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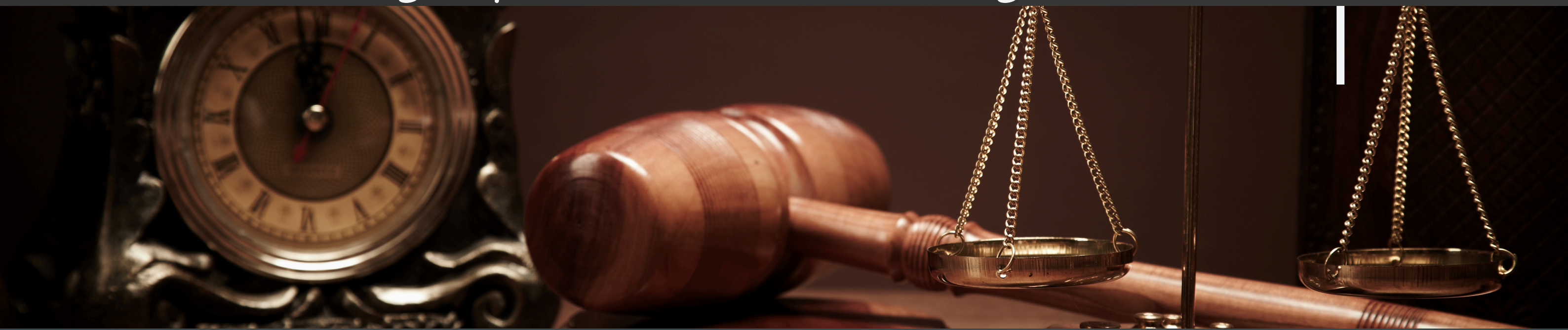
IBC Pulse

Monthly Updates on Insolvency & Resolution

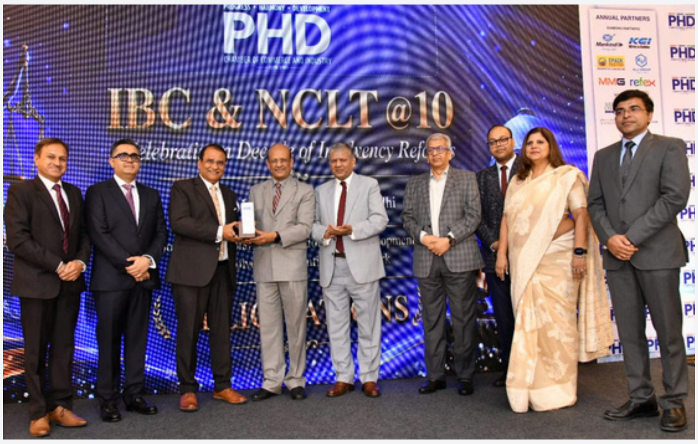


"IBC & NCLT @10"

Celebrating a Decade of Transformative Insolvency Reforms

30 May 2026, Hotel Taj Mahal, New Delhi

NCLT & IBC Committee PHDCCI successfully organized **"IBC & NCLT @10 – Celebrating a Decade of Insolvency Reforms" on 30 May 2026 at Hotel Taj Mahal, New Delhi**, commemorating ten years of the Insolvency and Bankruptcy Code (IBC), 2016, and the establishment of the National Company Law Tribunal (NCLT). The event brought together eminent judicial dignitaries, policymakers, regulators, insolvency professionals,



financial institutions, legal experts, industry leaders, and key stakeholders to reflect on the transformative impact of India's insolvency framework and deliberate on the future roadmap for strengthening the insolvency ecosystem.

The event was graced by **Justice Ashok Bhushan**, Chairperson, NCLAT; **Justice Rajesh Bindal**, Former Judge, Supreme Court of India; **Justice M.M. Kumar**, Founder President, NCLT and Former Chief Justice of the Jammu & Kashmir High Court; **Dr. Anju Rathi Rana**, Member Secretary, Department of Legal Affairs, Government of India; **Shri Debajyoti Ray Chaudhuri**, MD & CEO, National e-Governance Services Ltd. (NeSL); **Shri Gyaneswar Kumar Singh**, Director General & CEO, IICA and Member Secretary, BLRC; **Dr. U.K. Chaudhary**, Senior Advocate and President, NCLT Bar Association; **Dr. M.S. Sahoo**, Former Chairperson, IBBI; **Mr. P.K. Malhotra**, Former Secretary, Ministry of Law & Justice; **Mr. Santosh Shukla**, Chief General Manager, SEBI and **Mr. Rajnish Kumar**, Former Chairman, State Bank of India, along with distinguished members of the insolvency and legal fraternity.

Addressing the gathering, **Justice Ashok Bhushan** described the IBC as one of India's most significant legal and economic reforms, transforming a fragmented and delay-prone insolvency regime into a unified, creditor-driven framework focused on time-bound resolution, value maximization, and accountability. While highlighting the important role of NCLT and

Forthcoming Events

- ***Roundtable on IBC Amendment Act 2026***
  Jul '26, New Delhi
- ***National Summit & IBC Awards at Delhi***
  12 Sep'26, New Delhi
- **Residential Workshop on Board Governance at Puri**
  25, 26, 27 Nov'26

For More Details:
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NCLAT in developing insolvency jurisprudence, he emphasized the need to address challenges relating to resolution timelines, institutional capacity, cross-border insolvency, and group insolvency mechanisms to further strengthen the framework.

Addressing the gathering, **Justice Rajesh Bindal** underscored the transformative impact of the Insolvency and Bankruptcy Code (IBC) in replacing a fragmented and inefficient insolvency regime with a resolution-oriented framework focused on preserving businesses and economic value. He highlighted the significant improvement in resolution outcomes, recoveries, revival of stressed enterprises, reduction in NPAs, and enhanced credit discipline over the past decade. Emphasizing that the success of the insolvency ecosystem has been driven by collective efforts across institutions, regulators, the judiciary, financial institutions, and industry stakeholders, he called for continued strengthening of infrastructure, technology adoption, institutional capacity, and timely resolution mechanisms to support India's vision of becoming a developed economy by 2047. He also stressed the importance of leveraging data, digital platforms, and collaborative approaches to facilitate early resolution of financial distress and further enhance the effectiveness of the insolvency framework.

Justice M.M. Kumar reflected on the challenging initial years of establishing the NCLT and recalled how the institution began functioning with limited infrastructure and resources. He noted that despite capacity constraints, NCLT successfully implemented the IBC, facilitated significant recoveries, reduced non-performing assets, and contributed to improving India's Ease of Doing Business rankings. He also highlighted the need to ensure greater accessibility of insolvency mechanisms for MSMEs.

Speaking on the occasion, **Dr. Anju Rathi Rana** stated that the IBC was far more than a legislative reform and represented a fundamental shift in India's approach to business distress and insolvency. She noted that the Code has strengthened credit culture, enhanced investor confidence, and established a structured and accountable framework for resolution while underscoring the critical role played by NCLT in its successful implementation.

Shri Debajyoti Ray Chaudhuri highlighted the transformative role of information utilities in reducing information asymmetry and strengthening creditor confidence. Referring to more than 32,000 applications involving debt of nearly ₹14 lakh crore that were resolved before admission, he observed that the IBC has significantly changed debtor behaviour by encouraging early settlements and constructive negotiations. He further reaffirmed NeSL's readiness to support upcoming reforms through its robust Record of Default framework.

Shri Gyaneswar Kumar Singh reflected on the collaborative efforts of the government, judiciary, regulators, insolvency professionals, and industry stakeholders in shaping India's insolvency ecosystem. Highlighting the Code's role in strengthening financial discipline and improving credit culture, he outlined future priorities including personal insolvency, cross-border insolvency, technology-driven reforms, creditor-led restructuring, and enhanced institutional capacity.

Dr. U.K. Chaudhary praised the significant contribution of the legal fraternity in supporting the development of insolvency jurisprudence and strengthening the functioning of NCLT and NCLAT. He called for greater institutional capacity, timely appointment of members, and enhanced infrastructure to ensure faster and more effective resolution of cases.

Earlier, **Dr. Jatinder Singh**, Deputy Secretary General, PHDCCI, welcomed the distinguished gathering and highlighted the transformative impact of the IBC and NCLT in promoting accountability, transparency, and a rules-based economic framework. He emphasized the active role played by PHDCCI's IBC & NCLT Committee in facilitating policy dialogue, stakeholder consultations, and industry engagement to support the evolution of India's insolvency framework.

Mr. G.P. Madaan, Chair, IBC & NCLT Committee, PHDCCI, in the theme address, highlighted the remarkable journey of the IBC and NCLT over the last decade, noting their contribution to strengthening credit discipline, improving debt resolution outcomes, reducing NPAs, and enhancing India's business environment. He described the ten-year milestone as a celebration of institutional resilience, economic reform, and the collective efforts of all stakeholders associated with the insolvency ecosystem.

NCLT & IBC Committee PHDCCI successfully organized **"IBC & NCLT @10 – Celebrating a Decade of Insolvency Reforms" on 30 May 2026 at Hotel Taj Mahal, New Delhi**, commemorating ten years of the Insolvency and Bankruptcy Code (IBC), 2016, and the establishment of the National Company Law Tribunal (NCLT). The event brought together eminent judicial dignitaries, policymakers, regulators, insolvency professionals.

Ms. Ranjana Roy Gawai, Co-Chair, IBC & NCLT Committee, PHDCCI, addressed the gathering and expressed gratitude to the distinguished speakers, stakeholders, and participants for their continued contribution to strengthening India's insolvency framework.

In a landmark gathering uniting the many officials of the IBC Ecosystem, a felicitation ceremony was presided over by **Mr. G P Madaan**, Chair, NCLT & IBC Committee, joined by Co-Chairs **Ms. Ranjana Roy Gawai**, **Mr. Rachit Mittal, Mr. Abhishek Anand,** and **Mr. Harish Taneja**, underscoring the committee's commitment to recognizing excellence across the insolvency landscape.

The programme concluded with a felicitation ceremony honouring distinguished contributors, policymakers, judicial members, insolvency professionals, and institutional stakeholders whose efforts have been instrumental in shaping and strengthening India's insolvency and bankruptcy framework over the past ten years.

A. SUCCESSFUL RESOLUTION APPLICANT CANNOT RESILE FROM CoC-APPROVED RESOLUTION PLAN BY ALLEGING THAT LETTER OF INTENT IS "CONDITIONAL"; ACCEPTANCE OF TERMS AND PARTICIPATION IN CoC PROCESS CONSTITUTES ACQUIESCENCE; FORFEITURE OF EMD FOR NON-ACCEPTANCE OF LoI AND FAILURE TO FURNISH PERFORMANCE GUARANTEE IS VALID; CoC MAY RESOLVE FOR LIQUIDATION BEFORE APPROVAL OF RESOLUTION PLAN UNDER SECTION 33 OF THE IBC – HON'BLE SUPREME COURT

The Hon'ble Supreme Court in ***Sanjay Dave v. Andhra Bank Ltd. and Ors., Civil Appeal Nos. 12264–12266 of 2024***, decided on 27.05.2026, held that a Successful Resolution Applicant (SRA) cannot avoid its obligations under a Committee of Creditors (CoC)-approved resolution plan by contending that the Letter of Intent (LoI) issued pursuant thereto was "conditional", where the alleged conditions merely reflected pending judicial proceedings or risks already disclosed and accepted during the CIRP process. The Court further held that failure to accept the LoI and furnish the requisite performance guarantee entitled the Resolution Professional to forfeit the Earnest Money Deposit (EMD) in terms of the Request for Resolution Plan (RFRP), and that the CoC is statutorily empowered under Section 33 of the Insolvency and Bankruptcy Code, 2016 to resolve for liquidation before approval of a resolution plan by the Adjudicating Authority.

The appeals arose out of the CIRP of Oracle Home Textiles Limited. The appellant, who was the promoter and director of the corporate debtor and whose entity enjoyed MSME status, had submitted a resolution plan pursuant to permission granted by the NCLT. The plan was approved by the CoC with 99.90% voting share. Thereafter, the Resolution Professional issued a Letter of Intent recording that the approval of the resolution plan was subject to the outcome of pending applications filed by certain prospective resolution applicants before the NCLT. The appellant refused to accept the LoI, contending that it was conditional and inconsistent with the approved resolution plan. Multiple LoIs were thereafter issued, but the appellant continued to withhold acceptance. Consequently, the EMD of Rs.1 crore was forfeited and, upon expiry of the CIRP period without a valid resolution plan, the CoC resolved with 99.61% voting share to liquidate the corporate debtor. The NCLT dismissed the appellant's applications challenging the LoI and forfeiture of EMD while allowing the liquidation application, and the NCLAT affirmed those orders.

Before the Hon'ble Supreme Court, the appellant argued that the LoIs were impermissibly conditional because they made implementation of the resolution plan subject to the outcome of pending proceedings filed by third-party prospective resolution applicants. It was further contended that the LoI improperly imposed upon the SRA the risk of liabilities arising from pending claims of employees and workers. The appellant also challenged the reduction of time for furnishing the performance guarantee from forty-five days to seven days and contended that forfeiture of the EMD was contrary to the RFRP.

Rejecting these submissions, the Supreme Court held that the stipulation making the LoI subject to the outcome of pending proceedings did not render it conditional. The Court observed that the pending applications of the prospective resolution applicants were well known to all stakeholders and had been discussed repeatedly in CoC meetings attended by the appellant. The appellant had itself entered the resolution process against the backdrop of such pending litigation and therefore could not subsequently insist that its plan be insulated from judicial determinations affecting the CIRP. The Court held that a clause merely recognising the binding effect of future judicial orders could not be construed as an impermissible condition enabling the SRA to withdraw from a CoC-approved plan.

The Court similarly rejected the appellant's challenge to the clause allocating risks arising from employee and worker claims. On examination of the CoC minutes, the Court found that the issue had been expressly discussed during the CIRP and that the appellant had agreed that such risks would be borne by the resolution applicant. Having consciously accepted those terms during the deliberative process, the appellant could not subsequently characterize them as conditions imposed unilaterally by the CoC. The Court emphasised that the appellant had participated in the discussions and had acquiesced in the very stipulations later challenged.

Addressing the contention regarding performance guarantee timelines, the Court held that the original RFRP prescribed a period of seven days for furnishing the guarantee. Although the CoC had temporarily relaxed the requirement to forty-five days in view of the COVID-19 pandemic, that concession had lapsed by the time the third LoI was issued. The Court further noted that the appellant had itself agreed in a subsequent CoC meeting to furnish the performance guarantee within seven days in accordance with the RFRP. In such circumstances, no grievance could be maintained regarding restoration of the original timeline.

The Hon'ble Supreme Court placed significant reliance on the doctrines of acquiescence, approbation and reprobation. Referring to established precedent, the Court held that a party who knowingly participates in a process, accepts its benefits, and expressly agrees to its terms cannot later challenge those very terms to secure a different advantage. The Court observed that the appellant's objections constituted an indirect attempt to withdraw from a CoC-approved resolution plan, despite the settled position that withdrawal or modification of such plans is impermissible once approved by the CoC and submitted for further processing under the Code. The Court characterised the appellant's conduct as a deliberate effort to delay implementation of the plan and shift responsibility for its unwillingness to proceed onto the CoC.

Relying upon the principles laid down in *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*, the Court reiterated that a resolution plan approved by the CoC is binding and irrevocable as between the CoC and the successful resolution applicant. The issuance of a Letter of Intent and the requirement of furnishing a performance guarantee are part of the implementation framework of the approved plan, and the Code does not contemplate a further stage of negotiations or withdrawal at the instance of the SRA. Permitting such conduct would undermine the time-bound architecture of the insolvency regime and frustrate the objectives of value maximisation and resolution.

On the issue of forfeiture of EMD, the Court held that Clause 1.9.4 of the RFRP expressly authorised forfeiture where the successful applicant failed to furnish the performance guarantee within the stipulated period or otherwise failed to comply with the resolution process. The Court found that the appellant had neither accepted the LoI nor complied with the post-approval obligations contemplated under the RFRP. Since the alleged conditions objected to by the appellant were not additional terms imposed by the CoC but matters already accepted and incorporated into the resolution framework, the appellant could not invoke the protective proviso against forfeiture. Accordingly, the forfeiture of the EMD was held to be valid and lawful.

The Court further upheld the decision of the CoC to place the corporate debtor into liquidation. Referring to Section 33(2) of the IBC and its Explanation, the Court observed that the CoC is entitled to decide to liquidate the corporate debtor at any stage after its constitution and before confirmation of a resolution plan. Where the successful resolution applicant defaults in implementing its obligations and the CIRP period expires without an approved plan, the CoC is entitled, in exercise of its commercial wisdom, to resolve for liquidation. The Court reiterated that such commercial decisions of the CoC are ordinarily non-justiciable and are not open to judicial review except on limited statutory grounds.

Accordingly, the Hon'ble Supreme Court held that the appellant had failed to establish any illegality in the LoIs, forfeiture of the EMD, or the liquidation process. The Court upheld the orders of the NCLT and NCLAT, dismissed the appeals, vacated all interim orders, and directed the liquidator to proceed with the remaining liquidation process in accordance with law.

B. CONTEMPT JURISDICTION CANNOT BE INVOKED WITHOUT STRICT COMPLIANCE WITH PROCEDURAL SAFEGUARDS; PUNISHMENT FOR CONTEMPT CANNOT BE IMPOSED WITHOUT IDENTIFYING INDIVIDUAL CONTEMNORS, RECORDING PRIMA FACIE SATISFACTION, ISSUING SHOW CAUSE NOTICE AND FRAMING SPECIFIC CHARGES; BONA FIDE INTERPRETATION OF RESOLUTION PLAN AND COURT ORDERS NEGATES WILFUL DISOBEDIENCE – NCLAT

The National Company Law Appellate Tribunal in ***State Bank of India and Ors. v. Jyoti Structures Ltd. and Ors., Comp. App. (AT) (Ins.) Nos. 388 and 389 of 2026***, decided on 26.05.2026, held that contempt jurisdiction cannot be exercised in the absence of strict adherence to procedural safeguards governing contempt proceedings. The Tribunal held that punishment for contempt cannot be imposed without identifying the individual contemnors, recording a prima facie satisfaction that contempt has been committed, issuing a formal show cause notice setting out specific allegations, and affording an adequate opportunity of defence. The Tribunal further held that where the alleged contemnors have acted on a bona fide interpretation of the resolution plan, contractual documents and prior judicial orders, the essential ingredient of wilful and deliberate disobedience is not established.

The dispute arose in the CIRP of Jyoti Structures Limited. The resolution plan approved by the Adjudicating Authority in March 2019 contemplated roll-over and issuance of bank guarantees and letters of credit by the existing lender banks. Pursuant to the approved resolution plan, a Non-Fund Based Facility Agreement was executed between the corporate debtor and the lender banks governing the terms for issuance of such facilities. The investors infused the contemplated funds and the "Closing Date" under the resolution framework was achieved on 09.11.2021. However, disputes subsequently arose regarding release of the non-fund based facilities. The Adjudicating Authority, by order dated 20.08.2024, directed the lender banks to release the NFB limits, and the said order was affirmed by the NCLAT on 09.12.2024. Alleging continued non-compliance, the corporate debtor and its shareholders initiated contempt proceedings against the lender banks. The NCLT ultimately directed release of the rolled-over facilities and further ordered that in case of continued non-compliance, the banks would be subjected to one day's simple imprisonment in civil prison. The lender banks challenged this order before the Appellate Tribunal.

Before the NCLAT, the principal contention of the banks was that the contempt proceedings themselves were fundamentally defective. It was argued that no individual officer had been identified as the alleged contemnor, no prima facie finding of contempt had been recorded, no formal show cause notice had been issued, and no specific charges had been framed. The banks further contended that they had acted resolution plan, the NFB Agreement, and applicable banking regulations. According to the banks, the dispute essentially concerned interpretation of the contractual and judicial directions and therefore could not constitute contempt.

The corporate debtor and shareholders, on the other hand, contended that the approved resolution plan had become binding upon all stakeholders under the IBC and that the lender banks had persistently failed to discharge their reciprocal obligations despite repeated judicial directions. It was argued that the lenders were deliberately frustrating implementation of the resolution plan by insisting upon fresh sanction letters and introducing conditions not contemplated under the plan or the NFB Agreement. The respondents asserted that such conduct amounted to wilful and deliberate disobedience of the orders passed by the Adjudicating Authority and affirmed by the Appellate Tribunal.

Examining the nature of contempt jurisdiction, the NCLAT reiterated that contempt proceedings are quasi-criminal in character and therefore require strict compliance with procedural safeguards. The Tribunal observed that before imposing any punishment for contempt, the court must first arrive at a prima facie satisfaction that a case of contempt is made out, issue a formal show cause notice specifying the exact allegations, frame precise charges, and afford the alleged contemnor a meaningful opportunity to defend itself. These safeguards assume even greater significance where imprisonment is contemplated. The Tribunal held that the power to punish for contempt is a serious and exceptional power which must be exercised with utmost caution and only upon clear proof of deliberate and intentional disobedience.

The Appellate Tribunal found merit in the contention that the NCLT had not followed the mandatory procedural framework governing contempt proceedings. The contempt applications had sought imprisonment of the chairpersons and officers of the banks, yet no specific individuals had been identified as contemnors. The proceedings were conducted against banking institutions as entities, without identifying the officers allegedly responsible for non-compliance. The Tribunal observed that where penal consequences are sought to be imposed, individual responsibility must be specifically established and the concerned persons must be placed on notice regarding the allegations against them. The absence of such procedural compliance rendered the contempt proceedings legally vulnerable.

The Tribunal further examined whether the conduct of the lender banks disclosed wilful and deliberate disobedience. It noted that the banks had relied upon provisions contained in the approved resolution plan and the NFB Agreement which contemplated project appraisal, due consideration of applicable laws and regulations, evaluation of projects, and issuance of facilities in accordance with banking requirements. The Tribunal observed that the banks had issued sanction letters and had attempted to structure the release of facilities through that mechanism. Significantly, the impugned order itself had recorded that several of the conditions incorporated in the sanction letters were bona fide and did not constitute disobedience of earlier judicial directions. The Adjudicating Authority had also acknowledged that the banks' conduct was influenced by concerns relating to protection of public funds and compliance with banking norms.

The NCLAT held that contempt jurisdiction cannot be invoked where the order alleged to have been violated is reasonably capable of more than one interpretation and the alleged contemnor has acted on one such plausible interpretation in good faith. Referring to settled principles laid down by the Supreme Court, the Tribunal observed that where there exists a genuine dispute regarding the meaning, scope or implementation of a judicial direction, the element of wilfulness necessary to sustain a charge of civil contempt is absent. A party acting under a bona fide understanding of its obligations cannot ordinarily be branded a contemnor merely because its interpretation is ultimately found to be incorrect.

The Tribunal also noted that the controversy substantially revolved around the manner in which the NFB limits were to be released and whether fresh sanction letters and associated conditions were permissible under the approved resolution framework. Such questions involved interpretation of the resolution plan, the NFB Agreement, previous sanction arrangements and banking regulations. The existence of these interpretational issues itself militated against any finding of deliberate defiance. The Tribunal observed that contempt jurisdiction is not intended to adjudicate complex contractual disputes or competing interpretations of commercial arrangements arising out of an approved resolution plan.

Having regard to the procedural infirmities in the contempt proceedings and the absence of a clear case of wilful disobedience, the Appellate Tribunal concluded that the ingredients necessary for invoking contempt jurisdiction had not been established. The Tribunal held that the Adjudicating Authority had erred in imposing coercive consequences including imprisonment without complying with the mandatory procedural requirements governing contempt proceedings and without establishing deliberate and intentional violation of judicial directions.

Accordingly, the NCLAT held that the impugned contempt order could not be sustained in law, emphasised that contempt jurisdiction must be exercised strictly within the confines of established procedural safeguards and only upon proof of wilful disobedience, and set aside the directions imposing penal consequences against the lender banks.

C. NCLT CANNOT REJECT A CoC-APPROVED RESOLUTION PLAN ON SUBJECTIVE GROUNDS OR RE-APPRECIATE COMMERCIAL DECISIONS; INTERFERENCE IS PERMISSIBLE ONLY FOR NON-COMPLIANCE WITH SECTION 30(2) OF THE IBC – NCLAT

The National Company Law Appellate Tribunal in **Express Resorts and Hotels Ltd. v. Amit Jain (RP) and Ors., Company Appeal (AT) (Insolvency) No. 517 of 2024**, decided on 25.05.2026, held that once a resolution plan has been approved by the Committee of Creditors ("CoC") with the requisite voting threshold, the Adjudicating Authority cannot reject the plan on subjective considerations, assumptions regarding valuation, perceived inadequacies in commercial terms, or disagreement with the CoC's business decisions. The NCLAT reiterated that the jurisdiction of the NCLT at the stage of approval under Section 31 of the Insolvency and Bankruptcy Code, 2016 is confined to examining whether the resolution plan complies with the requirements of Section 30(2), and not to reassessing the commercial wisdom of the CoC.

The appeal arose from the CIRP of Neesa Leisure Limited. The appellant, Express Resorts and Hotels Limited, was the successful resolution applicant whose resolution plan, having a plan value of approximately ₹143.83 crores along with a commitment of nearly ₹250 crores of additional capital expenditure, was approved by the CoC with 67.85% voting share in October 2020. The Resolution Professional thereafter filed an application for approval of the plan under Section 31. However, after prolonged proceedings and multiple rounds of litigation, the NCLT rejected the plan by order dated 04.03.2024 on various grounds relating to valuation, treatment of creditors, disputed assets, alleged lack of transparency in the process, the impact of Rainbow Papers, and subsequent settlement proposals made by promoters.

The successful resolution applicant challenged the rejection contending that the plan fully complied with Sections 30 and 31 of the Code, had been approved by the CoC in exercise of its commercial wisdom, and that none of the grounds relied upon by the NCLT constituted a violation of Section 30(2). It was further submitted that the NCLT had effectively revisited issues already settled in earlier rounds of litigation, including attempts to reopen the CIRP process and invite fresh bids after approval of the resolution plan.

The NCLAT undertook a detailed examination of each observation recorded by the NCLT and found that the findings were either unsupported by the record, based on assumptions, factually incorrect, or contrary to settled insolvency jurisprudence. The Appellate Tribunal observed that negotiation between the CoC and prospective resolution applicants to improve plan value is a recognised feature of the CIRP framework and cannot be treated as evidence of an unfair or non-transparent process. The Tribunal held that the NCLT had failed to identify any actual procedural irregularity in the conduct of the resolution process.

On the issue of valuation, the NCLAT held that valuation exercises conducted by registered valuers under the CIRP Regulations fall within the domain of the CoC and cannot ordinarily be re-examined by the Adjudicating Authority while considering approval of a resolution plan. The Tribunal noted that the CoC had accepted the valuation reports and no stakeholder had successfully challenged the valuation process at the relevant stage. Questions regarding the adequacy or correctness of valuation therefore fell squarely within the commercial wisdom of the creditors.

The Appellate Tribunal also rejected the NCLT's concerns regarding disputed properties, litigations affecting certain assets, and the "as is where is" nature of the acquisition. It observed that the Information Memorandum had disclosed the relevant disputes and litigations and that the resolution applicant had submitted its plan with full awareness of those risks. The existence of pending disputes concerning assets could not by itself constitute a ground for rejecting an otherwise compliant resolution plan.

With respect to statutory dues and the impact of State Tax Officer v. Rainbow Papers Ltd., the Tribunal noted that the issue had already been examined during the CIRP. The Resolution Professional had identified the statutory dues potentially entitled to secured status, and the successful resolution applicant had voluntarily undertaken to pay an additional amount of approximately ₹2.33 crores over and above the plan value to address any impact arising from the subsequent development of law. Since this additional payment did not affect the recoveries of the financial creditors who had approved the plan, the Tribunal found no legal impediment to approval of the resolution plan.

The NCLAT further held that the NCLT had erred in relying upon subsequent settlement proposals submitted by the promoters. The Tribunal reiterated that once the CoC had rejected the promoters' settlement proposals and approved a resolution plan, repeated attempts by promoters to improve their offers could not justify reopening the CIRP process. Permitting such an exercise would undermine finality in insolvency proceedings and defeat the time-bound framework contemplated by the Code.

The Tribunal also disapproved the NCLT's observations concerning the "wafer-thin majority" by which the plan was approved. It held that Section 30(4) requires approval by not less than 66% voting share, and a plan approved by 67.85% voting share satisfies the statutory requirement. Once the prescribed threshold is met, the Adjudicating Authority cannot reject a resolution plan merely because the majority is narrow.

Reiterating the principles laid down by the Supreme Court in K. Sashidhar, Essar Steel, Pratap Technocrats, Ebix Singapore and other authorities, the NCLAT emphasised that commercial decisions concerning distribution, valuation, feasibility, viability, treatment of stakeholders and overall business restructuring are matters entrusted to the CoC. Judicial review is confined to ensuring compliance with Section 30(2) and does not extend to substituting the Adjudicating Authority's views for those of the financial creditors.

The Appellate Tribunal found that the NCLT had not identified any specific violation of Section 30(2) of the Code and had instead rejected the plan on the basis of subjective observations and legally unsustainable considerations. The Tribunal held that none of the grounds relied upon by the NCLT justified rejection of the plan and that ample material existed on record explaining the issues raised by the Adjudicating Authority.

Accordingly, the NCLAT set aside the impugned order, allowed the appeal, approved the resolution plan submitted by the successful resolution applicant, and directed the NCLT to pass consequential orders for implementation of the resolution plan within fifteen days.

D. OPERATIONAL CREDITOR WHOSE CLAIM IS TREATED AS CONTINGENT DUE TO PRE-EXISTING RECIPROCAL DISPUTES IS NOT ENTITLED TO NOTICE OF CoC MEETINGS UNDER SECTION 24(3)(C); APPROVED AND IMPLEMENTED RESOLUTION PLAN CANNOT BE REOPENED IN ABSENCE OF FRAUD OR MATERIAL ILLEGALITY – NCLAT

The National Company Law Appellate Tribunal in ***Dharampal Premchand Ltd. v. Jitendra Bhandari & Ors., Company Appeal (AT) (Insolvency) No. 1872 of 2025***, decided on 25.05.2026, upheld the dismissal of a recall application seeking to reopen an approved resolution plan and held that where an operational creditor's claim is treated as contingent on account of substantial reciprocal contractual disputes and counterclaims, such creditor cannot claim an automatic right to notice of Committee of Creditors ("CoC") meetings under Section 24(3)(c) of the Insolvency and Bankruptcy Code, 2016. The Appellate Tribunal further reiterated that once a resolution plan has been approved and implemented, judicial interference is extremely limited and cannot be invoked merely because a stakeholder disagrees with the manner in which its claim was classified during the CIRP.

The appellant, Dharampal Premchand Ltd., had entered into a Contract Manufacturing and Packaging Agreement with the corporate debtor, Trimurti Foodtech Pvt. Ltd., in August 2014. Under the arrangement, the appellant provided substantial financial assistance and also supplied machinery and equipment under a separate lease arrangement. The appellant subsequently claimed that the contract had been terminated in December 2017 and that the corporate debtor owed it approximately ₹6.81 crores. After commencement of CIRP against the corporate debtor in August 2021, the appellant filed its claim as an operational creditor.

During claim verification, however, the Resolution Professional informed the appellant that its claim did not reconcile with the books of the corporate debtor and remained under verification. Thereafter, relying upon information provided by the suspended management, the Resolution Professional asserted that the corporate debtor possessed substantial claims against the appellant arising from alleged breaches of production commitments under the manufacturing agreement. The alleged losses were quantified at approximately ₹55.68 crores and were treated as a counterclaim against the appellant. Consequently, the appellant's claim was classified as contingent rather than admitted.

The resolution plan submitted by the successful resolution applicant was approved by the CoC with 78.58% voting share and thereafter approved by the Adjudicating Authority on 31.03.2023. The appellant challenged the approval order, alleging that its claim had actually been admitted by the Resolution Professional, that it was entitled to notice of CoC meetings under Section 24(3)(c), that the Resolution Professional had illegally revived a terminated contract to manufacture a counterclaim, and that leased machinery belonging to the appellant had been improperly treated as part of the insolvency estate. The appellant further alleged suppression of material facts, manipulation of the Information Memorandum, and fraud in the conduct of the CIRP.

Rejecting these contentions, the NCLAT observed that the material on record demonstrated that the appellant's claim had never been finally admitted as an undisputed operational debt. The Tribunal noted that from the inception of the CIRP the Resolution Professional had consistently maintained that the claim was under verification and that serious reciprocal disputes existed between the parties arising out of the same contractual arrangement. In such circumstances, the Resolution Professional was justified in treating the claim as contingent pending adjudication of the underlying contractual disputes.

The Appellate Tribunal specifically held that the appellant could not selectively rely upon portions of the Resolution Professional's communications suggesting acknowledgment of its claim while ignoring the simultaneous assertion of substantial counterclaims by the corporate debtor. The Tribunal observed that the Resolution Professional had never treated the appellant as an operational creditor possessing an unconditional and crystallized debt and had consistently classified the claim as contingent because of the reciprocal liabilities asserted between the parties.

Addressing the alleged violation of Section 24(3)(c), the NCLAT held that the statutory requirement of notice to operational creditors presupposes the existence of admitted operational debt above the prescribed threshold. Since the appellant's claim was not admitted but was treated as contingent and disputed, the foundation for invoking Section 24(3)(c) itself was absent. The Tribunal distinguished earlier NCLAT decisions such as ANG Industries Ltd. v. Shah Brothers Ispat Pvt. Ltd. and Bhushan Shringarpure v. B.K. Mishra, noting that those cases involved operational creditors whose claims had already been admitted during CIRP.

The Tribunal further held that even assuming some procedural deficiency in relation to participation rights, every procedural irregularity does not automatically vitiate the CIRP. The appellant failed to demonstrate any material prejudice caused by non-service of CoC notices or establish that its participation would have altered the commercial decision-making process of the CoC. Mere exclusion from meetings, without proof of actual prejudice affecting the resolution process, was insufficient to invalidate the approved resolution plan.

With respect to the appellant's contention that the Resolution Professional had unlawfully revived a terminated contract and relied upon an unadjudicated damages claim, the NCLAT held that questions concerning termination, renewal, continuation of contractual arrangements, interpretation of contractual clauses, and entitlement to damages are matters requiring adjudication in appropriate proceedings. The Resolution Professional was not exercising the powers of a civil court or arbitral tribunal while verifying claims. His function was limited to determining whether a claim was undisputed and payable or remained contingent because of existing disputes. Given the substantial contractual disputes between the parties, the contingent classification could not be regarded as arbitrary or illegal.

The Appellate Tribunal also rejected allegations of fraud, collusion, and suppression of material facts. It found that the CoC had been informed of the contingent nature of the appellant's claim and of the counterclaims asserted by the corporate debtor. The record did not support any inference that the Information Memorandum had been manipulated or that material information had been concealed from either the CoC or prospective resolution applicants. Allegations of fraud, the Tribunal observed, require clear and cogent evidence, which was absent in the present case.

As regards the appellant's claim over machinery and equipment supplied under the lease arrangement, the NCLAT held that disputes concerning ownership, title, possession, or contractual rights in relation to such assets could be pursued independently in accordance with law, but such disputes did not furnish a basis for invalidating the CIRP process or recalling an approved resolution plan.

The Tribunal further emphasised that the appellant had been aware since at least April 2022 that its claim was being treated as contingent. Despite such knowledge, it did not challenge the classification during the CIRP and chose to raise objections only after approval of the resolution plan. This conduct was considered significant because insolvency proceedings under the Code are intended to be time-bound and to attain finality within prescribed timelines.

Reiterating the broader objectives of the Insolvency and Bankruptcy Code, the NCLAT observed that once a resolution plan has been approved and implemented, courts and tribunals must exercise extreme restraint in reopening the process. Endless challenges based on disputed contractual claims would undermine certainty, revival of the corporate debtor, and finality of the insolvency framework. The Tribunal held that the appellant's grievances essentially arose from pre-existing contractual disputes and could not constitute grounds for recalling an approved and implemented resolution plan.

Finding no fraud, suppression of facts, material irregularity, jurisdictional error, or violation of any mandatory provision of the Code, the NCLAT upheld the order of the Adjudicating Authority dismissing the recall application and consequently dismissed the appeal.

E. PROCEEDINGS UNDER SECTION 138 NI ACT ARE PREDOMINANTLY CRIMINAL IN NATURE; PART III IBC MORATORIUM DOES NOT BAR CRIMINAL PROSECUTION BUT STAYS RECOVERY OF COMPENSATION – ISSUE REFERRED TO LARGER BENCH – SUPREME COURT

The Supreme Court in ***Dineshchand Surana v. UCO Bank, SLP (Crl.) Nos. 12135-12136 of 2024, decided on 27.05.2026***, considered the interplay between proceedings under Sections 138 and 141 of the Negotiable Instruments Act, 1881 and the moratorium provisions applicable to individuals under Part III of the Insolvency and Bankruptcy Code, 2016. The principal issue was whether the interim moratorium under Section 96, the insolvency moratorium under Section 101, and the bankruptcy moratoria under Sections 124 and 128 of the IBC operate to stay cheque dishonour proceedings against individuals undergoing personal insolvency or bankruptcy. While holding that Section 138 proceedings are predominantly criminal and not mere debt-recovery actions, the Court distinguished between the penal and compensatory components of such proceedings and referred the matter to a larger Bench for an authoritative determination.

The appellant, a former Managing Director of Surana Power Ltd., had availed financial facilities from UCO Bank, including a letter of credit facility. Upon devolvement of the letter of credit, the appellant issued a cheque towards repayment of the outstanding liability. The cheque was dishonoured for insufficiency of funds, following which the bank initiated prosecution under Sections 138 and 141 of the Negotiable Instruments Act. During the pendency of those proceedings, personal insolvency proceedings were initiated against the appellant under Section 95 of the IBC, leading first to an interim moratorium under Section 96, then a moratorium under Section 101 upon admission of the insolvency application, and eventually a bankruptcy moratorium under Section 128. The appellant contended that these moratoria barred continuation of the Section 138 proceedings.

The Court first undertook an extensive examination of the nature of the offence under Section 138. It observed that dishonour of a cheque issued towards discharge of a legally enforceable debt is transformed into a criminal offence through a statutory deeming fiction. The legislative object behind Chapter XVII of the Negotiable Instruments Act was not merely to facilitate debt recovery but to preserve the credibility and reliability of cheques as instruments of commerce by attaching penal consequences to their dishonour. The Court emphasised that the offence is committed when the cheque is dishonoured, whereas the statutory notice and waiting period merely operate as safeguards affording the drawer an opportunity to avoid prosecution.

While acknowledging that earlier decisions, particularly P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., had highlighted the hybrid or quasi-criminal character of Section 138 proceedings, the Court held that those observations principally focused upon procedural and compensatory features of the provision. According to the Court, the predominant character of Section 138 remains criminal because Parliament deliberately attached penal consequences to dishonour of cheques in order to deter conduct undermining commercial confidence. The Court therefore expressed reservations regarding the oft-cited description of Section 138 proceedings as a "civil sheep in a criminal wolf's clothing".

The Court further clarified the distinction between punishment and compensation in cheque dishonour proceedings. It observed that Section 138 itself provides for imprisonment, fine, or both, whereas compensation is not sourced from Section 138 but from Section 395 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 357 CrPC). Compensation, although capable of being awarded in criminal proceedings, remains civil and restitutive in nature. Accordingly, the Court held that the compensatory element of a Section 138 proceeding must be analytically separated from its criminal component.

The Hon'ble Supreme Court also reaffirmed that civil remedies for recovery of money and criminal prosecution under Section 138 can coexist. The availability of a parallel civil suit demonstrates that Section 138 is not merely a debt recovery mechanism. Rather, the provision serves the broader public purpose of preserving confidence in negotiable instruments by punishing wrongful dishonour of cheques while simultaneously permitting compensation to be awarded to the complainant.

Turning to the scope of moratorium under Part III of the IBC, the Court analysed Sections 96, 101, 124 and 128, all of which refer to legal actions or proceedings "in respect of any debt". The Court held that notwithstanding the breadth of this language, criminal prosecution under Section 138 cannot be suspended merely because the accused is undergoing personal insolvency or bankruptcy. The Court relied significantly upon Section 79(15) of the IBC, which excludes liabilities to pay fines imposed by courts from the ambit of insolvency protection. It reasoned that extending moratorium protection to the penal component of Section 138 proceedings would effectively allow debtors to evade criminal liability and would frustrate the legislative purpose of Chapter XVII of the Negotiable Instruments Act.

At the same time, the Court drew a distinction between the criminal prosecution itself and the recovery of compensation arising therefrom. It held that once compensation is awarded under Section 395 BNSS, a right to payment accrues in favour of the complainant, thereby bringing the liability within the concepts of "claim" and "debt" recognised by the IBC. Consequently, while criminal prosecution may continue and culminate in conviction, imprisonment, or fine, the recovery of compensation awarded in such proceedings must remain suspended during the currency of the moratorium under Part III.

The Court then addressed the position of directors and other persons vicariously liable under Section 141 of the Negotiable Instruments Act. It reiterated that criminal liability under Section 141 survives notwithstanding legal impediments affecting the company itself and that directors cannot escape prosecution merely because insolvency proceedings have been initiated. However, where such directors themselves undergo personal insolvency or bankruptcy, any compensatory liability imposed upon them pursuant to Section 395 BNSS would fall within the expression “any debt” appearing in Sections 96 and 101 of the IBC. Accordingly, recovery of compensation from such individuals would remain subject to the moratorium, although their criminal liability would continue unabated.

Summarising its conclusions, the Court held that proceedings under Section 138 are not proceedings for recovery of money simpliciter but are predominantly criminal in character; that the moratorium provisions contained in Part III of the IBC do not apply to the criminal aspect of such proceedings; that recovery of compensation awarded in those proceedings is subject to the moratorium; and that directors or other persons vicariously liable under Section 141 similarly enjoy protection only against recovery of compensatory liabilities and not against criminal prosecution.

However, recognising the importance of the issues involved and the need to reconcile the reasoning in P. Mohanraj, Ajay Kumar Radheyshyam Goenka, Rakesh Bhanot and other authorities, the Court directed that the matter be placed before the Chief Justice of India for constitution of an appropriate three-Judge Bench. It specifically referred for authoritative determination the questions whether Section 138 is essentially a quasi-criminal offence with a predominantly criminal character and whether the moratorium under Part III of the IBC applies to the entirety of Section 138 proceedings or only to their compensatory component. Thus, the legal position articulated in the judgment presently remains subject to consideration by the larger Bench.

F. DIRECTORS CAN BE ORDERED TO CONTRIBUTE TO CORPORATE DEBTOR’S ASSETS UNDER SECTION 66 IBC FOR FRAUDULENT TRADING; FORENSIC AUDIT REPORT MUST BE SUPPORTED BY CIRCUMSTANTIAL AND DOCUMENTARY MATERIAL; NCLT CANNOT DIRECT SFIO INVESTIGATION DIRECTLY – NCLAT

The National Company Law Appellate Tribunal, Principal Bench, in **Nitin Ramchandra Jadhav & Ors. v. Vijendra Kumar Jain & Anr., Company Appeal (AT) (Ins.) No. 1044 of 2024**, decided on 20.05.2026, examined the scope of Section 66 of the Insolvency and Bankruptcy Code, 2016 in relation to fraudulent trading and wrongful trading by directors of a corporate debtor. The appeal arose from an order directing the erstwhile directors of Gajanan Solvex Ltd. to contribute over ₹9.04 crores to the assets of the corporate debtor on account of fraudulent diversion of assets. While substantially affirming the findings of fraudulent conduct and contribution liability, the NCLAT modified the order insofar as it directed investigation by the Serious Fraud Investigation Office (“SFIO”), holding that such a direction could not be issued directly by the Adjudicating Authority.

The corporate insolvency resolution process against Gajanan Solvex Ltd. commenced pursuant to admission of a Section 7 application filed by State Bank of India. During CIRP, forensic auditors were appointed to examine the affairs of the company. The investigation revealed that the corporate debtor had invested approximately ₹8.85 crores in its Singapore-based subsidiary, Rio Resource PTE Ltd., acquiring a 51% shareholding. However, despite audited financial statements continuing to reflect this investment up to FY 2021-22, the forensic audit disclosed that the shares had allegedly been transferred as early as February 2019 to another entity without any consideration being received by the corporate debtor.

The Resolution Professional further discovered that the suspended directors had subsequently claimed that the shares were sold to Bellwether International Trade PTE Ltd. for consideration of approximately ₹19.95 crores. According to the directors, the sale proceeds were not received by the corporate debtor because they had been diverted directly towards settlement of an alleged penalty payable to a UAE-based entity, Aero Steel Resources Ltd., arising from an earlier commercial contract. The Resolution Professional and forensic auditor considered this explanation implausible and alleged that the transaction was devised to siphon away valuable assets beyond the reach of creditors.

The forensic audit also reported several other suspicious transactions, including fictitious sales, dealings with entities allegedly controlled by former employees, purchases from entities whose GST registrations had already been cancelled, and transactions with parties whose existence could not be independently verified. Based on these findings, the Resolution Professional initiated proceedings under Section 66 of the IBC seeking contribution from the former directors.

Before the Appellate Tribunal, the appellants argued that the entire case rested solely on a forensic audit report and that Section 66 requires a much higher evidentiary threshold. They contended that the transaction with Aero Steel represented a genuine commercial settlement and that there was insufficient evidence establishing any fraudulent intent. They further submitted that a forensic audit report by itself could not constitute proof of fraud and relied upon prior NCLAT decisions emphasising the necessity of corroborative evidence.

The NCLAT undertook a detailed examination of Section 66. It observed that Section 66(1) addresses situations where the business of the corporate debtor has been carried on with intent to defraud creditors or for any fraudulent purpose, whereas Section 66(2) concerns directors or partners who knew, or ought to have known, that insolvency was unavoidable and nevertheless failed to exercise due diligence in minimising losses to creditors. The Tribunal reiterated that the two provisions operate independently and address distinct factual circumstances.

While recognising that a forensic audit report alone cannot automatically establish fraud, the Tribunal clarified that such a report may constitute part of the evidentiary foundation when supported by surrounding circumstances and other material on record. The Tribunal reaffirmed earlier decisions holding that allegations under Section 66 must be proved through adequate evidence and that mere suspicion cannot substitute proof. At the same time, it emphasised that fraud may also be established through circumstantial evidence and by drawing inferences from a party's conduct.

Applying these principles, the Tribunal found several circumstances strongly indicative of fraudulent conduct. First, despite the alleged sale of the subsidiary shares in 2018 or 2019, the corporate debtor continued to show the investment in its audited financial statements until 2022. Secondly, the suspended directors failed to disclose the transaction during CIRP despite repeated requests by the Resolution Professional. Thirdly, the explanation that the sale consideration had been diverted directly to Aero Steel was unsupported by credible documentation. Fourthly, there was no satisfactory evidence demonstrating any prior commercial relationship between the corporate debtor and Aero Steel that would justify such a substantial penalty settlement.

The Tribunal concluded that these circumstances established more than mere suspicion. In its view, the continued reflection of the investment in the company's financial statements despite the alleged sale, coupled with concealment of the transaction and diversion of the sale proceeds away from the corporate debtor, demonstrated a deliberate attempt to keep valuable assets beyond the reach of creditors at a time when insolvency proceedings were foreseeable. Such conduct squarely attracted Section 66 of the IBC.

The NCLAT further held that once the Resolution Professional had discharged the initial burden of producing material indicating fraudulent conduct, the evidentiary burden shifted to the suspended directors to satisfactorily explain the impugned transactions. The explanations offered by the appellants were found to be unsupported by documentary evidence and therefore insufficient to rebut the case established by the Resolution Professional.

The Tribunal also upheld the findings concerning another transaction involving an alleged sale of ₹19.70 lakhs to M/s SR Minerals. Although the appellants claimed that the transaction had subsequently been cancelled, no documentary material was produced to substantiate that assertion. The Tribunal therefore accepted the finding that the transaction appeared designed to facilitate misappropriation of corporate assets.

On the question of SFIO investigation, however, the Tribunal accepted the appellants' contention. Relying upon earlier precedent, it held that the Adjudicating Authority lacks jurisdiction to directly order investigation by the Serious Fraud Investigation Office. Under Sections 212 and 213 of the Companies Act, 2013, the power to direct SFIO investigation ultimately rests with the Central Government. The Tribunal observed that while the Adjudicating Authority may initiate the process contemplated under Section 213 and refer the matter for investigation, it cannot bypass the statutory framework by directly mandating an SFIO inquiry.

Accordingly, the NCLAT substantially affirmed the findings of fraudulent conduct and the directions requiring contribution to the assets of the corporate debtor. However, it modified the impugned order to the limited extent of setting aside the direct SFIO investigation direction and instead referred the matter to the Secretary, Ministry of Corporate Affairs, for investigation through inspectors in accordance with the Companies Act, leaving it to the Central Government to determine whether a further SFIO investigation was warranted. The appeal was therefore partly allowed only to that limited extent.

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