

LITIGATION & ADR

NEWSLETTER

S. 9 IBC | UNCRYSTALLIZED DAMAGES FROM BREACH OF CONTRACT NOT OPERATIONAL DEBT: SUPREME COURT

BEFORE THE SUPREME COURT OF INDIA
Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt. Ltd.
 Civil Appeal No. 876 of 2021
 Judgement Dated: 12 August 2026

Summary

The case concerned an EPC contract for setting up a 225 MW gas based power station. The respondent, the operational creditor, claimed unpaid milestone payments along with suspension and demobilisation charges and initiated proceedings under Section 9 of the IBC.

The Supreme Court held that the EPC contract had not come to an end merely because the work remained suspended. However, this did not mean that the respondent had a continuing cause of action for the unpaid amounts. The contractual milestone payments were operational debt, while the unadjudicated suspension and demobilisation charges were damages and could not be treated as operational debt.

Most importantly, the Court held that the Section 9 application was filed after the expiry of the limitation period. Mere continuation of the EPC contract or sending legal notices could not extend limitation. The NCLT and NCLAT orders were therefore set aside.

Facts

- The appellant invited bids for setting up a 225 MW gas based combined cycle power station at Bikkavolu, Andhra Pradesh.
- The respondent was awarded the contract for Rs. 827 crore through a Letter of Award dated 24.12.2010. An EPC agreement was subsequently executed on 09.02.2011, with completion contemplated within 14 months.
- Under the payment schedule, payments were linked to different milestones. Although the respondent completed the first three milestones, the appellant paid only Rs. 50.15 crore, leaving substantial amounts unpaid.

- Due to non-payment, the respondent issued a suspension notice on 30.07.2011 and stopped the EPC work.
- The respondent subsequently sent legal notices dated 25.07.2014, 16.09.2014 and 15.07.2015, demanding its dues. The appellant did not respond to these notices.
- On 02.07.2018, the respondent issued a statutory demand notice under Section 8 of the IBC and later filed a Section 9 application on 12.10.2018.
- The NCLT admitted the application on 13.12.2019. The NCLAT upheld the decision, mainly holding that the EPC contract continued to subsist and therefore the claim was not time-barred.

Issues:

The Supreme Court considered four main issues:

- Whether the EPC contract had been frustrated by efflux of time.
- Whether the amounts claimed constituted operational debt under Section 5(21) of the IBC.
- Whether there was a pre-existing dispute between the parties.
- Whether the Section 9 application was barred by limitation.

Judgment:

On subsistence of the EPC contract:

The Court held that the contract continued to subsist because neither party had terminated it. The suspension of work was not an unforeseen event making performance impossible. Therefore, Section 56 of the Contract Act could not be invoked. The contract was not frustrated merely because time had passed.

On operational debt:

The Court distinguished between the different claims. Payments due under the contractual milestones were operational debt because they were consideration for the works performed. However, suspension, idling and demobilisation charges were in the nature of damages. Since they had not been adjudicated and crystallised by a competent court or arbitral tribunal, they could not be treated as operational debt under Section 5(21).

On pre-existing dispute:

The Court held that there was no pre-existing dispute. Although a dispute does not necessarily have to be pending before a court or arbitral tribunal, the appellant had remained completely silent in response to several legal notices and even the Section 8 demand notice. The defence was raised for the first time in response to the Section 9 application and was therefore treated as an afterthought.

On limitation:

This was the decisive issue. The Court held that the operational debt had become due and payable when the relevant defaults occurred, and the claim had crystallised by January and February 2012. The limitation period under Article 137 was three years.

The Court rejected the argument that the continued existence of the EPC contract created a continuing cause of action. A default occurs when a debt becomes due and is not paid. Sending subsequent legal notices does not restart limitation unless there is a written acknowledgment of liability under Section 18 of the Limitation Act.

Analysis

The main takeaway from the judgment is that a continuing contract does not necessarily mean a continuing cause of action for the purpose of IBC limitation.

The Court also made an important distinction between ordinary civil/arbitration proceedings and IBC proceedings. In some EPC disputes, a fresh right to sue may arise when the final bill is reconciled or the works are finally tested. However, for a Section 9 IBC application, the relevant question is when the default under Section 3(12) occurred. Paras 86 to 88.

The judgment also reinforces that IBC proceedings cannot be used as a method of reviving a debt that has already become time barred.

IBC MORATORIUM AGAINST COMPANY DOESN'T BAR CONSUMER COMPLAINTS AGAINST PROMOTERS, DIRECTORS: SUPREME COURT

BEFORE THE SUPREME COURT OF INDIA

Tejas J. Shah & Amisha T. Shah & Ors. V. Mantri Technology Constellations Pvt. Ltd. & Ors.

Civil Appeal Nos. 4289-4290 of 2025

Judgement Dated: 27 July 2026

Summary

The case concerned homebuyers who had filed a consumer complaint against the developer, its associated company, promoters/directors and landowners for non-delivery of their apartments.

During the pendency of the complaint, insolvency proceedings were initiated against the main developer and a moratorium under Section 14 of the IBC was imposed. The NCDRC consequently stopped the entire consumer complaint.

The Supreme Court held that the moratorium applies only to the corporate debtor. It does not automatically extend to promoters, directors, associated companies or other respondents. Therefore, the consumer complaint could continue against Respondent Nos. 2 to 7.

Facts:

- The appellants were homebuyers who booked apartments in the Mantri Manyata Energia project, developed by Respondent No. 1, Mantri Technology Constellations Pvt. Ltd.
- Agreements were executed in 2016, under which possession was to be handed over by 31.12.2018.
- Despite substantial payments, possession was not delivered within the agreed time. The homebuyers therefore filed Consumer Complaint No. 13 of 2023 before the NCDRC alleging deficiency in service and unfair trade practices against Respondent Nos. 1 to 7.
- During the pendency of the complaint, the NCLT admitted a Section 9 IBC application on 23.08.2024 against Respondent No. 1 and imposed a Section 14 moratorium.
- The homebuyers then requested the NCDRC to continue the complaint against Respondent Nos. 2 to 7. The NCDRC rejected this request and adjourned the complaint sine die.

Issue:

Whether the Section 14 IBC moratorium imposed against the corporate debtor also prevented the consumer complaint from continuing against the other respondents who were not themselves subject to the moratorium.

Judgment:

The Supreme Court held that Section 14 moratorium operates only against the corporate debtor. It cannot be extended to other parties unless the law specifically provides for such protection.

The Court relied on decisions including *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.* and *Ansal Crown Heights Flat Buyers Association v. Ansal Crown Infrabuild Pvt. Ltd.*, which recognise that the moratorium does not automatically protect directors, promoters and other persons.

The Court also held that the NCDRC had prematurely assumed that the alleged deficiency was attributable only to Respondent No. 1. Whether Respondent Nos. 2 to 7 were actually liable had to be decided after considering the pleadings and objections. That question could not be closed at the interlocutory stage.

SUPREME COURT HIGHLIGHTS CHALLENGES FACED BY SMALL OPERATIONAL CREDITORS AND MSMES, SUGGESTS LEGISLATIVE EXAMINATION OF REPAYMENT FRAMEWORK

*BEFORE THE SUPREME COURT OF INDIA
M/s Tata Steel Ltd. v. Varsha & Anr.
CIVIL APPEAL Nos. 9052-9053 OF 2026
Judgement Dated: 17 July 2026*

Summary:

The case concerned whether pending civil suits and arbitration proceedings relating to claims against Bhushan Steel Ltd. could continue after approval of its Resolution Plan under the IBC.

The Supreme Court held that once the Resolution Plan was approved, claims which had not crystallised and become determinable and quantifiable by that stage stood extinguished. The

fact that such claims were pending before a civil court or arbitral tribunal did not allow them to continue after approval of the Resolution Plan.

The Court applied the clean slate/fresh start principle under the IBC and held that the successful resolution applicant cannot be exposed to uncertain claims after taking over the corporate debtor.

Facts:

Bhushan Steel Ltd. was undergoing CIRP. Before the CIRP:

- Varsha, an operational creditor, had filed a civil suit for recovery of ₹38,89,674.14, along with 18% interest. The suit later became Civil Suit No. 153 of 2011.
- Masyc Projects Pvt. Ltd. had initiated six arbitration proceedings relating to goods supplied to Bhushan Steel.
- During CIRP, both creditors submitted their claims to the Resolution Professional. Varsha claimed ₹34,27,895, while Masyc claimed ₹31,30,67,354.

Initially, their disputed claims were admitted at a notional value of ₹1. However, in the Final List of Creditors dated 20 March 2018, the earlier note stating that liability was subject to the outcome of pending proceedings was removed. The claims continued to be shown at ₹1.

Tata Steel's Resolution Plan was approved by the CoC on 20 March 2018 and sanctioned by the NCLT on 15 May 2018 under Sections 30 and 31 of the IBC.

Despite this, Varsha's civil suit and Masyc's arbitration proceedings were allowed to continue, leading Tata Steel, as the successful resolution applicant, to approach the Supreme Court.

Judgment:

The Supreme Court allowed Tata Steel's appeals. The Court held that:

1. Once a Resolution Plan is approved under Section 31(1) of the IBC, the claims dealt with by the Plan become final and binding.

2. The purpose of the clean slate principle is to ensure that the successful resolution applicant takes over the corporate debtor without being exposed to unforeseen or uncertain liabilities.
3. The ₹1 value assigned to Varsha's and Masyc's claims in the Final List was not intended to keep their claims alive until the pending litigation was decided. The Court found that the Final List had changed the position from a claim being subject to adjudication to a quantified ₹1 claim.
4. The Resolution Plan did not create a carve-out allowing the pending proceedings to continue. Instead, the Plan provided for the withdrawal, abatement, settlement or extinguishment of such proceedings.
5. Therefore, only claims which had crystallised and were determinable and quantifiable by the relevant stage were capable of being dealt with under the Plan. Pending claims which had not reached that stage could not survive after approval of the Plan.

The Court ultimately held that the pending civil suit and arbitration proceedings stood abated, waived, withdrawn or extinguished upon approval of the Resolution Plan.

Analysis:

A resolution plan cannot leave uncertain claims hanging indefinitely. Here, the claims of Varsha and Masyc were still pending before the civil court and arbitral tribunals when the Resolution Plan was approved. Since their liability had not been finally determined and quantified, allowing those proceedings to continue would expose Tata Steel to liabilities which could not have been properly calculated when it formulated its Resolution Plan.

The Court therefore treated the clean slate principle as an important part of the insolvency process. Once the Plan is approved, the successful resolution applicant must know the extent of liabilities it is taking over.

Importantly, the Court also noted the difficulty faced by small operational creditors and MSMEs under the present IBC framework, particularly because of their position in the repayment waterfall. However, the Court clarified that changing this framework is a matter for the Legislature, not the Court.

CAN PRE-DEPOSIT BE MANDATED TO INVOKE ARBITRATION? SUPREME COURT REFERS TO LARGER BENCH, DOUBTS 2009 PRECEDENT

BEFORE SUPREME COURT OF INDIA

M/s Santosh Associate Private Limited v. Haryana State Industrial and Infrastructure Development Corporation Ltd.

CIVILAPPEAL NO. OF 2026 @ SLP (C) No. 31245 of 2025

Judgement Dated: August 17, 2026

Summary:

In *M/s Santosh Associate Pvt. Ltd. v. Haryana State Industrial and Infrastructure Development Corporation Ltd.*, 2026 INSC 872, the Supreme Court considered a contractual clause requiring a contractor to deposit 10% of the claim amount before invoking arbitration. The Sole Arbitrator dismissed the appellant's claim for failing to make the deposit; the Commercial Court, on appeal, upheld this relying on *S.K. Jain v. State of Haryana*.

The Supreme Court examined *S.K. Jain*, *ICOMM Tele*, *Lombardi Engineering and CORE*. It observed that a substantial pre-deposit may discourage parties from pursuing arbitration and make the right to sue ineffective. However, since *S.K. Jain* was decided by a three-Judge Bench, the present two-Judge Bench could not overrule it. The Court therefore referred the issue to a larger Bench to determine whether such pre-deposit conditions are valid under Article 14, Section 18 of the Arbitration Act and Section 28 of the Contract Act, including whether the fact that the deposit is refundable affects its validity.

Facts:

Haryana State Industrial and Infrastructure Development Corporation Ltd. invited tenders on 7 November 2016 for storm-water drainage work at Sector-35, Udyog Vihar, Gurugram. Santosh Associate was awarded the contract on 17 May 2017 for ₹5.14 crore.

The contract contained Clause 25-A(vii), which required the contractor to deposit 10% of the claim amount as security before referring a claim ₹1 lakh and above to arbitration. The deposit was refundable after the arbitration proceedings, subject to adjustment towards costs.

Due to site-related difficulties, the scope of work was reduced and the contract value was revised to about ₹2.40 crore on 19 January 2021. Disputes subsequently arose regarding the final payment.

The High Court appointed a sole arbitrator on 8 August 2024. The respondent raised an objection under Section 16 of the Arbitration Act, arguing that the claim was not maintainable because the appellant had not deposited the required 10%.

The arbitrator directed the appellant to make the deposit within 15 days. When the appellant refused, its claim was dismissed entirely. The Commercial Court upheld this decision on 12 September 2025, relying on *S.K. Jain v. State of Haryana*.

Issue:

The main question was whether a contractual clause requiring only the contractor to make a substantial pre-deposit before invoking arbitration is legally valid. More specifically, the Court considered whether such a clause:

1. violates Article 14 of the Constitution;
 2. violates Section 18 of the Arbitration and Conciliation Act, which requires equal treatment of parties;
 3. discourages access to arbitration;
 4. violates Section 28 of the Contract Act; and
 5. remains valid when the deposit is refundable.
6. *S.K. Jain* itself remains a valid and binding precedent

Judgment:

The Supreme Court did not finally decide the validity of the 10% pre-deposit clause. Instead, it found that the issue requires consideration by a larger Bench. The Court examined four important decisions:

- *S.K. Jain v. State of Haryana*, (2009) 4 SCC 357
- *ICOMM Tele Ltd. v. Punjab State Water Supply & Sewerage Board*, (2019) 4 SCC 401
- *Lombardi Engineering Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.*, (2024) 4 SCC 341
- *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*, (2025) 4 SCC 641

The difficulty was that S.K. Jain, a three-Judge Bench decision, had upheld a similar pre-deposit requirement, whereas ICOMM Tele had treated such a requirement as arbitrary. Lombardi subsequently held that there was no conflict between the two decisions because the clauses involved were materially different.

The present two-Judge Bench stated that it was prima facie difficult to accept that Article 14 was not argued in S.K. Jain and also expressed serious concerns about requiring a claimant to deposit a substantial percentage of its claim before even accessing arbitration.

The Court observed that an arbitration clause

cannot impose such an onerous pre-deposit condition that the right to sue becomes practically illusory or ineffective. Such a condition may discourage genuine claims and defeat the purpose of arbitration. However, because S.K. Jain was decided by a larger Bench, the present two-Judge Bench could not overrule it. Therefore, the matter was referred for consideration by a larger Bench.

Analysis

The judgment highlights the tension between S.K. Jain, which upheld refundable pre-deposit clauses, and later decisions such as ICOMM Tele and Lombardi Engineering, which questioned such requirements as potentially arbitrary and discouraging access to arbitration. The Court observed that a substantial pre-deposit should not make the right to invoke arbitration practically ineffective. However, since S.K. Jain was a three-Judge Bench decision, the present two-Judge Bench could not overrule it. The Court therefore referred the issue to a larger Bench to decide whether such clauses violate Article 14, Section 18 of the Arbitration Act and Section 28 of the Contract Act, and whether their being refundable affects their validity.

ARBITRATION | INVOLVEMENT IN PERFORMANCE OF UNDERLYING CONTRACT A FACTOR TO DECIDE IF NON-SIGNATORY BOUND BY AGREEMENT : SUPREME COURT

BEFORE SUPREME COURT OF INDIA
KKH Finvest Pvt. Ltd. and anr v. Ashiesh Shukla and ors.
Special Leave Petition (C) No. 4222 of 2025
Judgement Dated: August 5, 2026

Summary:

The Supreme Court of India ruled that a non-signatory to a primary settlement agreement can be bound by its arbitration clause under the "veritable party" doctrine if their obligations in an interlinked agreement are fundamental to the main contract's completion. The Court set aside a Delhi High Court decision that had excluded one non-

signatory based on a decoupling clause in his Share Purchase Agreement, noting that other identically situated parties with the exact same clause were already referred to arbitration. Consequently, the Court held that the non-signatory was a veritable party and referred the dispute to the ongoing arbitral proceedings.

Facts:

- Appellant No. 1 (KKH Finvest Pvt. Ltd.) intended to take over Appellant No. 2 (Sensorise Digital Services Pvt. Ltd.) and its sister concern through a Memorandum of Settlement (MoS) dated May 9, 2022.
- Respondent No. 1, Ashiesh Shukla, did not sign the MoS.
- However, Ashiesh Shukla was identified in Schedule 2 of the MoS as a consultant holding 1480 shares, which constituted a 0.05% shareholding.
- The MoS stipulated that separate Share Purchase Agreements (SPAs) would be executed simultaneously with the individuals listed in the schedules.
- In accordance with the MoS, Ashiesh Shukla signed an SPA on May 9, 2022, to transfer his shares for a proportionate portion of the ₹8 crore settlement amount.
- The MoS included an arbitration agreement for resolving disputes through a mutually appointed sole arbitrator.
- Following the emergence of disputes, the Delhi High Court referred several non-signatory management team members to arbitration.
- The High Court declined to refer Ashiesh Shukla to arbitration, relying on Clause 16 of his SPA.
- Clause 16 stated that the sale of his shares was independent, mutually exclusive, and not connected to the remaining clauses of the SPA and the MoS.

Issues:

- Whether a non-signatory to a primary settlement agreement (MoS) qualifies as a "veritable party" and is bound by the arbitration agreement contained within it.
- Whether the High Court erred in excluding Ashiesh Shukla from arbitration based on an exclusionary clause in his SPA, despite referring other identically situated parties to arbitration.

Judgment:

- The Supreme Court allowed the appeal and set aside the Delhi High Court's judgment concerning Ashiesh Shukla.
- The Court held that Ashiesh Shukla is a veritable party to the MoS and is therefore bound by its arbitration agreement.
- The Court appointed Hon'ble Mr. Justice T.S. Thakur (Retired) as the sole Arbitrator to adjudicate the disputes between the appellants and Ashiesh Shukla.
- The Court noted that the High Court overlooked a critical fact: the other management team members who were referred to arbitration had identical exclusion clauses in their respective SPAs.
- The Court found that distinguishing between Ashiesh Shukla and the other identically situated individuals was factually unfounded and legally unsustainable.
- Applying the principles laid down in *Cox and Kings Limited v. SAP India Private Limited*, the Court determined that Ashiesh Shukla's performance under his SPA was fundamental to fulfilling the obligations outlined in the MoS.
- The Court observed that without Shukla transferring his shares, the primary objective of the MoS would inevitably remain incomplete.

Analysis:

- The judgment reinforces the application of the "veritable party" doctrine in modern commercial transactions involving composite and interlinked agreements.
- It clarifies that boilerplate exclusion or decoupling clauses in secondary agreements cannot defeat an arbitration clause if the transaction requires the non-signatory's performance to achieve the contract's primary goal.
- The judgment reiterates that a non-signatory's participation in the performance of the underlying contract is an important factor in determining whether it intended to be bound by the arbitration agreement, alongside other factors assessed holistically.

The ruling establishes a firm precedent on equal treatment, mandating that courts cannot artificially

differentiate between non-signatories who execute agreements with mirror obligations.



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KEY CONTACTS



Jidesh Kumar

Managing Partner
jidesh@ksandk.com



Smita Paliwal

Partner
smita@ksandk.com



Deepika Kumari

Partner
deepika.kumari@ksandk.com



Zeeshan Farooqui

Partner
zeeshan@ksandk.com



Atul Menon

Partner
atul@ksandk.com



Sukrit Kapoor

Partner
sukrit@ksandk.com



Aditya Bhattacharya

Partner
aditya@ksandk.com



Navod Prasannan

Partner
navod@ksandk.com



Sunayana B Mallik

Partner
sunayana@ksandk.com



Simran Tandon

Partner
simran@ksandk.com

NEW DELHI

RNM Tower, 5th Floor, Metro pillar no 331, i4, B 1, NH-19, Mohan Cooperative Industrial Estate, New Delhi, 110044
Tel: +911141318190/41032969
Email: delhi@ksandk.com

BANGALORE

1A, 1B, 2B & 3B Lavelle Mansion, 1/2, Lavelle Road, Bangalore
Tel: +91 80 41179111/41179222,
Email: bangalore@ksandk.com

CHENNAI

211, Alpha Wing, Second Floor, Raheja Towers, #177, Anna Salai, Chennai
Tel: +91 44 28605955/28606955
Email: chennai@ksandk.com

MUMBAI (1)

61, Atlanta Building, Jamnalal Bajaj Road, Nariman Point, Mumbai
Tel: +91 22 62372076/22020080
Email: mumbai@ksandk.com

MUMBAI (2)

301A, 3rd Floor, Piramal Tower, Peninsula Corporate Park, Lower Parel, Mumbai -400013
Tel: +91 2235253198
Email: mumbai@ksandk.com

MUMBAI (3)

802, 8th Floor, REMI COMMERCIO, Shah Industrial Estate, Veera Desai Road, Andheri Link Road, Behind Yash Raj Studio, Andheri (West), Mumbai - 400 053
Tel: +91 2235253198
Email: mumbai@ksandk.com

KOCHI

1st Floor, Manavalan Building, Banerji Road, Ernakulam, Kochi
Tel: +91 484-3592950
Email: kochi@ksandk.com

PUNE

Bootstart Cowork, 1st Floor, Arcadian Building Plot No 12, Lane 5A, Koregaon Park, Pune
Tel: +91 9833555232
Email: pune@ksandk.com

HYDERABAD

608, Shangrila Plaza, Road no. 2, Banjara Hills, Hyderabad, Telangana
Tel: +91 40 48516011/+91 40 48506011
Email: hyderabad@ksandk.com