may not be taken to be retrospective if application is to be in future with reference to a pending cause of action; and

(*v*) The SARFAESI Act is a remedial statute intended to deal with problem of pre-existing loan transactions which need speedy recovery."

23. It is relevant to note that the learned Single Judge of this Court, in the recent judgement in the case of **Tata Capital Financial Services Limited Vs. Neel Motors LLP and others** *(supra)*, relied upon the said judgement of the Supreme Court in the case of **SEBI Vs. Rajkumar Nagpal** (*supra*). Thereupon, it was held that the amendment to Section 96 of the IBC adding sub-section (4) therein has prospective application, but to facts existing as on the date of introduction of sub-section (4) by way of amendment. On this basis, it was held that the interim moratorium operating in pending proceedings ceased to operate with effect from 26.05.2026 i.e. the date on which the amendment came into operation.

24. It is relevant to note that the said judgement and order of the learned Single Judge of this Court was followed by the learned Single Judge of the Delhi High Court in the case of *IDBI Trusteeship Services Limited Vs. Manish Jain and others* [order dated **19.08.2026** passed in **CS (Comm) 800 of 2025**].

25. The learned counsel for the creditors in these petitions have relied upon the aforementioned judgements to claim that the *principle of retroactive application* clearly applies to the aforesaid amendment to the IBC, whereby sub-section (4) was added to Section 96 thereof. One of the limbs of the arguments in support of the said contention is that, the amendment is merely procedural in nature and it does not affect any substantive right. It is asserted that a 'vested right' is not affected by operation of the said amendment and applying the same even to pending proceedings. As to what could be said to be a procedural amendment and

when is a right found to be a 'vested right' are questions that are central to the analysis of the rival submissions in this context.

26. In the case of **J. S. Yadav Vs. State of U.P.** (*supra*), the Supreme Court considered the effect of the word 'vest' or 'vested'. In that context, it was observed as follows:-

> "**20.** "*17*. The word 'vested' is defined in *Black's Law Dictionary* (6th Edn.) at p. 1563, as:
>
> 'Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'
>
> Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.
>
> In *Webster's Comprehensive Dictionary* (International Edn.) at p. 1397, 'vested' is defined as:
>
> '[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.' "
>
> **21.** The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right". It had a "legitimate" or "settled expectation" to obtain right to enjoy the property, etc. Such "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide *Howrah Municipal Corpn.* v. *Ganges Rope Co. Ltd.* [(2004) 1 SCC 663])"

27. In the said judgement, a reference was made to the earlier judgement of the Supreme Court in the case of *Howrah Municipal Corporation and others Vs. Ganges Rope Co. Ltd.*, **(2004) 1 SCC 663**, wherein the Supreme Court had considered the concept of 'vested right' and the meaning of the word 'vest'. In that context, it was observed that

with long usage, the word 'vest' has also acquired a meaning as 'an absolute or indefeasible right'. It is to be kept in mind that having noted the said meaning of the concept 'vested right', in the above-quoted portion of the judgement of the Supreme Court in the case of **J. S. Yadav Vs. State of Uttar Pradesh** (*supra*), it was laid down that such a vested right cannot be countenanced against public interest and convenience, which are sought to be served by amendment of the law. According to us, this is a crucial observation in the facts and circumstances of the present case.

28. In the case of **BCCI Vs. Kochi Cricket Private Limited** (*supra*), the Supreme Court considered the concept of 'vested right' while construing the effect of an amendment to Section 36 of the Arbitration and Conciliation Act, 1996 (Arbitration Act). As a consequence of the amendment, mere filing of an application under Section 34 of the Arbitration Act to challenge an arbitral award would not result in rendering the award unforceable, unless the Court granted stay of the operation of the arbitral award. It was contended on behalf of the parties whose proceedings already filed to challenge arbitral awards were pending that the said amendment would not apply to them as their vested right would be taken away. The Supreme Court declined to accept the said contention and while doing so, held as follows:-

> "**60.** This brings us to the manner of enforcement of a decree under CPC. A decree is enforced under CPC only through the execution process (*see* Order 21 of the Code of Civil Procedure). Also, Section 36(3), as amended, refers to the provisions of the Code of Civil Procedure for grant of stay of a money decree. This, in turn, has reference to Order 41 Rule 5 of the Code of Civil Procedure, which appears under the Chapter heading, "Stay of Proceedings and of Execution". This being so, it is clear that Section 36 refers to the execution of an award as if it were a decree, attracting the provisions of Order 21 and Order 41 Rule 5 of the Code of Civil Procedure and would, therefore, be a provision dealing with the execution of arbitral awards. This being the case, we need to refer to some

judgments in order to determine whether execution proceedings and proceedings akin thereto give rise to vested rights, and whether they are substantive in nature.

61. In *Lalji Raja and Sons* v. *Firm Hansraj Nathuram* [*Lalji Raja and Sons* v. *Firm Hansraj Nathuram*, (1971) 1 SCC 721] , this Court was concerned with a judgment-debtor's right to resist execution of a decree. Section 20(1)(*b*) of the Code of Civil Procedure (Amendment) Act, 1951 was extended to Madhya Bharat and other areas, as a result of which the judgment-debtor's right to resist execution of a decree was protected. In this context, this Court held that the Amendment Act, 1951 made decrees, which could have been executed only by courts in British India, executable in the whole of India. Stating that the change made was one relating to procedure only, this Court held: (SCC p. 728, paras 15-16)

> "15. This provisions undoubtedly protects the rights acquired and privileges accrued under the law repealed by the Amending Act. Therefore the question for decision is whether the non-executability of the decree in the Morena Court under the law in force in Madhya Bharat before the extension of "the Code" can be said to be a right accrued under the repealed law. We do not think that even by straining the language of the provision it can be said that the non-executability of a decree within a particular territory can be considered as a privilege. Therefore the only question that we have to consider is whether it can be considered as a "right accrued" within the meaning of Section 20(1)(*b*) of the Code of Civil Procedure (Amendment) Act, 1950. In the first place, in order to get the benefit of that provision, the non-executability of the decree must be a right and secondly it must be a right that had accrued from the provisions of the repealed law. It is contended on behalf of the judgment-debtors that when the decree was passed, they had a right to resist the execution of the decree in Madhya Bharat in view of the provisions of the Indian Code of Civil Procedure (as adapted) which was in force in the Madhya Bharat at that time and the same is a vested right. It was further urged on their behalf that that right was preserved by Section 20(1)(*b*) of the Code of Civil Procedure (Amendment) Act, 1950. It is difficult to consider the non-executability of the decree in Madhya Bharat as a

vested right of the judgment-debtors. The non-executability in question pertains to the jurisdiction of certain courts and not to the rights of the judgment-debtors. Further the relevant provisions of the Civil Procedure Code in force in Madhya Bharat did not confer the right claimed by the judgment-debtors. All that has happened in view of the extension of "the Code" to the whole of India in 1951 is that the decrees which could have been executed only by courts in British India are now made executable in the whole of India. The change made is one relating to procedure and jurisdiction. Even before "the Code" was extended to Madhya Bharat the decree in question could have been executed either against the person of the judgment-debtors if they had happened to come to British India or against any of their properties situated in British India. The execution of the decree within the State of Madhya Bharat was not permissible because the arm of "the Code" did not reach Madhya Bharat. It was the invalidity of the order transferring the decree to the Morena Court that stood in the way of the decree-holders in executing their decree in that court on the earlier occasion and not because of any vested rights of the judgment-debtors. Even if the judgment-debtors had not objected to the execution of the decree, the same could not have been executed by the court at Morena on the previous occasion as that court was not properly seized of the execution proceedings. By the extension of "the Code" to Madhya Bharat, want of jurisdiction on the part of the Morena Court was remedied and that court is now made competent to execute the decree.

16. That a provision to preserve the right accrued under a repealed Act "was not intended to preserve the abstract rights conferred by the repealed Act…. It only applies to specific rights given to an individual upon happening of one or the other of the events specified in statute"—see Lord Atkin's observations in *Hamilton Gell* v. *White* [*Hamilton Gell* v. *White*, (1922) 2 KB 422 (CA)] . The mere right, existing at the date of repealing statute, to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause—see *Abbott* v. *Minister for Lands* [*Abbott* v. *Minister for Lands*,

> 1895 AC 425 (PC)] and *Ogden Industries Pty. Ltd.* v. *Lucas* [*Ogden Industries Pty. Ltd.* v. *Lucas*, 1970 AC 113 : (1969) 3 WLR 75 : (1969) 1 All ER 121 (PC)] ."

62. In *Narhari Shivram Shet Narvekar* v. *Pannalal Umediram* [*Narhari Shivram Shet Narvekar* v. *Pannalal Umediram*, (1976) 3 SCC 203] , this Court, following *Lalji Raja* [*Lalji Raja and Sons* v. *Firm Hansraj Nathuram*, (1971) 1 SCC 721] , held as follows: (SCC p. 207, para 8)

> "*8.* The learned counsel appearing for the appellant however submitted that since the Code of Civil Procedure was not applicable to Goa the decree became inexecutable and this being a vested right could not be taken away by the application of the Code of Civil Procedure to Goa during the pendency of the appeal before the Additional Judicial Commissioner. It seems to us that the right of the judgment-debtor to pay up the decree passed against him cannot be said to be a vested right, nor can the question of executability of the decree be regarded as a substantive vested right of the judgment-debtor. A fortiori the execution proceedings being purely a matter of procedure it is well settled that any change in law which is made during the pendency of the cause would be deemed to be retroactive in operation and the appellate court is bound to take notice of the change in law."

Since it is clear that execution of a decree pertains to the realm of procedure, and that there is no substantive vested right in a judgment-debtor to resist execution, Section 36, as substituted, would apply even to pending Section 34 applications on the date of commencement of the Amendment Act.

63. The matter can also be looked at from a slightly different angle. Section 36, prior to the Amendment Act, is only a clog on the right of the decree-holder, who cannot execute the award in his favour, unless the conditions of this section are met. This does not mean that there is a corresponding right in the judgment-debtor to stay the execution of such an award. The learned counsel on behalf of the appellants have, however, argued that a substantive change has been made in the award, which became an executable decree only *after* the Section 34 proceedings were over, but which is now made executable as if it was a decree with immediate effect, and that this change would, therefore, take away a vested right or accrued privilege in favour of the respondents. It has been argued, relying upon a number of judgments, that since Section 36 is a part of the enforcement process of awards, there is a vested right or at least a privilege accrued in favour of the appellants in the unamended 1996 Act applying insofar as arbitral proceedings and court proceedings in relation thereto have commenced, prior to the commencement of the Amendment Act. The very judgment strongly relied upon by the Senior Counsel for the appellants, namely, *Garikapati Veeraya* [*Garikapati Veeraya* v. *N. Subbiah Choudhry*, 1957 SCR 488 : AIR 1957 SC 540] , itself states in Proposition (*v*) at p. 515, that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides specifically or by necessary intendment and not otherwise. We have already held that Section 26 does specifically provide that the court proceedings in relation to arbitral proceedings, being independent from arbitral proceedings, would not be viewed as a continuation of arbitral proceedings, but would be viewed separately. This being the case, it is unnecessary to refer to the judgments such as *Union of India* v. *A.L. Rallia Ram* [*Union of India* v. *A.L. Rallia Ram*, (1964) 3 SCR 164 : AIR 1963 SC 1685] and *NBCC Ltd.* v. *J.G. Engg. (P) Ltd.* [*NBCC Ltd.* v. *J.G. Engg. (P) Ltd.*, (2010) 2 SCC 385 : (2010) 1 SCC (Civ) 416] , which state that a Section 34 proceeding is a supervisory and not an appellate proceeding. *Snehadeep Structures (P) Ltd.* v. *Maharashtra Small-Scale Industries Development Corpn. Ltd.* [*Snehadeep Structures (P) Ltd.* v. *Maharashtra Small-Scale Industries Development Corpn. Ltd.*, (2010) 3 SCC 34 : (2010) 1 SCC (Civ) 603] , SCC at pp. 47-49, which was cited for the purpose of stating that a Section 34 proceeding could be regarded as an “appeal” within the meaning of Section 7 of the Interest on Delayed Payments to Small-Scale and Ancillary Industrial Undertakings Act, 1993, is obviously distinguishable on the ground that it pertains to the said expression appearing in a beneficial enactment, whose object would be defeated if the word “appeal” did not include a Section 34 application. …”

29. The aforesaid position of law has to be kept in mind while referring to the relevant provisions of the IBC to understand as to whether interim moratorium under Section 96 of the IBC can be said to be a vested right in favour of the parties, who are claiming that the amendment in this case must necessarily apply prospectively. It is contended that the triggering of the interim moratorium under Section 96

of the IBC amounts to a vested right in the beneficiaries to such an interim moratorium, and therefore, the effect of sub-section (4) of Section 96 introduced by way of amendment must be prospective. Section 96 is found in Chapter III of Part III of the IBC. It is to be noted that Part III of the IBC pertains to 'Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms' and Chapter III thereof pertains to the 'Insolvency Resolution Process'. Sections 94 to 120 are found in Chapter III of Part III of the IBC. Section 94 pertains to *application by debtor to initiate insolvency resolution process* while Section 95 pertains to *an application by a creditor to initiate the insolvency resolution process*. Upon such applications filed under Sections 94 and / or 95 of the IBC, as per Section 96 thereof, interim moratorium is triggered.

30. As per Section 99 of the IBC, the resolution professional is required to examine the application filed under Section 94 or 95 of the IBC and to submit a report to the adjudicating authority (NCLT), either recommending the approval or rejection of the application. Section 100 of the IBC provides that the adjudicating authority shall within 14 days from the date of submission of the report under Section 99 thereof pass an order, either admitting or rejecting the application referred to in Section 94 or 95, as the case may be. It is crucial to note that upon the application being admitted by the adjudicatory authority under Section 100 of the IBC, a moratorium commences under Section 101 thereof for a period of 180 days. It is crucial to note that if the application filed under Section 94 or 95 of the IBC is rejected by the adjudicating authority under Section 100(4) thereof, on the basis of the report submitted by the resolution professional that the application was made with the intention to defraud creditors, the order of the adjudicating authority under Section 100(1) of the IBC shall record that the creditor is entitled to file for a bankruptcy order under Chapter IV. Section 121 of

the IBC, under Chapter IV pertaining to *Bankruptcy Order for Individuals and Partnership Firms*, in sub-section (1) thereof specifically provides that an application for bankruptcy of a debtor can be filed by the creditor, *inter alia*, where such an order has been passed by the adjudicating authority under Section 100(4). Thus, if the adjudicating authority admits an application under Section 94 or 95 of the IBC upon the report submitted by the resolution professional, moratorium under Section 101 thereof is triggered and further process for insolvency resolution is undertaken under Section 102 and subsequent provisions. On the other hand, if the adjudicating authority passes an order under Section 100(4) of the IBC rejecting the application filed under Section 94 or 95 thereof, the process for bankruptcy can be initiated by the creditor under Chapter IV.

31. The said scheme under Chapters III and IV of the IBC clearly indicates that the process between Section 94 / 95 of the IBC and Section 100 thereof is purely procedural in nature and the substantive step for insolvency resolution of individuals and partnership firms is initiated only when the adjudicating authority passes an order under Section 100(1), admitting the application under Section 94 or 95 of the IBC. Consequently, there is a qualitative difference between the interim moratorium triggered under Section 96 of the IBC and the moratorium triggered under Section 101 when the procedure initiated under Section 94 or 95 of the IBC culminates under Section 100 thereof. Once this aspect is appreciated, it comes to light that the aforesaid amendment, whereby sub-section (4) has been added to Section 96 of the IBC, necessarily concerns a procedural limb under Chapter III and therefore, it cannot be said that introduction of the amendment and applying it to pending proceedings would amount to retrospective application of the same as a 'vested right' is taken away. It must also be appreciated that during the interim moratorium under Section 96 of the IBC, the

restrictions are only on the creditors, but upon the moratorium triggered under Section 101 thereof, restrictions on transfers and alienation of assets are imposed on the debtors also. All the relevant stakeholders in such an insolvency process highlighted that due to this, the interim moratorium under Section 96 of IBC had become the number one mechanism for siphoning of crores of rupees by the debtors.

32. It cannot be said that interim moratorium under Section 96 of the IBC is an absolute or indefeasible right. It is necessarily a transitory arrangement, during the period when the insolvency professional is in the process of preparing a report under Section 99 of the IBC, to place the same for consideration before the adjudicating authority. The journey of the application under Section 94 or 95 of the IBC towards its culmination in the form of the same being either admitted or rejected by the adjudicating authority under Section 100 of the IBC, upon consideration of the report submitted by the resolution professional under Section 99 thereof, is purely procedural in nature and there is no question of the interim moratorium under Section 96 giving rise to a 'vested right' in the debtors.

33. Once the aforesaid aspect of the matter is appreciated in the correct perspective, the ratio of the aforementioned judgement of the Supreme Court in the case of **BCCI Vs. Kochi Cricket Private Limited and others** (*supra*), applies with full force. As a matter of fact, the other aforementioned judgements, clarifying the concept of retroactive amendment of a statute, also apply, thereby demonstrating that the creditors in these cases, are justified in contending that although the amendment adding sub-section 4 to Section 96 of the IBC applies from the date it was brought into force with effect from 26.05.2026, it does apply even to the proceedings/applications filed under Sections 94 and 95 of the IBC and pending on the said date.

34. At this stage, it would be appropriate to consider the contentions raised on behalf of the respondents/beneficiaries of the interim moratorium, with regard to the nature of such moratorium. But, before considering the same, it would be appropriate to reproduce Section 96 of the IBC as it stands today, post-amendment.

> "96. **Interim-moratorium.**
>
> (1) When an application is filed under section 94 or section 95-
>
> (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and
>
> (b) during the interim-moratorium period—
>
> (i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
>
> (ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
>
> (2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.
>
> (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
>
> **(4) The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor.**
>
> (emphasis supplied)"

35. This Court has supplied emphasis to sub-section 4 of Section 96 of the IBC quoted hereinabove, as it was added by way of amendment with effect from 26.05.2026. In the case of **Dilip B. Jiwrajka Vs. Union of India** (*supra*), the Supreme Court held that the purpose of interim moratorium under Section 96 of the IBC, was protective in nature. In

these cases, it is contended by the beneficiaries of such interim moratorium that they have a vested right in continuation thereof. But, in the light of the discussion hereinabove, since the whole process between Sections 94 to 99 of the IBC has been found to be procedural in nature, which is yet to reach completion, we are of the opinion that the beneficiaries of the interim moratorium cannot claim any vested right. We are unable to accept the contention that such parties have a vested right in such a procedural realm, of not being proceeded against in accordance with law or that there is a corresponding duty upon the creditors not to proceed against them. As held in the case of **BCCI Vs. Kochi Cricket Private Limited and others** (*supra*), the amendment has merely removed a clog on the right of the creditors to proceed in accordance with law. The debtors do not have a right to stay of such proceedings.

36. Moreover, consideration of the rival submissions cannot be divorced from the whole purpose for which the aforesaid amendment had to be introduced. The purpose for which the amendment was introduced can be gathered from the material that triggered the legislature to introduce sub-section 4 in Section 96 of the IBC. In this context, the petitioners/creditors are justified in referring to and relying upon the relevant portion of the report of the Select Committee on the IBC (Amendment) Bill, 2025. The aforesaid Bill ultimately culminated into the amending Act. The relevant portion of the said report of the Select Committee reads as follows:

> "47.3. <u>Reasons/Justification given by the Ministry for the proposed provisions:</u>
>
> The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt.

The Adjudicating Authority (AA) has, on occasion, expressed concerns regarding the misuse of initiation of the individual insolvency resolution process by personal guarantors to take advantage of the interim moratorium. Clause 47 therefore seeks to insert a new sub-section (4) to section 96 of the Code to provide that provisions of section 96 of the Code will not apply where an application to initiate an insolvency resolution process in respect of a personal guarantor to a corporate debtor is filed by a creditor or the debtor itself.

47.4 Important Views / Suggestions given by Experts / Stakeholders:

Some of the important suggestions of the stakeholders in this regard are furnished below:

(i) Consider providing an interim moratorium on disposal of assets by the debtor. The report of the Insolvency Law Committee of February 2020 recommended that Section 96 and 124 should be amended to include a stay on actions relating to disposition of assets by the debtor.

(ii) Removal of this amendment may be considered. The proposed amendments make the provision of interim moratorium non applicable in cases of personal guarantor to a corporate debtor which provides for protection to the personal guarantor from legal actions of the creditors. However, such interim protection is critical to the resolution process. Some of the other important issues that have arisen in practice have not been addressed i.e. no thresholds for admission to insolvency process have been specified, no specific guidelines for MSME guarantors etc.

(iii) The Bill seeks to introduce a new sub-section excluding application of interim moratorium in respect of personal guarantor to a CD. Non-application of interim moratorium might encourage the personal guarantor to dispose of their assets to the detriment of creditors. Non-application of interim moratorium might encourage the PG to dispose of assets to the detriment of creditors. To prevent such wrongful disposal of assets by PG, provisions for moratorium may be introduced to prohibit alienation of assets by the guarantors post filing of the application.

47.5 Examination by the Committee:

47.5.1 The Ministry in their written replies to the corresponding suggestions above have submitted as under:

(i) The interim moratorium under section 96 provides that upon the filing of an application, all legal actions or proceedings pending in respect of the concerned debt shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt. Concerns have been expressed regarding the misuse of initiation of the individual insolvency resolution process (IIRP)by PGs to take advantage of the interim moratorium. To remove any perverse incentives to initiate IIRP, the proposed amendment seeks to dispense with the concept of interim moratorium for the insolvency of PG to CD. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(ii) Additionally, Part III currently applies to personal guarantors, who may or may not be MSMEs. Hence, the provision in the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 may be retained without any change.

(iii) It is clarified that the proposed Amendment Bill restricts the interim moratorium protection for personal guarantors, thereby creating a level playing field for PGs and their creditors to seek appropriate remedies outside the IBC before the insolvency resolution or bankruptcy process is initiated. Hence, no changes to the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 are required.

47.5.2 Regarding the issue of removal of Interim moratorium, the secretary, Ministry of Corporate Affairs stated as under during the deposition before the Committee:

"This concerns individual insolvency, personal guarantees, etc. They recommend reconsidering the removal of interim moratorium protection for personal guarantors during insolvency and bankruptcy processes. They also suggest allowing automatic commencement of the bankruptcy process without a three-month gap after completion of the CIRP or liquidation proceedings. They further propose extending provisions similar to Section 66 regarding fraudulent or wrongful trading to personal insolvency. Our position is that removing the interim moratorium for personal guarantors is intended primarily to prevent misuse. Currently, when recovery proceedings begin against a personal guarantor, the guarantor rushes to file an application before the NCLT, triggering the interim moratorium immediately. This provision has been subject to misuse, hence our proposal to remove it. Under statutes such as SARFAES/ and through multiple Supreme Court judgments, it is very clear that the creditor is not required to exhaust remedies against the borrower first. The law treats the borrower and guarantor on the same footing once default occurs. That means, once there is a default, the law applies equally to the borrower

> as well as to the guarantor. It is pointed out in the SARFAESI Act, there is no moratorium."

47.5.3. Elaborating further on the issue, Chairperson, IBBI stated as under during oral evidence:

> ‘NCLT members have repeatedly flagged this issue. In fact, in our colloquiums, they cite it as the number one mechanism through which thousands of crores are being siphoned off. Therefore, this amendment is one of the most' crucial for plugging a major loophole in the IBC.’

47.6 <u>Observations / Recommendations of the Committee:</u>

The Committee note that Clause 47 seeks to amend Section 96 to exclude personal guarantors to corporate debtors from the scope of the interim moratorium. The Committee observe that this amendment is aimed at addressing a persistent concern flagged by the Adjudicating Authority and insolvency practitioners namely, the misuse of interim moratorium by personal guarantors who file applications solely to obstruct or delay legitimate recovery proceedings, a major loophole confirmed by NCLT members to be responsible for significant value erosion. The Committee, having considered detail submissions of the Ministry and IBBI, underscore that removing this unnecessary pre-admission shield is essential. The Committee observe that the law, consistent with SARFAESI Act and Supreme Cour judgements, treats the borrower and the guarantor on the same footing upon default, and the proposed amendment does not deprive personal guarantors of the right to seek insolvency resolution or bankruptcy under Part Ill of the Code. In view of the above, and recognising the need to curb strategic filings and strengthen the integrity of the insolvency process, the Committee find the proposed

> amendment under Clause 47 to be appropriate and recommend its acceptance in its present form."

37. The above-quoted portion of the said report demonstrates that various stakeholders concerned with dynamic application and operation of the IBC, raised serious concerns about gross misuse of the interim moratorium triggered by filing of applications under Sections 94 or 95 of the IBC. It was found that corporate debtors were taking advantage of triggering of such interim moratorium, by misusing the provisions of Sections 94 or 95 of the IBC, for initiation of individual insolvency resolution process under Part III of the IBC.

38. The members of the adjudicating authority i.e. NCLT repeatedly flagged the said serious concerns and while adducing oral evidence before the Select Committee, the Chairperson of the Insolvency and Bankruptcy Board of India (IBBI) constituted under the IBC, stated that in number of cases, the colloquiums organized by the IBBI were cited, showing that the number one mechanism for siphoning of thousands of crores, was the aforesaid misuse of Sections 94 or 95 of the IBC, leading to triggering of interim moratorium under Section 96 thereof. The report strongly recommended the amendment to curb such strategic filings and mischievous misuse of Sections 94 and 95 of the IBC, so as to strengthen the integrity of the insolvency process.

39. We also find substance in reliance placed on statement of objects and reasons for enactment of IBC itself, *inter alia* emphasizing upon completion of insolvency resolution of individuals in a time-bound manner, for maximization of value of assets of such persons. We also find that in the statement of objects and reasons for bringing about such amendment, including introduction of sub-section 4 in Section 96 of the IBC with effect from 26.05.2026, it was recorded that the amendments were necessary for clarifying the original intent of provisions. Also, to

incorporate novel concepts, the statement of objects and reasons recorded that the IBC being an economic legislation, requires periodic updates to align with changing market needs and 'lessons learnt from practical experience'.

40. We are of the opinion that the aforesaid material, particularly the report of the Select Committee brought to our notice, clearly indicates that the very purpose of bringing about the amendment for adding sub-section 4 to Section 96 of the IBC, was to address the mischief of rampant and deliberate misuse of the interim moratorium triggered under Section 96 of the IBC, merely by filing of applications under Sections 95 and/or 96 of the IBC.

41. As a matter of fact, judicial notice of such gross misuse was also taken by the Courts. It was found that the route of filing applications under Sections 94 and/or 95 of the IBC, was being taken, not with the purpose of triggering the procedure for examination of applications and preparation of report by the resolution professional, for the applications to be considered for admission or rejection by the adjudicating authority, but only with the sole intention of triggering and enjoying interim moratorium under Section 96 of the IBC. It was found that the applications under Section 94 and 95 were being indiscriminately filed, certain papers being collected and eventually thrown into the Registry of the NCLT, to claim that the moment such applications were filed, interim moratorium was triggered under Section 96 of the IBC. It came to notice that creditors had started adopting this path at stages, when the creditors were on the verge of completion of lawful methods undertaken for realization of their dues.

42. In the case of *Bank of Baroda vs. Union of India and another*, **2024 SCC OnLine Bom 3964**, this Court found that such applications filed under Sections 94 and/or 95 of the IBC were being filed and simply

kept pending at the stage of scrutiny or defects, without any effort being made to process the same. As a consequence, it was claimed that interim moratorium had been triggered and no further steps could be taken by the creditors, till the time such applications remained pending with the NCLT. In the said judgement, upon taking note of such conduct and the consequent harassment suffered by the creditors, this Court held that the interim moratorium under Section 96 of the IBC, would stand triggered only upon registration of such applications filed under Sections 94 and/or 95 of the IBC. This Court laid down timelines for processing of such applications, stating that if the applicants failed to remove defects, consequential orders would be passed, which would have to be challenged by way of appeals provided under the relevant Rules and only upon the applications being duly registered, would the interim moratorium stand triggered under Section 96 of the IBC.

43. In the case of **Kapole Advertising Agency & Ors. vs. Standard Chartered Bank & Ors.** (*supra*), this Court also found that specific Standard Operating Procedure (SOP) framed by the NCLT, was not being followed, as a consequence of which the creditors were facing difficulties. In that light, this Court directed the Registry of NCLT to ensure that the directions contained in the judgement and order of this Court, in the case of **Bank of Baroda vs. Union of India and another** (*supra*) and the SOP framed by the NCLT itself, were scrupulously followed without exception, so that misuse of aforesaid provisions of the IBC, was discouraged.

44. In the case of **Rozina Firoz Hajiani and others Vs. Union of India and others** (*supra*), this Court was at pains to record the rampant misuse of Sections 94 to 96 of the IBC, to the detriment of the creditors and to the benefit of chronic defaulters. The relevant portions of the said judgement read as follows:

“. A disturbing trend is noticed by this writ Court as to the manner in which chronic defaulters are taking resort to the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the IBC’ for short) to frustrate secured creditors and auction purchasers from proceeding, in accordance with law, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the Securitisation Act’ for short).

2. In a number of such matters, it is found that the borrowers/ guarantors act as fence sitters and do not take any steps when the secured creditors proceed under Section 13(2) of the Securitisation Act and take further consequential steps, till the culmination of the process and auction purchasers coming into the picture. At the stage when the auction sale has been conducted and the auction purchaser has come into the picture, in a few instances, even after the sale certificate is issued, when physical possession of the secured asset is about to be handed over to the auction purchaser, the original borrowers/guarantors initiate collusive proceedings under Section 94 or Section 95 of the IBC, claiming triggering of moratorium under Section 96 thereof, the moment such proceedings are filed before the National Company Law Tribunal (NCLT). As a consequence, all steps taken under the provisions of the Securitisation Act, suddenly come to a standstill and such borrowers/guarantors, who are defaulters, wear a cloak of immunity under the garb of moratorium triggered under Section 96 of the IBC. In such a situation, the secured creditor and/or the auction purchaser are required to approach the NCLT and thereafter, the proceedings reach the National Company Law Appellate Tribunal (NCLAT) and then the Supreme Court, till which time the auction purchaser is completely frustrated, despite having parted with consideration in terms of the bid amount.

3. The manner in which such borrowers/guarantors and chronic defaulters are using the provisions of the IBC, shows that the objects of the both the IBC as well as the Securitisation Act are frustrated. This has the tendency of adversely affecting the economy, financial health and business environment in the country. In such situations, the writ Court cannot remain a mute spectator, when misuse of legal provisions demonstrates failure of justice. The present petition, although it arises from an interim order of the Debts Recovery Tribunal-I, Mumbai (DRT), is one such example of gross facts manifesting the attitude and approach adopted by the respondent Nos.3 to 7 i.e.

the borrowers and guarantors to ensure that the legal process is frustrated.

xxx xxx xxx

24. The object of the IBC is to ensure that insolvency resolution of corporate persons and individuals is undertaken in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all stake holders. The IBC emphasizes upon an effective legal framework for the timely resolution of insolvency and bankruptcy, so that an opportunity is made available for revival of the debtor to support development of credit markets and to encourage entrepreneurship, with liquidation being the last resort. The whole purpose of enactment of IBC is for improving the ease of doing business, facilitating more investments, leading to higher economic growth and development in the country.

25. We find that the manner in which the defaulting borrowers and guarantors have been taking recourse to the provisions of the IBC, particularly Sections 94, 95 and 96 thereof, shows that such strategies are frustrating the very object of the IBC, apart from paralyzing the whole process of lawful steps taken by secured creditors in respect of secured assets under the provisions of the Securitisation Act. As noted hereinabove, chronic defaulters of loan and financial facilities, when facing the heat of proceedings initiated by secured creditors reaching culmination, scamper to file proceedings under Sections 94 and 95 of the IBC in a collusive manner, so as to claim that the moment such proceedings are initiated, moratorium is triggered under Section 96 thereof, as a result of which further lawful proceedings are stayed. The filing of such proceedings under the IBC is only with the object of frustrating the legal process and it has nothing to do with the object with which the IBC was enacted."

45. Thus, judicial notice was taken of the manner in which applications under Sections 94 and/or 95 of the IBC were being filed, not with the intention and purpose for which Chapter III Part III of the IBC, was enacted, but with the sole intention of somehow seeking benefit of interim moratorium triggered under Section 96 of the IBC. The 'mischief' was noticed by the legislature as well as the judiciary. On

the judicial side, within the limits of exercise of power and interpretation, judgements and orders were passed, to mitigate the mischievous nature of such proceedings. But beyond a point, the solution lay at the door of the legislature. In the backdrop of such mischief being perpetrated, which operated against the very object of enactment of IBC, the legislature finally stepped in and brought about the aforesaid amendment, by adding sub-section 4 to Section 96 of the IBC with effect from 26.05.2026. In this backdrop, the Mischief Rule or Heydon's Rule of interpretation of statutes, assumes great significance.

46. In the case of **Bengal Immunity Company Limited vs. State of Bihar & Ors.** (*supra*), the Heydon case was cited with approval. The relevant portion of the said judgement reads as follows:

> "20. In *Bengal Immunity Co. Ltd. v. State of Bihar*, Heydon case was cited with approval. Their Lordships have said: (SCR pp. 632-33)
>
> > "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case was decided that—
> >
> > '… for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—
> >
> > 1st. What was the common law before the making of the Act.
> >
> > 2nd. What was the mischief and defect for which the common law did not provide.
> >
> > 3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
> >
> > 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the

> cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*.' "

47. It is crucial that the resolve of the legislature for remedying the mischief is given its full effect, so that the mischief is suppressed and the remedy is advanced. The Courts must interpret such amendments to add life and force to the cure and remedy, rather than adopting an interpretation that fails to take forward the cure and remedy in its true spirit. The said Mischief Rule/Heydon's Rule has been applied consistently in our legal system and hence, it is an accepted Rule of interpretation. We find that the said Rule applies in the facts of the present case, to advance the proposition that sub-section 4 to Section 96 of the IBC introduced by way of amendment, must apply retroactively to pending proceedings also. This would advance the cure and remedy of addressing the mischief and it would not be appropriate to apply the same only prospectively, in the context of applications filed on or after 26.05.2026.

48. In this context, an attempt was made on behalf of the parties in these cases, advancing the proposition that the amendment ought to be applied prospectively, to claim that the applications filed *bona fide*, under Sections 94 or 95 of the IBC for insolvency resolution of personal guarantors to a corporate debtor, should not be adversely affected and painted in the same brush as mischievously initiated applications. We are of the opinion that when the legislature has acted, specifically taking note of the rampant mischief and misuse of the said provisions and larger and considerable public interest is involved in bringing about the said amendment, it ought to be applied in such a manner that it takes forward the dominant intention and purpose of the amendment.

49. The parties whose proceedings are still pending, cannot claim that the amendment should not apply and in the process, call upon the Courts

to go into the question as to whether such applications for insolvency process of personal guarantors to secured creditors, have been filed mischievously or not. As noted hereinabove, in the context of the procedural nature of the mechanism between Sections 94 to 99 of the IBC, such parties cannot claim a vested’right to such interim moratorium under Section 96 of the IBC.

50. It is relevant to note here that the Supreme Court, in the cases of **Ellora Paper Mills Limited Vs. State of M.P.** (*supra*); **TRF Limited Vs. Energo Engg. Projects Limited** (*supra*) and **Perkins Eastman Architects DPC Vs. HSCC (India) Limited** (*supra*), repeatedly held that the amended Section 12(5) of the Arbitration Act, concerning the eligibility of the arbitrators, applied to pending proceedings also. This concerned the question of unilateral appointment of arbitrators/arbitral tribunal by a party, that vitiated the arbitration proceedings itself.

51. As a matter of fact, the proceedings wherein arbitral awards were already rendered, were also found amenable to the effect of the amendment and such awards, were also set aside under Section 34 of the Arbitration Act, on the ground that the arbitrator/arbitral tribunal was unilaterally appointed by one of the parties. In other words, not only was the amendment made applicable to situations where the arbitral proceedings were pending, but also where the arbitral awards had been passed. This was obviously to remedy or cure the mischief of unilateral appointment of arbitrator/arbitral tribunal, which gave rise to serious concerns of bias and lack of objectivity. The said approach is required to be adopted in the facts and circumstances of the present cases also.

52. In the case of **Shanti Conductors Private Limited Vs. Assam Electricity Board** (*supra*), it was held that the subject provisions would apply to supplies made by suppliers after the provisions came into effect, although the supplies were pursuant to agreements executed prior to the

provisions being brought into force. The Supreme Court applied the concept of retroactive operation in the said case also.

53. At this stage, it would be appropriate to deal with the contention that the aforesaid amendment ought to be applied prospectively from 26.05.2026. It was claimed on behalf of the respondents that a bare reading of sub-section 4 to Section 95 of the IBC, added by way of amendment, shows that the words used therein on a literal interpretation, indicate that it must apply prospectively. It was claimed that the words 'is filed' used in the said provision being in simple present tense, demonstrate that it cannot operate retrospectively.

54. We find that the contentions raised by the creditors/petitioners in these petitions, concern retroactive operation of amendment and hence, the said contention that literal reading would show that the amendment cannot apply retrospectively, is without any substance. The said submission made on the basis that use of the words 'is filed' must necessarily mean that the amendment can only apply prospectively, is found to be without any substance. There is nothing to indicate that use of the words in sub-section 4 of Section 96 of the IBC, would necessarily mean that it would apply to the applications to be filed in future. If that was the case, the legislature would have used words such as 'to be filed' or other such similar phrases. In our opinion, a proper and even literal reading of the said provision added by way of amendment, in the backdrop in which it has been inserted, clearly demonstrates that the words 'is filed' necessarily include applications / proceedings under Sections 94 or 95 of the IBC, that were pending on the date on which the amendment was brought into effect. Hence, we do not find any substance in reliance placed on behalf of the respondents on the judgment in the case of **B. Premanand Vs. Mohan Koikal** *(supra)*.

55. It was also sought to be canvassed that the cases in which the

Supreme Court had applied amendments retroactively were beneficial amendments and since the amendment in the present case was taking away the benefit of interim moratorium, the ratio of the said judgments should not be applied. We are unable to accept the said contention, for the reason that where the Supreme Court found the amendment to be procedural in nature and not affecting a 'vested right', it was applied retroactively, even to pending proceedings. In the light of the discussion hereinabove and considering the approach adopted by the Supreme Court in cases such as **BCCI Vs. Kochi Cricket Private Limited and others** (*supra*), the said contention is rejected.

56. An elaborate exercise was carried out on behalf of some of the respondents in these petitions by referring to various provisions of the IBC introduced by way of amendment, to contend that comparing the language of the provision introduced by way of amendment in these cases i.e. sub-section (4) of Section 96 of the IBC with the provisions referred in the arguments, the subject amendment could only be read prospectively. In that context, four categories of such provisions of the IBC were identified and it was claimed that since the amendment, which is subject matter of consideration in these cases, does not fit in any of the four categories, it must be read as operating prospectively.

57. We have considered the said four categories of provisions introduced by way of amendment in the IBC, but we do not find any substance in the said contention. We are unable to accept the theory of the said respondents that since the subject amendment is neither clarificatory nor declaratory, or because there is no proviso or explanation in the provision itself to show that it operates retrospectively or because an explanation is not appended to make it operate retrospectively or because the amendment does not notify an anterior date of its coming into effect, the subject amendment must be applied

prospectively. We are unable to accept the said contention for the reason that a plain reading of sub-section (4) added by way of amendment to Section 96 of the IBC shows that it must apply retroactively. The said elaborate exercise of categorization of provisions and comparing them with the Section 96(4) of the IBC is based on a misconception that the said provision is being applied retrospectively. We are of the opinion that there is a fundamental difference between the concepts of retrospectivity on the one hand and retroactivity on the other. Since we have come to the conclusion that the subject amendment in these cases pertaining to Section 96(4) of the IBC applies retroactively, the said contention raised on behalf of the respondents deserves to be rejected. Accordingly, it is rejected.

58. We also do not find much substance in the contentions raised on behalf of some of the respondents in these petitions by placing reliance on the judgment of the Supreme Court in the case of **Manish Kumar vs. Union of India & Anr.** (*supra*). The portions of the judgment referring to vested rights and immunities cannot inure to the benefit of the said respondents, in the light of the discussion hereinabove, about the transitory and procedural realm between Sections 94 and 99 of the IBC, within which the interim moratorium operates. There is no question of any vested right accrued in the said respondents, justifying reliance on the said judgment. We also do not find much substance in the argument of some of the respondents that interim moratorium is a vested right as the beneficiaries had arranged and planned their affairs accordingly. This is because the 'beneficiaries' of such interim moratorium, due to the mischievous filing of applications under Sections 95 or 96 of IBC were the debtors. This argument further indicates that such applications were deliberately 'planned' and 'orchestrated', thereby showing that no 'vested right' could accrue. In any case, in the said judgment, the Supreme Court has acknowledged the fact that public interest cannot be ignored and that

in respect of economic statutes wider latitude is always available to the lawgiver.

59. We are also unable to accept the contention raised on behalf of some of the respondents by placing reliance on Section 179(3) of the IBC, to contend that the creditors would suffer as the facility of exclusion of the period of moratorium for the purposes of limitation would not be available to them. A perusal of the aforesaid provision shows that it starts with a non *obstante* clause and lays down that while computing the period of limitation specified for any suit or application, the period during which the moratorium was in place, shall be excluded, but the most crucial part of the said provision is that it applies to such suit or application filed in the name and on behalf of the debtor and not the creditor. Therefore, there is no substance in the said contention raised on behalf of the respondents.

60. At this stage, it would be relevant to note that Section 96(1)(b)(ii) of the IBC provides that the creditors of the debtor shall not initiate any legal action or proceeding in respect of any debt. Initiation of legal action or proceeding in respect of any debt does not mean that the creditor cannot even file a proceeding. The effect of the said provision would be that any such proceeding would remain inchoate and ineffective. We find that Section 96(1)(b)(ii) of the IBC cannot be read to oust the jurisdiction of a Court or tribunal which would otherwise have jurisdiction. It only prevents a proceeding filed to have any effect during the interim moratorium and obviously such a proceeding if filed cannot be labeled as *void ab initio*.

61. In the light of the discussion hereinabove, in the context of the principle of retroactive operation of the amendment, we do not find any substance in reliance placed on behalf of the respondents on judgments in the cases of **Vijaya Kumari Vs. Union of India** (*supra*), **Ambootia**

Tea Exports Pvt. Ltd. and others Vs. Sri Rani Sati Abasan Pvt. Ltd. (*supra*), **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited** (*supra*), *State of Maharashtra & Ors. vs. Prism Cement Limited & Anr.*, **(2025) 4 SCC 300**, **Keshavan Madhava Menon vs. State of Bombay** (*supra*), **Govind Das & Ors. vs. Income Tax Officer & Anr.** (*supra*), **State of Punjab & Ors. vs. Bhajan Kaur & Ors.** (*supra*), *State of Punjab vs. Mohar Singh*, **(1954) 2 SCC 483**, **Shyam Sunder & Ors. vs. Ram Kumar & Anr.** (*supra*), **Garikapatti Veeraya Vs. N. Subbiah Choudhury** (*supra*) and *Sree Sankaracharya University of Sanskrit & Ors. vs. Dr. Manu & Anr.*, **(2023) 19 SCC 30**. We find that all these judgments discuss and lay down principles in the context of retrospectivity, which are not applicable to the present cases, where we are concerned with retroactive operation of the subject amendment. In any case, in all these judgments, it is laid down that the Court must consider the language of the subject provision and the circumstances in which it was brought about by way of amendment to reach a finding as to whether it should apply prospectively or retrospectively or in a given case, retroactively. We have applied our mind to the subject provision and we have come to the considered conclusion that the said provision added by way of amendment must operate retroactively and hence, not only to applications/proceedings initiated on and from 26.05.2026, but also to pending proceedings.

62. The whole purpose of introducing the amendment to address the mischief noted hereinabove must be satisfied in the fullest by applying the same to the pending proceedings also, in larger public interest. This is quite apart from the fact that the respondents do not have a 'vested right' under Section 96 of the IBC during the procedural realm between Sections 94 to 99 thereof, and they cannot claim that the amendment should apply only prospectively.

63. We also do not agree with the respondents that their contentions can be accepted by placing reliance on Section 6 of the General Clauses Act. The present case does not concern repeal of an existing provision. As noted hereinabove, the amendment adding sub-section (4) to Section 96 of the IBC is with the stated purpose of addressing the mischief of rampant misuse of the said interim moratorium and therefore, the said contention raised on behalf of the respondents also deserves to be rejected.

CONCLUSION & ANSWER TO THE QUESTION

64. In view of the above, we answer the question framed at the outset in this judgment by holding that sub-section (4) of Section 96 of the IBC added by way of amendment with effect from 26.05.2026, applies retroactively and hence, even to pending proceedings. Although it operates from the said date in *futuro*, its effect is equally on proceedings pending on the said date under Sections 94 and/or 95 of the IBC.

65. In the light of the conclusion rendered hereinabove, we are in agreement with the findings rendered by the learned Single Judge of this Court in the judgment in the case of **Tata Capital Financial Services Limited Vs. Neel Motors LLP and others** (*supra*) and order of the learned Single Judge of Delhi High Court in the case of **IDBI Trusteeship Services Limited vs. Manish Jain & Ors.** (*supra*).

PART-II

CONSIDERATION & DISPOSAL OF WRIT PETITIONS

66. Since the aforesaid question arose in all these petitions, its effect shall be applied to the said petitions, apart from dealing with the individual factual matrix thereof. In that light, the writ petitions are now taken up for consideration.

<u>WRIT PETITION NO. 7805 OF 2026</u> (A.S.)
(*Assets Reconstruction Co. India Limited & Ors. vs. Veer Gurjar Aluminum Industries Private Limited & Ors.*)

67. By this petition, the petitioners (creditors) have prayed for a clarification that filing of a petition against respondent No.2, one of the Directors of the respondent No.1-borrower company, by one Yuvraj Mate, under Section 95 of the IBC, does not operate as a stay to hearing of regular appeals filed by the petitioners against the respondents before the Debts Recovery Appellate Tribunal (DRAT), Mumbai. The petitioners have also prayed for extension of time to conclude arguments in the light of timeline fixed by this Court in an order dated 30.03.2026 passed in earlier writ petitions filed by these petitioners for disposal of the appeals on or before 31.05.2026.

68. We find that the DRAT passed a common order in a pending Appeal on 04.06.2026, referring to the said petition filed under Section 95 of the IBC before the NCLT, noting that interim moratorium had taken effect. On that basis, it was recorded in the said order that the appeals could not be proceeded with.

69. We find that the petition under Section 95 of the IBC was filed against the respondent No.2 by a person claiming to be his creditor before the NCLT on 25.05.2026, one day prior to the aforesaid amendment taking effect from 26.05.2026. We find the said action to be orchestrated and mischievous only to somehow take benefit of the interim moratorium that would be triggered under Section 96 of the IBC. The facts of the present case further fortify our view that unless the operation of the said amendment is held to be retroactive, such mischievous acts of borrowers in connivance with other individuals would continue to fester, despite the said amendment brought about by the legislature to cure such mischief.

70. In the light of the answer to the question framed at the outset in this petition, we hold that interim moratorium is not operating in the present case by operation of Section 96(4) of the IBC and therefore, the reliefs claimed in the petition can be granted. Accordingly, the writ petition is allowed, by holding that the filing and pendency of the petition under Section 95 of the IBC before the NCLT against respondent No.2 by the aforementioned individuals, does not operate as a stay on hearing on the appeals by the DRAT. Notwithstanding, the filing of the said petition, by operation of Section 96(4) of the IBC, the interim moratorium shall not effect the hearing of Regular Appeal Nos.74 of 2024 and 75 of 2024 pending before the DRAT and the Recovery Proceedings No.207 of 2024 pending before the Debts Recovery Tribunal, Aurangabad. The DRAT, Mumbai is directed to hear and dispose of the said appeals expeditiously and in any case, on or before 31.10.2026. The Debts Recovery Tribunal, Aurangabad shall also proceed further, in accordance with law.

71. Pending applications, if any, in the said writ petition, are disposed of.

WRIT PETITION NO.2819 OF 2026 (O.S.)
(Indian Bank Vs. Shabbir Abbas Patel)

72. The petitioner bank (secured creditor) has challenged orders dated 03.10.2024 and 13.03.2026 passed by the Debts Recovery Tribunal-I, Mumbai, whereby the petitioner bank was restrained from going ahead with auction proceeding and the said order was subsequently continued. A further declaration is sought regarding discontinuation of interim moratorium under Section 96 of the IBC in the light of an order dated 18.02.2026 passed by NCLT, Mumbai, whereby the company petition filed under Section 95 of the IBC was dismissed. The petitioner has sought further ancillary directions for declaration that the actions of the

petitioner bank in confirming sale in terms of auction conducted on 30.09.2024 and issuance of sale certificate and registration thereof in favour of the auction purchaser are legal and binding. The petitioner bank has also sought a consequential relief of directing respondent Nos.1 to 3 (borrowers / occupants of the secured asset) to handover vacant physical possession to the petitioner bank and / or the auction purchaser.

73. At the root of the challenge to the impugned orders, is the observation of DRT-I in the order dated 03.10.2024 restraining the petitioner bank from proceeding further with regard to the auction proceeding on the basis that an interim moratorium was operating under Section 96 of the IBC. The subsequent impugned order dated 13.03.2026 simply continued the earlier direction restraining the bank. In the light of the order dated 18.02.2026 passed by the NCLT dismissing the company petition under Section 95 of the IBC, we find substance in the contention of the petitioner bank that the subsequent impugned order dated 13.03.2026, continuing the restraining order dated 03.10.2024, was unjustified. We are of the opinion that with the dismissal of the company petition, there was no question of continuation of the interim moratorium.

74. But, in the reply affidavit, the contesting respondent Nos.1 to 3 relied upon a subsequent fresh insolvency petition filed under Section 95 of the IBC against respondent No.1 before the NCLT. It was stated that the same was filed on 19.02.2026 and it stood registered on 06.05.2026. On this basis, it was contended that in terms of the law laid down by this Court in the case of **Bank of Baroda Vs. Union of India and another** (*supra*), from the date of registration of the said subsequent petition i.e. 06.05.2026, the interim moratorium operated and this fact should have been brought to the notice of this Court by the petitioner.

75. We are of the opinion that in the light of the findings rendered

hereinabove on the question of law, the interim moratorium triggered by registration of the subsequent insolvency petition under Section 95 of the IBC filed against respondent No.1, also ceased to operate with effect from 26.05.2026. Therefore, the said respondents cannot claim that the petitioner bank does not deserve reliefs as claimed in the petition.

76. We are of the opinion that the present case, on facts, further highlights the abuse of law and the very mischief specifically addressed by the said amendment by way of addition of sub-section (4) to Section 96 of the IBC. It is precisely to deal with and cure such mischief that the amendment was introduced with effect from 26.05.2026. In such a situation, to hold that the interim moratorium would continue to operate on the subsequent petition filed under Section 95 of the IBC against respondent No.1 on 19.02.2026, which stood registered on 06.05.2026, would be in the teeth of the position of law clarified hereinabove and it would be a travesty of justice to allow the said respondents to repeatedly indulge in such mischief, which definitely needs to be cured by application of the amendment.

77. In view of the above, Writ Petition No.2819 of 2026 is allowed in the following terms:-

(A) Impugned orders dated 03.10.2024 and 13.03.2026 are quashed and set aside. Hence, the restraining order issued by DRT-I shall cease to operate.

(B) It is held that in the light of order dated 18.02.2026 passed by the NCLT dismissing the company petition filed earlier, interim moratorium had ceased to operate and DRT-I ought not to have continued the restraining order in the subsequent order dated 13.03.2026.

(C) In any case, in the light of the position of law clarified hereinabove, as to the effect of the amendment, adding sub-section (4) to Section 96 of the IBC, interim moratorium triggered by filing of subsequent petition under Section 95 thereof before the NCLT, registered on 06.05.2026, ceased to operate with effect from 26.05.2026 i.e. the date of the said amendment coming into effect.

(D) Consequently, the action of the petitioner bank in confirming sale in favour of the auction purchaser as per auction conducted on 30.09.2024, issuance of sale certificate dated 25.02.2026, registered on 27.02.2026, were steps validly taken as no interim moratorium could be said to be operating in the facts and circumstances of the present case from 26.05.2026.

(E) As a result, the Court Commissioner appointed by the order dated 04.01.2025 of the Additional Chief Judicial Magistrate, 19th Court, Esplanade, Mumbai is at liberty to issue notice in accordance with law for taking possession of the secured asset. Upon the Court Commissioner approaching the concerned police station within whose jurisdiction the secured asset is located, appropriate police protection and assistance shall be provided, including providing lady constables for taking physical possession of the secured asset(s). The police authorities shall extend all co-operation so that the said order of the Magistrate is executed and the petitioner bank is put in physical possession of the secured asset for handing it over to the auction purchaser;

(F) Securitisation Application No.115 of 2024 shall be decided by DRT-I, Mumbai expeditiously in accordance with law.

<u>WRIT PETITION NO.3374 OF 2026</u> (A.S.)

(Godrej Finance Limited Vs. Ashok Rajkumar Gupta & Ors.)

78. By this petition, the petitioner (secured creditor) has challenged order dated 09.03.2026 passed by the Debts Recovery Tribunal, Pune (DRT), whereby an application seeking restoration of possession of the mortgaged property was allowed and the petitioner was directed to restore possession of the subject flat to the respondents.

79. This Court by an order dated 13.03.2026, after hearing the learned counsel for the parties, while issuing notice in the writ petition, granted interim stay of the impugned order dated 09.03.2026. The respondents filed Special Leave Petition (Civil) No. 21313 of 2026 before the Supreme Court to challenge the said interim order passed in the writ petition. On 18.06.2026, the Supreme Court issued notice in the Special Leave Petition and granted stay of the order of this Court, indicating that the order of the DRT, directing restoration of possession would stand revived.

80. Subsequently, the petitioner (secured creditor), who was the respondent in the Special Leave Petition, appeared before the Supreme Court and filed an application for vacation of the interim order passed by the Supreme Court. After hearing the parties, the Supreme Court was pleased to confirm the interim order dated 18.06.2026 passed in the Special Leave Petition. It was directed that the same would operate till the disposal of the present writ petition. The petitioner herein was directed to handover possession of the subject property to the respondents herein, on or before 22.07.2026. After noting that the writ petition was listed for hearing before this Court on 31.07.2026, the Supreme Court requested this Court to make an endeavour to dispose of the said writ petition itself on the said date or on such other earlier date, as this Court may deem fit. Accordingly, the Special Leave Petition was

disposed of.

81. Thereafter, when the present writ petition came up for consideration on 21.07.2026, having noted the directions issued by the Supreme Court, this Court directed that possession of the subject property should be handed over to the respondents, subject to the result of the writ petition. Thereupon, the writ petition was directed to be listed on 27.07.2026 for final disposal.

82. After hearing the parties on 27.07.2026, it came to light that one of the issues arising for consideration was the effect of the aforesaid amendment, whereby sub-section (4) was added to Section 96 of the IBC and as to whether it would apply to proceedings initiated by the respondents before the DRT. Taking note of the fact that the other petitions in this bunch were being taken up for consideration on the said issue, this petition was tagged along with the bunch of petitions to be heard and decided. Accordingly, the learned counsel for the parties appearing in this petition were heard on the aforesaid issue, as well as the other issues arising in the present writ petition.

83. In view of the discussion hereinabove and the finding rendered on the issue with regard to the retroactive applicability of the aforesaid amendment adding sub-section (4) to Section 96, it is evident that the respondents cannot claim benefit of interim moratorium triggered by filing of petitions under Section 95 of the IBC. We find on the basis of the admitted position on facts that this particular case also demonstrates the mischief in repeated petitions being filed under Section 95 of the IBC, only with the intention to trigger the interim moratorium under Section 96 of the IBC for paralyzing recovery proceedings initiated in accordance with law by the petitioner (secured creditor).

84. It is to be noted that in the present case, the petitioner was

constrained to issue notice under Section 13(2) of the Securitisation Act to the respondents for outstanding amount of Rs.3,58,57,180/- on account of default on their part in repayment of credit facility. On 09.01.2025, notice was issued for taking symbolic possession of the secured asset under Section 13(4) of the Securitisation Act. On 16.05.2025, the Competent Magistrate passed an order under Section 14 of the Securitisation Act, appointing Court Commissioner for taking physical possession of the subject property and on 07.07.2025, the Court Commissioner issued notice for scheduling such act of taking physical possession on 23.07.2025.

85. It is at this belated stage that the respondents for the first time approached the DRT on 17.07.2025, by filing Securitisation Application No. 648 of 2025 along with interim application for stay. On 23.07.2025, the DRT passed an order, granting stay on the ground that interim moratorium was operating under Section 96 of the IBC. It is to be noted that the petition under Section 95 of the IBC was filed by proprietor of German Garments against respondent No.1, who is not the owner of the subject property and it was kept pending only to trigger and enjoy the interim moratorium. The said petition was filed on 20.07.2025, three days after filing of the Securitisation Application before the DRT, and kept in defects, obviously with the intention of claiming interim stay of physical possession by relying upon interim moratorium under Section 96 of the IBC. It is an admitted position that the registration of the said petition was declined, on account of non-removal of defects, by the Registry of the NCLT.

86. On 02.01.2026, the Competent Magistrate passed an order extending the time period for obtaining physical possession of the secured asset and on 11.02.2026, the Court Commissioner scheduled the taking of physical possession on 05.03.2026.

87. On 01.03.2026, the respondents filed an interim application for amendment of the securitisation application and also an application, seeking stay of the aforesaid notice issued by the Court Commissioner. On the very same date i.e. on 01.03.2026, an entity called M/s. Jeanius Clothing Company filed another petition under Section 95 of the IBC, this time against respondent Nos.3 and 4 before the NCLT. This Court finds the filing of the second petition by the aforesaid entity on 01.03.2026, four days prior to the date fixed for taking physical possession, as a calculated and mischievous move orchestrated by the respondents only with a view to claim triggering of interim moratorium before the DRT.

88. On 05.03.2026, the interim application for stay along with application for amendment were listed before the DRT. It is the case of the petitioner that the possession of the secured asset i.e. the subject flat was taken by the Court Commissioner, on the said date, before any order could be passed in the application filed by the respondents before the DRT for interim stay. In that light, the application for stay bearing Interim Application No. 721 of 2026 was disposed of as not pressed. An application seeking restoration of possession bearing Interim Application No. 785 of 2026 was taken on record and opportunity was granted to the petitioner to file reply affidavit.

89. It is the said application seeking restoration of possession that stood allowed by order dated 09.03.2026. The same is assailed in the present writ petition. The chronology of events already noted hereinabove, demonstrates the manner in which the respondents are in possession of the secured asset, subject to the result of the present petition.

90. In the light of the findings rendered in this judgment on the aforesaid question of law and issue regarding retroactive application of

the amendment, whereby sub-section (4) was added to Section 96 of the IBC, it is clear that the aforesaid provision applies to pending proceedings and therefore, the respondents cannot claim benefit of interim moratorium on the basis of the petition filed under Section 95 of the IBC on 01.03.2026 by M/s. Jeanius Clothing Company. It is to be noted that the said petition was eventually registered only on 30.03.2026. But, with the amendment coming into effect from 26.05.2026, the interim moratorium ceased to operate and therefore, the very basis of interim relief sought and pressed by the respondents, ceased to have effect. On the said aspect of the matter, the contentions raised on behalf of the respondents are rejected.

91. But, the other aspects of the matter need consideration. Mr.D'Souza, learned counsel for the petitioner submitted that the impugned order was wholly without jurisdiction as restoration of possession cannot be directed by way of interim order, during pendency of the securitisation application before the DRT. It was submitted that the observations of the DRT about 'oral directions' was without any substance, particularly in the light of the specific recording of the fact in the order dated 05.03.2026 that the respondents did not press the application for stay bearing Interim Application No. 721 of 2026, obviously because possession of the secured asset was already taken by the petitioner. It was submitted that the contention that possession of the secured asset was taken at 9:00 a.m. itself on 05.03.2026 is not borne out from the record, as the *panchanama* recorded while taking possession specifically records that the action of taking possession started at 11:00 a.m. and continued upto 12:15 p.m. There is nothing on record to show that the DRT at any point in time considered the three pronged test of strong *prima facie* case, balance of convenience and grave and irreparable loss on 05.03.2026, to pass even an ad-interim direction in the matter. Therefore, there was no basis for DRT to pass the drastic

direction against the petitioner for restoration of possession of the secured asset.

92. Even in the order dated 09.03.2026, there was no discussion on the question as to whether the respondents had made out any *prima facie* case in their favour. Considering the mischievous nature of repeated petitions being orchestrated and filed under Section 95 of the IBC to claim interim moratorium under Section 96 thereof, there was no basis for considering any interim relief on 05.03.2026 and in any case, there was no basis for passing the impugned order for restoration of possession. In that light, it was submitted that the writ petition deserved to be allowed.

93. On the other hand, Mr. Agarwal, learned counsel appearing for the respondents, apart from adopting the contentions raised by the learned counsel for the parties, claiming that the aforesaid amendment applies only prospectively, made submissions on the facts of the present case. He emphasized that in the light of the sequence of events recorded by the DRT in the order dated 09.03.2026, it was obvious that the petitioner had taken physical possession of the secured asset, despite 'oral directions' of the DRT being communicated to the Court Commissioner. It was submitted that this was a good ground for restoration of possession. It was submitted that since facts recorded in the proceedings by the tribunal, are to be treated as conclusive of facts, as per judgment and order passed by the Supreme Court in the case of *State of Maharashtra vs. Ramdas Shrinivas Nayak & Anr.*, **(1982) 2 SCC 463**, no doubt can be raised regarding the same. It was further submitted that as per judgment of the Supreme Court in the case of *Jang Singh vs. Brij Lal & Ors.*, **1963 SCC OnLine SC 219**, no act of a Court can prejudice a party, and hence the impugned order does not deserve interference. It was submitted that this Court ought to take into consideration the aspect

of equitable considerations and accordingly, the writ petition may be dismissed.

94. On the manner in which the impugned order has been passed, this Court has carefully perused the same. The impugned order dated 09.03.2026 has to be considered in the light of the proceeding recorded by the DRT on 05.03.2026. This is crucial for the present petition. A perusal of the order/proceeding recorded on 05.03.2026 by the DRT shows that the application for stay bearing Interim Application No. 721 of 2026 was disposed of as not pressed. Nothing in the said proceeding indicates that any submissions were made on behalf of the respondents about alleged highhandedness on the part of the petitioner, while taking physical possession of the secured asset, as per notice issued by the Court Commissioner in terms of the order passed by the Competent Magistrate under Section 14 of the Securitisation Act.

95. It was only in the application filed by the respondents bearing Interim Application No. 785 of 2026, seeking restoration of possession that allegations were made about ‘oral directions’ of the DRT being flouted. The petitioner filed reply to the said application, resisting the relief claimed therein, emphasizing that restoration of the possession cannot be directed at the interim stage by the DRT.

96. A perusal of the impugned order shows that the DRT observed that intimation was given to the Court Commissioner about ‘oral directions’, but possession was taken and that such an act was not ‘appreciable to the law’ when the application was being heard. The DRT specifically recorded that though at interim stage possession of the mortgaged property taken by the secured creditor cannot be restored, but it went ahead to pass the order for restoration of the possession to the respondents.

97. We are of the opinion that 'oral directions' are not contemplated in proceedings before any Court or tribunal and if the tribunal is of the opinion that an ad-interim order or direction is warranted, it must immediately record at least some reasons in a written order, as regards *prima facie* case, balance of convenience and grave and irreparable loss. There is nothing recorded in the order/proceeding dated 05.03.2026 that physical possession was scheduled and actually taken by the petitioner (secured asset) on the basis of an order passed by the Competent Magistrate under Section 14 of the Securitisation Act, or that for specific reasons an ad-interim direction was warranted and granted. It is not even recorded in the said order/proceeding that some 'oral directions' were issued to restrain the petitioner from proceeding to take physical possession. The said order/proceeding dated 05.03.2026 simply records that the application for stay of the respondents bearing Interim Application No. 721 of 2026 was disposed of as not pressed. We are of the opinion that there is no contemporaneous record as on 05.03.2026 about any ad-interim order restraining the petitioner from taking physical possession, as per schedule. We are of the opinion that 'oral directions' cannot be issued in such a manner by the DRT and having noted that restoration of possession of the mortgaged property at interim stage cannot be granted, the DRT ought not to have passed the impugned order, directing restoration of the possession to the respondents.

98. We also find substance in the contention of the petitioner that the recording of events is in the teeth of the documents, in as much as, the *panchanama* recorded that the act of taking physical possession commenced at 11:00 a.m. and continued till 12:15 p.m. Therefore, the DRT jumping to the conclusion that possession was initiated at 9:00 a.m. and that 'oral directions' were flouted does not appear to be sustainable. It is to be noted that at no stage either on 05.03.2026 or even at the stage of passing of the impugned order dated 09.03.2026 did the DRT render

any finding at all about the respondents having made out even a *prima facie* case in their favour for either protecting the possession or seeking restoration of the possession of the secured asset. The admitted chronology of events shows that the respondents chose to file the securitisation application after the proceedings under the Securitisation Act had reached the stage of execution of the order passed by the Competent Magistrate under Section 14 of the Securitisation Act. The initial stay was obtained on the basis of merely orchestrating filing of a mischievous petition under Section 95 of the IBC, only to obtain the protection of interim moratorium under Section 96 thereof. The petition was not even pursued by the entity, which filed it, and registration of the same was declined by the NCLT.

99. Thereafter, merely four days prior to the possession of the secured asset being taken on 05.03.2026, the aforesaid second mischievous petition was orchestrated under Section 95 of the IBC to claim interim moratorium, thereby indicating the conduct of the respondents and lack of any submission on the merits of the matter. We are unable to agree with the respondents that the impugned order of the DRT cannot be interfered with, as facts recorded in the said order must be accepted as gospel truth. We are also of the opinion that this is not a case where the act of the tribunal has caused any prejudice to the respondents. As a matter of fact, we find that the respondents have not made an attempt at any stage to demonstrate as to why interim protection could be granted in their favour, apart from the fact that no submission is made on the aspect of making good the defaults. Therefore, reliance placed on judgment of the Supreme Court in the case of **State of Maharashtra vs. Ramdas Shrinivas Nayak & Anr.** (*supra*) and **Jang Singh vs. Brij Lal & Ors.** (*supra*), is misplaced.

100. Reliance placed on judgment of the Supreme Court in the case of

M. S. Sanjay vs. Indian Bank & Ors. (judgment and order dated **29.01.2025** passed in **Civil Appeal No. 1188 of 2025**) on the ground of equitable consideration, is also misplaced. If equitable considerations are to be taken into account, we find that the respondents have indulged in all acts possible to deprive the logical consequences of steps taken by the petitioner under the Securitisation Act. The mischief of orchestrating successive petitions under Section 95 of the IBC is obvious, as noted hereinabove, only to trigger interim moratorium, which no longer survives w.e.f. 26.05.2026. Such parties like the respondents cannot be heard to raise the ground of equitable considerations for any relief from this Court exercising writ jurisdiction.

101. As regards the objection regarding maintainability of the writ petition and availability of alternative remedy for the petitioner to approach the DRAT, suffice it to say that when an order is passed by a Court or tribunal in the teeth of settled position of law, the order can be said to be without jurisdiction (*East India Commercial Company Limited, Calcutta & Anr. vs. Collector of Customs, Calcutta,* **AIR 1962 SC 1893**).

102. In view of the above, we find that the writ petition deserves to be allowed and the impugned order deserves to be set aside. Accordingly, the writ petition is allowed. The impugned order is set aside and the respondents are directed to handover possession of the subject property to the petitioner (secured creditor) within four weeks from today.

<u>**WRIT PETITION NO.7587 OF 2026**</u> (A.S.)

(Apna Sahakari Bank Ltd. & anr. Vs. M/s. Image Industries Pvt. Ltd. & ors.)

<u>**WRIT PETITION NO.7598 OF 2026**</u> (A.S.)

(Apna Sahakari Bank Ltd. & anr. Vs. M/s. Warna Industries Limited & ors.)

<u>**WRIT PETITION NO.7600 OF 2026**</u> (A.S.)

(Apna Sahakari Bank Ltd. & anr. Vs. M/s. Gandharv Farms & Resorts Pvt. Ltd. & ors.)

103. The petitioner in these three writ petitions is a bank, which is a secured creditor and the petitions have been filed impugning identical orders passed by the Debts Recovery Tribunal, Pune (DRT) in interim applications filed by the contesting respondents (borrowers / guarantors), preventing the petitioner bank from accepting balance 75% amount from the auction purchaser and further restraining it from issuing sale certificate.

104. According to the petitioner bank, such unreasoned orders having the drastic effect of stalling the logical consequences of action taken by the petitioner bank under the provisions of the Securitisation Act and that too, without hearing the auction purchaser, which is a vital party, demonstrates that the writ petitions filed directly challenging the impugned orders deserve to be entertained and allowed. It was submitted on behalf of the petitioner bank that even if ad-interim orders were to be passed by the DRT, the three pronged test of strong *prima facie* case, grave and irreparable loss and balance of convenience ought to have been applied, reaching findings in favour of the contesting respondents before issuing the said restraining directions.

105. Apart from this, it was submitted that the amendment introducing sub-section (4) in Section 96 of the IBC applies to the pending proceedings, and therefore, the interim moratorium as claimed by the contesting respondents cannot apply. On this basis, it was submitted that the impugned orders deserve to be set aside. It was emphasized that the filing of the petition by the Punjab National Bank (PNB) under Section 95 of the IBC on 01.10.2022 against the mortgagors / guarantors of the credit facilities was suppressed by the contesting respondents throughout the proceedings and advantage of the same is now sought to be taken at

the fag end of the proceedings when the auction purchasers have also come into the picture. On this basis, it was claimed that interim reliefs could not be claimed on the basis of the interim moratorium triggered by filing of the said petition, while keeping the said fact suppressed, only to be used as a protective shield at the end of the proceedings. It was emphasized that the securitisation applications were filed belatedly and with the amendment coming into force, the ground of interim moratorium cannot inure to the benefit of the contesting respondents.

106. On the other hand, the learned counsel appearing for the contesting respondents submitted that this cannot be said to be a case of mischief on the part of the contesting respondents as the petition under Section 95 of the IBC was filed as far back as on 01.10.2022 by PNB. There was no question of any connivance between the said bank and the contesting respondents to mischievously seek triggering of interim moratorium. The contentions with regard to the effect of the amendment raised on behalf of the said respondents have been already recorded hereinabove. It was further submitted that although the impugned orders are brief, the intention behind the said orders is to prevent further complications setting in before any decision is taken on the pending interim applications. On this basis, it was submitted that the writ petitions deserve to be dismissed.

107. As regards the effect of the amendment, findings have been already rendered hereinabove against the contesting respondents. We have already held that sub-section (4) introduced in Section 96 of the IBC applies to pending proceedings, and therefore, the interim moratorium triggered by filing of the petition under Section 95 of the IBC ceased to exist from 26.05.2026 onwards. Accordingly, the contesting respondents cannot claim any interim reliefs and / or protection on the basis of such interim moratorium, which has ceased to

operate.

108. The said respondents in these petitions have submitted that there is no indication of any mischief or connivance between the bank that filed the petition under Section 95 of the IBC and the contesting respondents herein. But, in the light of our finding rendered hereinabove that the amendment applies across the board as larger public interest cannot be ignored, particularly in the light of the opinion of stakeholders in such proceedings recorded in the aforesaid report of the Select Committee that triggering of interim moratorium under Section 96 had become the number one mechanism to siphon of crores of rupees by debtors, we are inclined to hold against the contesting respondents on the said aspect.

109. Even otherwise, we find substance in the contention raised on behalf of the petitioner bank (secured creditor) that the contesting respondents in these petitions deliberately suppressed the fact of filing of the petition under Section 95 of the IBC by the Punjab National Bank on 01.10.2022 and sought to rely upon the said fact only when interim applications were filed before the DRT. In the earlier securitisation applications filed by the contesting respondents herein, in the years 2023 and 2025, there was no whisper about such alleged interim moratorium operating from October 2022.

110. It is correctly pointed out by the petitioner bank that when attempts at auction sale were made earlier, which had failed and even when physical possession of the secured asset was taken by the petitioner bank, at no stage did the contesting respondents reveal the fact about filing of the petition under Section 95 of the IBC by the PNB. Even when One Time Settlement (OTS) proposals were made by the contesting respondents - borrowers, such interim moratorium was suppressed and only in the interim applications filed in the year 2026,

for the first time did the contesting respondents reveal the filing of such a petition to claim the benefit of interim moratorium. This in itself is found to be mischievous conduct on the part of the contesting respondents, who have sought to rely upon such interim moratorium only to frustrate the petitioner bank, which is a secured creditor. It is this very mischief that is addressed by the aforementioned amendment by introducing sub-section (4) in Section 96 of the IBC. Since we have already held hereinabove that the amendment applies to even pending proceedings, in any case, the interim moratorium has ceased to operate, and therefore, on this count, we hold against the contesting respondents.

111. As regards the impugned orders in these writ petitions, we find that the DRT has gravely erred in issuing directions restraining the petitioner bank from accepting balance 75% amount from the auction purchasers and also directing that sale certificate shall not be issued. According to us, these are drastic directions issued against the secured creditor and particularly, against the auction purchasers, who are not even heard by the DRT. This is clear violation of the principles of natural justice. In any case, there is not an iota of discussion in the impugned orders on the question as to whether the contesting respondents satisfy the three pronged test of strong *prima facie* case, grave and irreparable loss and balance of convenience. Even if the DRT were to pass an ad-interim order, discussion on the said aspects was necessary, particularly in the light of the earlier securitisation applications filed by the contesting respondents and the history of the litigation between the parties. Such perfunctory orders having a drastic adverse effect on the petitioner bank (secured creditor) and the auction purchaser cannot be countenanced and therefore, the impugned orders deserve to be set aside. Accordingly, Writ Petition Nos.7587 of 2026, 7598 of 2026 and 7600 of 2026 are allowed and the orders impugned therein are quashed and set aside.

<u>WRIT PETITION (L) NO.22742 OF 2026</u> (O.S.)
(RBL Bank Limited Vs. State of Maharashtra & Ors.)

<u>WRIT PETITION (L) NO.24045 OF 2026</u> (O.S.)
(RBL Bank Limited Vs. State of Maharashtra & Ors.)

112. The petitioner bank has filed these two petitions for directions to the Court Commissioner to carry out the commission for execution of orders passed by competent Magistrates for taking physical possession of the subject secured assets. In Writ Petition (L) No.22742 of 2026, the secured asset is a flat located in a building at Borivali (East), Mumbai and in Writ Petition (L) No.24045 of 2026, the secured asset is a row-house at plot No.370, Chembur (East), Mumbai.

113. The contesting respondents (borrowers / guarantors) are resisting the present petition on the ground that petitions under Section 95 of the IBC have been filed triggering interim moratorium and that therefore, directions cannot be issued in these writ petitions for taking physical possession of the secured assets.

114. As noted hereinabove, the learned counsel for the petitioner bank (secured creditor) has submitted that with the insertion of sub-section (4) in Section 96 of the IBC, by way of amendment, the interim moratorium has ceased to operate as the said provision applies to pending proceedings also.

115. On the other hand, the learned counsel for the contesting respondents urged that the said provision, added by way of amendment, would apply only prospectively in proceedings initiated after 26.05.2026.

116. Since we have elaborately discussed the rival submissions and reached findings in favour of the petitioner bank (secured creditor), we are of the opinion that applying the said findings to the facts of the

present case, the contesting respondents cannot resist the directions sought in these writ petitions, only on the ground that an interim moratorium is operating. In the absence of the interim moratorium and it ceasing to operate from 26.05.2026, as we have held that the amendment applies retroactively, the orders passed by the competent Magistrates under Section 14 of the Securitisation Act for taking physical possession of the secured assets ought to be executed. There is no other ground pointed out by the contesting respondents or any restraining order from the competent tribunal for resisting the directions sought in the present writ petitions. Therefore, there can be no impediment in allowing the writ petitions.

117. In view of the above, the writ petitions are allowed. In Writ Petition (L) No.22742 of 2026, the respondent No.4 - Court Commissioner is directed to fix a date at the earliest for taking physical possession of the subject flat, which is the secured asset. Respondent No.4 - Court Commissioner shall inform respondent No.1 i.e. Senior Inspector of Police, Borivali Police Station about the date so fixed for taking physical possession. Upon doing so and the petitioner bank depositing the charges for police protection and assistance, the said Senior Inspector of Police, Borivali Police Station shall provide adequate police personnel, including lady constables to assist the Court Commissioner to take physical possession of the said secured asset on the fixed date. The police shall use adequate, necessary and proportionate force, if so required, to take physical possession of the secured asset and to hand it over to the petitioner bank.

118. Similarly, Writ Petition (L) No.24045 of 2026 is also allowed and the respondent No.4 - Court Commissioner is directed to fix a date for taking physical possession of the subject row-house (secured asset). The Court Commissioner shall inform the respondent No.1, Senior Inspector

of Police, Chembur Police Station about the date so fixed for taking physical possession. Upon doing so and the petitioner bank depositing the charges for police protection and assistance, the said Senior Inspector of Police, Borivali Police Station shall provide adequate police personnel, including lady constables to assist the Court Commissioner to take physical possession of the said secured asset on the fixed date. The police shall use adequate, necessary and proportionate force, if so required, to take physical possession of the secured asset and to hand it over to the petitioner bank.

119. All the writ petitions are disposed of in above terms. Pending applications are also disposed of.

(SHREERAM V. SHIRSAT, J.) **(MANISH PITALE, J.)**

Priya / Bipin / Minal

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